

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARCUS CASTER, et al.,

Plaintiffs,

v.

JOHN H. MERRILL, in his official
capacity as Alabama Secretary of State,

Defendant.

Case No.: 2:21-cv-1536-AMM

**JOINT STIPULATED FACTS FOR PRELIMINARY INJUNCTION
PROCEEDINGS**

Pursuant to this Court's Scheduling Order for Preliminary Injunction Proceedings dated November 23, 2021 (ECF No. 40), the parties submit the following joint stipulated facts:¹

I. Parties

A. Marcus Caster

1. Plaintiff Marcus Caster is African American.
2. Plaintiff Marcus Caster lives in McIntosh, Alabama.

¹ When stipulating to facts as true, the parties do not waive the right to object to evidence as irrelevant or otherwise inadmissible. Any stipulation made for purposes of the upcoming preliminary injunction proceedings shall not bind the parties for other purposes of this litigation.

3. Under the enacted plan, Plaintiff Marcus Caster resides and is a registered voter in Congressional District (“CD”) 1.

B. LaKeisha Chestnut

5. Plaintiff LaKeisha Chestnut is African American.

6. Plaintiff LaKeisha Chestnut lives in Mobile, Alabama.

7. Under the enacted plan, Plaintiff LaKeisha Chestnut resides and is a registered voter in CD 1.

C. Bobby DuBose

10. Plaintiff Bobby DuBose is African American.

11. Plaintiff Bobby DuBose lives in Bessemer, Alabama.

12. Under the enacted plan, Plaintiff Bobby DuBose resides and is a registered voter in CD 7.

D. Benjamin Jones

14. Plaintiff Benjamin Jones is African American.

15. Plaintiff Benjamin Jones lives in Montgomery, Alabama.

16. Under the enacted plan, Plaintiff Benjamin Jones resides and is a registered voter in CD 2.

E. Rodney Love

17. Plaintiff Rodney Love is African American.

18. Plaintiff Rodney Love lives in Birmingham, Alabama.

19. Under the enacted plan, Plaintiff Rodney Love resides and is a registered voter in CD 7.

F. Manasseh Powell

20. Plaintiff Manasseh Powell is African American.

21. Plaintiff Manasseh Powell lives in Montgomery, Alabama.

22. Under the enacted plan, Plaintiff Manasseh Powell resides and is a registered voter in CD 2.

G. Ronald Smith

23. Plaintiff Ronald Smith is African American.

24. Plaintiff Ronald Smith lives in Union Springs, Alabama.

25. Under the enacted plan, Plaintiff Ronald Smith resides and is a registered voter in CD 2.

H. Wendell Thomas

26. Plaintiff Wendell Thomas is African American.

27. Plaintiff Wendell Thomas lives in Montgomery, Alabama.

28. Under the enacted plan, Plaintiff Wendell Thomas resides and is a registered voter in CD 2.

I. John H. Merrill

29. Defendant John H. Merrill is the Alabama Secretary of State and the chief elections official in the State of Alabama. Secretary Merrill is sued in his official capacity.

30. Secretary Merrill provides uniform guidance for election activities in the State and certifies the elections of members to the Alabama Legislature and Congress. Ala. Code §§ 17-1-3, 17-12-21. Secretary Merrill also has responsibility for certifying the names of primary and general election candidates for the State Legislature and Congress, as well as issuing Certificates of Election following tabulation of vote results. Ala. Code §§ 17-13-5(b), 17-9-3(b), Ala. Code § 17-12-21.

II. Alabama's District Maps

The Census

31. The United States Bureau of the Census releases data to the states after each census for use in redistricting. This data includes population and demographic information for each census block.

32. Following the 2020 Census, the Census Bureau was statutorily required to release this redistricting data no later than April 1, 2021. 13 U.S.C. § 141. However, in February 2021, the Census Bureau issued a press release stating that it would not release the redistricting data until September 30, 2021. On March 10, 2021, the State of Alabama sued the Census Bureau to require it to comply

with the statutory deadline. *See Alabama v. United States Dep't of Com.*, No. 3:21-CV-211-RAH-ECM-KCN, (M.D. Ala.) (three-judge court). On March 15, 2021, the Census Bureau issued a further press release stating it could provide redistricting data in a legacy format by mid-to-late August 2021. The Census Bureau provided initial redistricting data to Alabama on August 12, 2021.

