



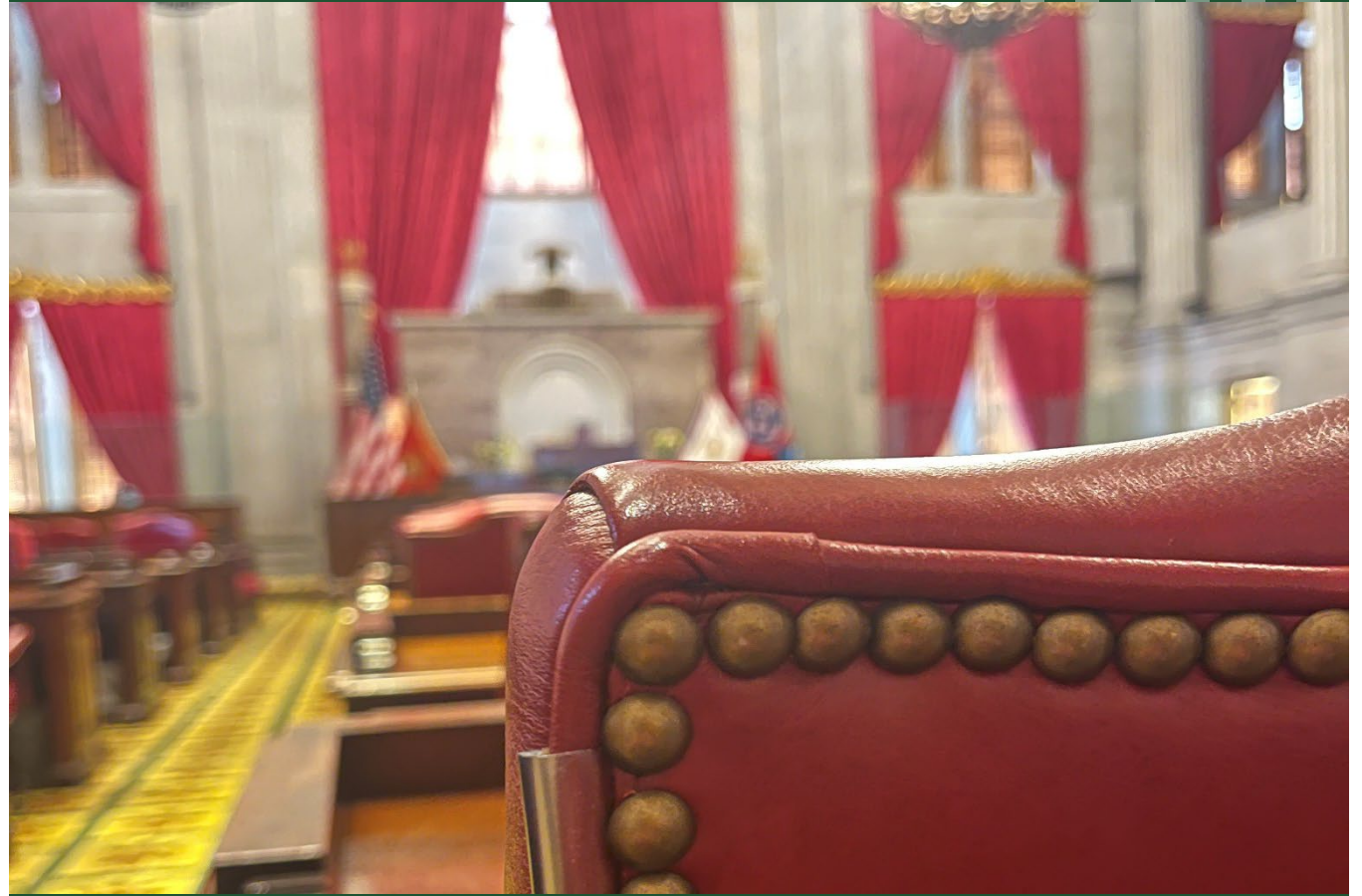
Overruled: Elections and Redistricting Legal Update

Aug. 16, 2023

Electoral Count Reform Act

Moore v. Harper and the Independent State Legislatures Theory

The Voting Rights Act and Racial Gerrymandering



Today's Agenda

The Electoral Count Reform Act

State Considerations

- What is the ECRA?
- Are there recommendations on resources legislators and staff can reference to check if their laws are compliant?