The Black Belt

33. The Black Belt is named for the region's fertile black soil. The region has a substantial Black population because of the many enslaved people brought there to work in the antebellum period. All the counties in the Black Belt are majority- or near majority-BVAP.

34. The Black Belt includes the core counties of Barbour, Bullock, Butler, Choctaw, Crenshaw, Dallas, Greene, Hale, Lowndes, Macon, Marengo, Montgomery, Perry, Pickens, Pike, Russell, Sumter, and Wilcox. Clarke, Conecuh, Escambia, Monroe, and Washington counties are sometimes included within the definition of the Black Belt.

Pre-2011 Congressional District Plans

35. In early 1992, Alabama consented in litigation to create its first majority-Black congressional district, CD 7. *Wesch v. Hunt*, 785 F. Supp. 1491 (S.D. Ala. 1992).

36. Following the 2000 Census, Alabama enacted a new seven-district congressional plan (the “2001 Plan”) in which CD 7 remained the only majority-minority district.

37. After the establishment of CD 7 as a majority-Black district in the 1992 Plan, Earl Hillard became the first Black Alabamian to be elected to Congress in the Twentieth Century.

38. In the general congressional elections of 2002, 2004, 2006, and 2008, Artur Davis, a Black Democrat, was elected in CD 7 after winning a majority of Black voters.

39. In each of the general congressional elections of 2002, 2004, 2006, and 2008, Representative Davis won election with no less than 74.9% of the vote.

40. In the November 2010 general congressional election, Terri Sewell, a Black Democrat, was elected in CD 7 after winning a majority of Black voters.

41. In the November 2010 general congressional election, Representative Sewell won election in CD 7 with 72% of the vote, beating her white opponent by 45 points.

42. In the Twentieth century, Black Alabamians have never elected a Black person to Congress outside of the majority-Black CD 7, and only since 1992.

43. In congressional races in the current majority-white CDs 1, 2, and 3, Black candidates have never won election to Congress.

44. In 2010, CD 7 under the 2001 Plan had a Black voting-age population (“BVAP”) of 60.11%.

2011 Congressional District Plan (“the 2011 Plan”)

45. In 2011, Alabama enacted a seven-district congressional plan with one majority-minority district, CD 7.

46. The 2011 Plan increased the BVAP of CD 7 from 60.11% to 60.91% AP Black and 60.55% SR Black, according to 2010 Census data.

47. In the 2012 general congressional election—the first held under the 2011 Plan—Representative Sewell won 75% of the vote in a contested race, beating her opponent by 51 points.

48. In each election since 2012, Representative Sewell has run unopposed in the general election.

Passage of 2021 Congressional District Plan (“the 2021 Plan”)

49. On November 4, 2021, Alabama enacted a seven-district congressional plan that maintains Alabama’s lone majority-minority district, CD 7.

50. The Alabama Legislative Committee on Reapportionment adopted guidelines for the redistricting process. These guidelines are available here:

<http://www.legislature.state.al.us/aliswww/reapportionment/Reapportionment%20Guidelines%20for%20Redistricting.pdf>.

51. On May 5, 2021, the Reapportionment Committee of the Alabama Legislature passed the Redistricting Guidelines to be used by the Committee during the redistricting process. Those Guidelines passed on a 16-1 vote, with both Republicans and Democrats as well as Black and White legislators supporting the Guidelines.

52. Using population estimates from the Census Bureau, the Committee, under the leadership of Sen. McClendon and Rep. Pringle, began to develop redistricting plans for congressional districts in May of 2021. See Ala. Code § 29-2-50(2). Once census data was released in August, that work continued.

53. The Committee consists of members of both the State House and Senate, with the Speaker of the House appointing one House member from each of the seven congressional districts and four additional House members and the Lieutenant Governor appointing one Senator from each of the seven congressional districts and four additional Senators. See Ala. Code § 29-2-51(c).

54. The 2021 Reapportionment Committee includes 21 members—15 white Republican members and six Black Democratic members.

55. The adopted guidelines define “[a] community of interest” as “an area with recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, geographic, or historical identities. The term communities of interest may, in certain circumstances, include political subdivisions such as

counties, voting precincts, municipalities, tribal lands and reservations, or school districts. The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process best carried out by elected representatives of the people.”

56. The guidelines provide that redistricting criteria set forth therein “shall be observed” only “to the extent that they do not violate ... the Constitution and laws of the United States and of the State of Alabama.”

57. The Reapportionment Committee held 28 public hearings at locations around the state between September 1 and September 16. The public could attend these hearings in person or via videoconference.

58. Every hearing, except one that was held at 6:00 pm at the Statehouse in Montgomery, was held between the hours of 9:00 am to 5:00 pm.

59. On October 25, 2021, Alabama Governor Kay Ivey officially called for the Legislature to convene in a special session to address redistricting.

60. On October 26, 2021, the Alabama Legislative Committee on Reapportionment held a committee meeting to consider the congressional plan that would be presented to the full Legislature and ultimately enacted.

61. No changes were made to the congressional plan that was introduced in the Reapportionment Committee on October 26, 2021, prior to enactment on November 4, 2021.

62. The Reapportionment Committee members received the full congressional plan on October 25, 2021.

63. Committee staff and the committee's map-drawer drew the congressional plan.

64. On October 26, 2021, the Committee held its second public meeting of this redistricting cycle. The first public meeting was held in May 2021, when the Committee adopted redistricting guidelines.

65. A member of the Committee, Rep. Chris England, a Black legislator, published the proposed maps on Twitter on October 25, 2021.

66. The Committee released the maps to the public on the day of the Committee meeting. Many Committee members did not see the full proposed maps beyond their own districts and those surrounding their own district until the day before their meeting.

67. Mr. Dorman Walker has been the Committee's lawyer for the 2011 and 2021 redistricting cycles.

68. Sen. McClendon explained that Mr. Walker told him that racial-polarization analysis was only done by Dr. M.V. "Trey" Hood III for state legislative districts where "it looked like there might possibly be a racial issue."

69. No racial-polarization analysis for any districts was provided to Committee members before or during the meeting.

70. Committee members only received demographic and population data for each district.

71. Neither Mr. Walker nor Dr. Hood, who conducted racial-polarization analysis for the state legislative districts, attended the Committee meeting.

72. During the October 26, 2021, Reapportionment Committee meeting multiple Committee members requested more time to determine whether the plan complied with the United States Constitution and the Voting Rights Act.

73. Rep. Laura Hall, a Black legislator, moved to postpone any vote on the proposed maps until the Committee members and the public had more time to review the maps and accompanying racial-polarization analysis.

74. All the Black Democratic committee members voted in favor of Rep. Hall's motion, which failed because nearly all white Republican committee members voted against it.

75. The congressional plan passed out of the Reapportionment Committee along party lines that same day. All Black legislators on the Reapportionment Committee voted against the map. All Black legislators on the Reapportionment Committee are Democrats.

76. On October 28, 2021, the special session began and the Congressional Plan (then H.B. 1) was assigned to the House Committee on State Government. On October 29, the Congressional Plan (in addition to three other redistricting plans)

was voted out of committee. All Black Representatives on the Committee voted against the map.

77. The Alabama House considered and passed the congressional plan on November 1, 2021. The House voted nearly along party lines, with all Democratic members and a few Republican members voting against the plan. Representative Kenneth Paschal voted for the plan, but the remaining Black Representatives voted against the plan. Each of the Black Representatives who voted against the plan is a Democrat.

78. On November 1, the House of Representatives considered the Congressional Plan. The same day, the House passed the Congressional Plan 65-38; in addition to every Democratic Representative, several Republicans voted against the plan. One Black Representative, Rep. Keith Paschal who is the sole Black Republican legislator, voted in favor of the Congressional Plan.

79. On November 2, the Senate General Fund and Appropriations Committee considered the Congressional Plan. The Plan was voted out of Committee that same day. All Black Senators on the Committee voted against the map.

80. The Alabama Senate considered and passed the congressional plan on November 3, 2021. The Senate voted along party lines. All Black Senators voted

against the plan. Each of the Black Senators who voted against the plan is a Democrat.