- What was *Moore v. Harper*?
- What is “ISLT”?
- Are there any ramifications from the Supreme Court’s tacit (if not explicit) approval of *Bush v. Gore* and a standard of review for state court cases interpreting state law?
- What impact will *Moore* have on the trend of partisan gerrymandering cases in state courts?



The Independent State Legislatures Theory

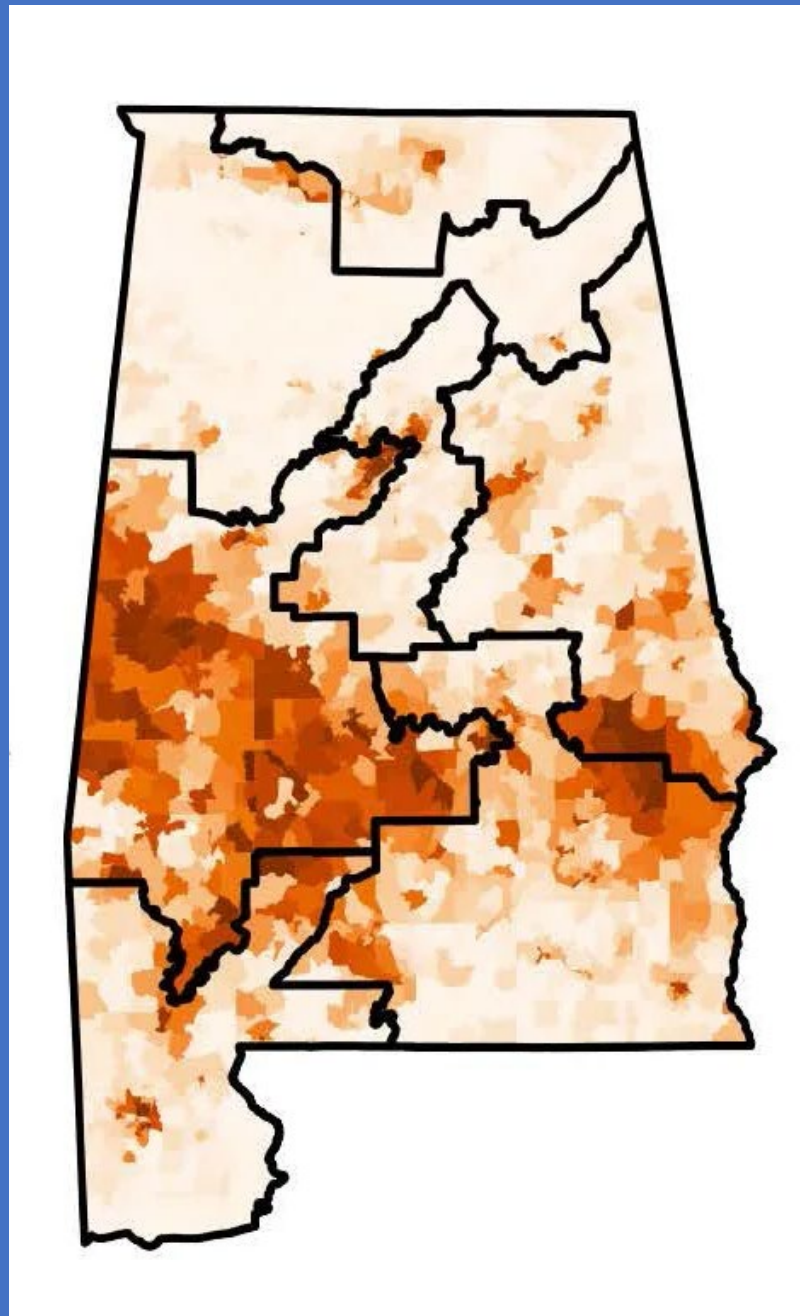


Allen v. Milligan and the Future of Race
in Redistricting





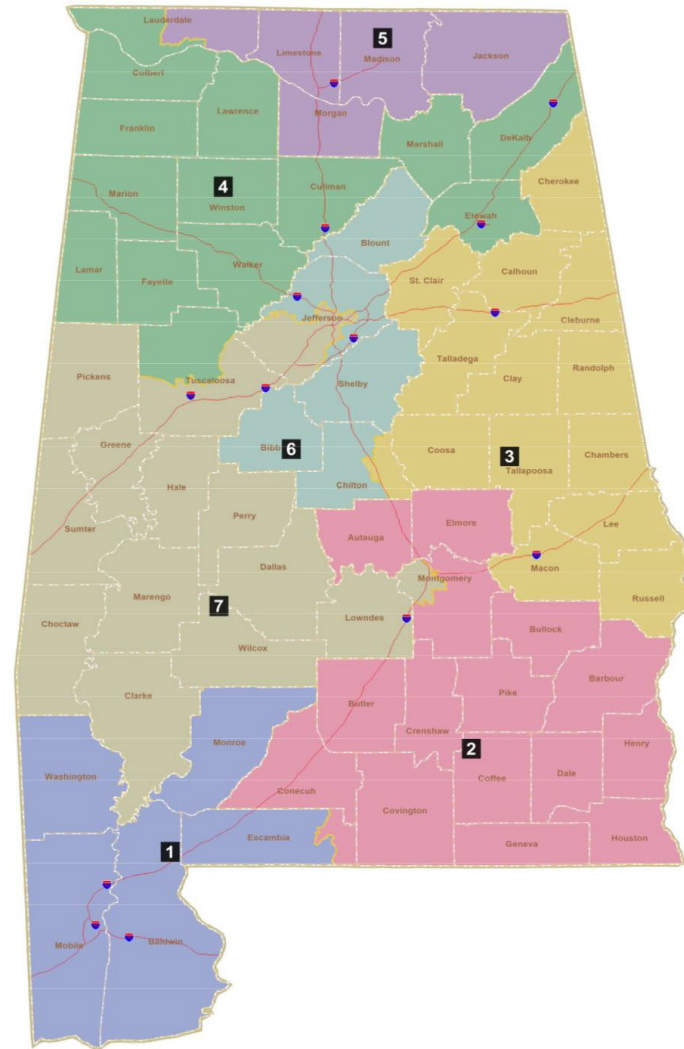
Alabama 2020 Black Voting Age Population Map





2021 Congressional Districts

2021 Alabama Congressional Plan



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Alabama 2021 Enacted Congressional Plan



Litigation Summary

- 3 separate cases (Milligan, Caster, & Singleton) were filed asserting various violations of the Voting Rights Act and/or the Equal Protection Clause in the 2021 Congressional Plan.
- In January 2022, prior to the 2022 Congressional Elections, a 3-Judge Federal District Court Panel combined these cases for injunctive purposes and entered a preliminary injunction against Alabama’s plan in favor of the plaintiffs on VRA grounds (without deciding constitutional issues).
- Holding: More likely than not, VRA violation occurred as the Plaintiffs satisfied the Gingles factors (numerosity, compactness, racially polarized voting, and totality of circumstances).
- Remedy ordered: A new map must be drawn. “[T]he appropriate remedy is a congressional redistricting plan that includes either an additional majority-Black congressional district, or an additional district in which Black voters otherwise have an ***opportunity to elect a representative of their choice.***”
- Additional Instruction: “As the Legislature considers [remedial] plans, it should be mindful of the practical reality, based on the ample evidence of intensely racially polarized voting adduced during the preliminary injunction proceedings, that any remedial plan will need to include two districts in which Black voters either comprise ***a voting-age majority or something quite close to it.***”