81. On November 3, the full Senate approved the Congressional Plan 22-7 and forwarded the Plan to Alabama Governor Kay Ivey. All six Black Senators present and Billy Beasley, the sole White Democratic Senator, voted against the map. On November 4, Governor Ivey signed the Congressional Plan into law.

82. During the Alabama House and Senate sessions considering the congressional plan, multiple legislators argued that the congressional plan does not adequately represent Black Alabamians.

83. During the Alabama House and Senate sessions considering the congressional plan, several members of the legislature argued that the congressional plan should contain two majority-minority districts.

84. During the Alabama House and Senate sessions considering the congressional plan, multiple legislators commented on the lack of a second majority-minority district in the congressional plan.

85. In each redistricting cycle from at least the 1990 census through the 2020 census, some Black legislators and voters have lobbied for plans that include two Black-majority districts.

86. Sen. Kirk Hatcher, a Black legislator, offered the demonstrative map prepared by Greater Birmingham Ministries and the Alabama NAACP as a

substitute map. He stated that this map sought to ensure “that all Black Alabamians have an opportunity to elect their preferred congressional representatives.”

87. Sen. Hatcher’s substitute map failed an up-or-down vote. All Black Senators voted in favor of it.

88. The Senate tabled several other substitute maps.

89. The State did not perform a functional analysis or racial polarization analysis on the 2021 Plan.

90. Governor Kay Ivey signed HB 1 into law on November 4, 2021.

91. Alabama’s primary elections—including elections for U.S. Congress—are scheduled for May 24, 2022. Candidates seeking their party’s nomination must file a declaration of candidacy with the state party chairman by January 28, 2022. *See* Ala. Code § 17-13-5(a).

The 2021 Plan

92. The enacted congressional plan contains only one majority-minority district—CD 7.

93. According to 2020 Census data, CD 7 in the 2021 Plan has a BVAP of 55.26% AP Black and 54.22% SR Black.

94. Under the 2021 Plan, CDs 1, 2, 4, and 6 border CD 7.

State Board of Education (“SBOE”) Plans

i. The 2011 SBOE Plan

95. The Alabama SBOE is a nine-member body that sets education policy for Alabama's K-12 schools. The Governor serves as the president of the SBOE, and the remaining eight members are elected to the Board from single-member districts.

96. In 2011, Alabama adopted an eight-district SBOE Plan (the "2011 SBOE Plan") with two majority-minority districts, Districts 4 and 5, in central and southern Alabama.

97. According to 2010 Census data, District 4 was 51.4% AP BVAP, and District 5 was 57.5% AP BVAP.

98. District 5 of the SBOE Plan includes the City of Mobile and many of the Black Belt Counties.

99. Based upon the 2020 Census data, Districts 4 and 5 under the 2011 SBOE Plan remain majority AP BVAP. 2011 SBOE District 4 is 51.5% and 2011 SBOE District 5 is 57.7%.

100. In each election since 2011, a Black Democrat won a majority of Black voters and the election in Districts 4 and 5 of the SBOE. District 5 of the SBOE Plan connects the City of Mobile to the Black Belt Counties.

ii. The 2021 SBOE Plan

101. The 2021 SBOE Plan adopted by the Alabama legislature and signed by Gov. Ivey on Nov. 4, 2021, includes two majority Black BOE districts in central and southern Alabama, Districts 4 and 5.

102. District 4 is 51.21% SR BVAP and District 5 is 51.27% SR BVAP.

103. According to the 2020 Census data, the combined SR Black population in the two majority Black districts represent more than half of the statewide Black population.

III. *Gingles* Preconditions

104. In the 2019 *Chestnut v. Merrill*, Case No. 2:18-cv-00907-KOB, litigation, Plaintiffs' mapping expert Mr. Bill Cooper prepared multiple illustrative congressional plans that contained two majority-minority districts in central and southern Alabama.

105. In drawing the Illustrative Plans, Mr. Cooper used the 2011 Plan as his starting point and used the 2011 SBOE Plan as a guide for where in the State a second majority-Black congressional district could be drawn.

106. According to 2010 Census data, each of the 2019 illustrative plans featured CDs 2 and 7 that had voting-age populations that were more than 50% AP Black.

107. According to the 2010 Census data, multiple of the 2019 illustrative plans featured CDs 2 and 7 that had voting-age populations that were more than 50% SR Black.

108. Each of the 2019 illustrative plans split Mobile County between two congressional districts.

109. In 2017, a Democrat was elected to the U.S. Senate (Doug Jones).

110. All but one of the Black representatives in the Alabama Legislature are elected from majority-minority districts.

IV. Totality of the Circumstances

111. After Reconstruction, Alabama lawmakers held a constitutional convention in 1901 with the purpose of enacting a political structure that would maintain white supremacy and prevent Black participation.

112. The 1901 Convention adopted election structures meant to disenfranchise Black Alabamians, including a literacy test, employment requirements, property qualifications, a cumulative poll tax, and disenfranchisement of those convicted of minor crimes.

113. The 1901 Convention created exemptions from their discriminatory devices that sought to limit those devices' disenfranchisement of white voters.

114. A new amendment in 1951 required all voter registration applicants to be able to read and write any article of the U.S. Constitution, among other arbitrary and discretionary things. And in some counties, the board of registrars implemented a "white voucher" rule, which required Black applicants to have a white person vouch for their qualifications to register to vote. And some counties, like Bullock County between 1946 to 1955, wholly refused the voter registration applications of Black Alabamians.

115. In 1964 and 1965, Dallas County Sheriff Jim Clark, Alabama state troopers, and vigilantes violently assaulted peaceful Black protesters attempting to gain access to the franchise.

116. On March 7, 1965, in what became known as Bloody Sunday, state troopers viciously attacked and brutally beat unarmed peaceful civil rights activists crossing the Edmund Pettus Bridge in Selma, where less than 5 percent of Black voters were registered to vote. Bloody Sunday helped pave the way for the passage of the Voting Rights Act in 1965 and Alabama was declared a “covered” state under Section 4(b) of the Act.

117. Between 1965 and 1982, the Justice Department (“DOJ”) objected 58 times to proposed changes to election practices or procedures in Alabama and sent observers to the State 107 times. Ten of the objections were to preclearance submissions by the State, and 48 were to preclearance submissions by local jurisdictions.

118. Between 1982 and 2006, DOJ objected to preclearance submissions from Alabama 46 times—seven from the State and 39 from local jurisdictions—and sent federal observers to the State 91 times. The most recent objection to a preclearance submission from the State was in 1994.

119. In 1982, DOJ objected to Alabama's legislative redistricting plans, stating that it was because the plans reduced the number of majority-minority districts and fragmented minority voting strength in a portion of the Black Belt.

120. There is no slating process involved in Alabama's congressional elections.

121. Alabama has never had more than one African-American congressional representative, and no African American has been elected to the U.S. House of Representatives outside of CD 7.

122. There are currently no African-American statewide officials in Alabama.

123. Only two African Americans have been elected to statewide office in Alabama, and both ran as incumbents after first being appointed. No Black person has won statewide office in Alabama since 1996.

124. None of the current statewide elected officials are Black. Only two Black people have ever been elected to statewide office. In both instances, the office was associate justice of the Alabama Supreme Court. In 1982 and 1988, the late Justice Oscar W. Adams, Jr. was elected to two consecutive terms; and, in 1994, Justice Ralph D. Cook won an unopposed statewide election. In 2000, both Justice Cook and the then-recently appointed Justice John England, both Black Democrats, lost elections to white Republican candidates.

125. On Tuesday, July 23, a special election was held to fill a vacancy in District 73 of the Alabama House of Representatives. The winner was Kenneth Paschal, the Republican candidate, who received 2,743 votes. Representative Paschal is African American. His white Democratic opponent received 920 votes. District 73 is located in Shelby County, Alabama. Based on 2010 census data, the voting-age population of District 73 was 84.12% white and 9.75% black. (See ALBC doc. 338-1). Representative Paschal defeated a white Republican candidate in the primary election by 64 votes. Representative Paschal received 1,476 votes, while his white opponent received 1,412 votes.

126. In 2014, following the Supreme Court's decision in *Shelby County v. Holder*, Alabama's photo identification law went into effect.

/s/ Richard P. Rouco

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