Litigation Summary

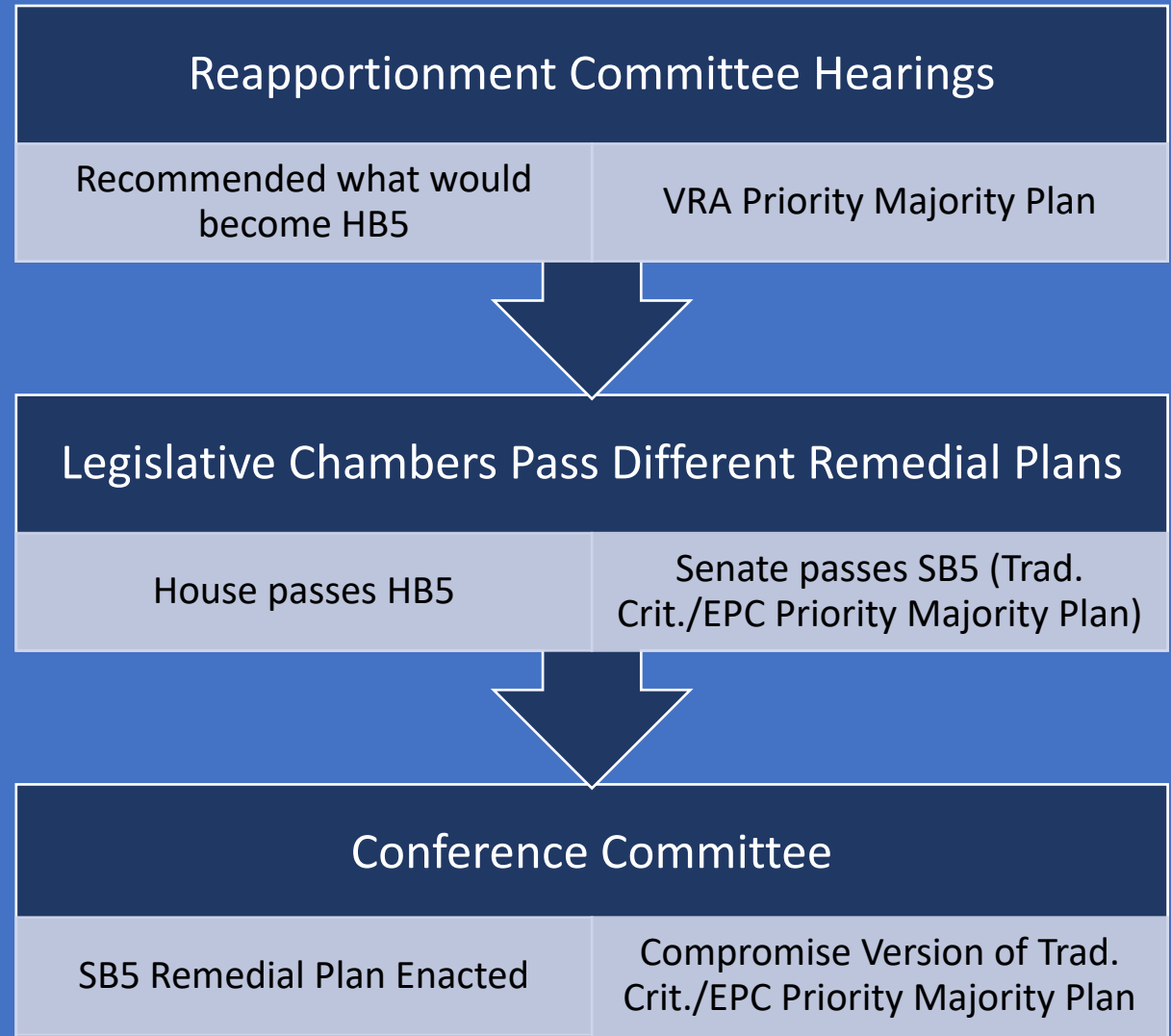
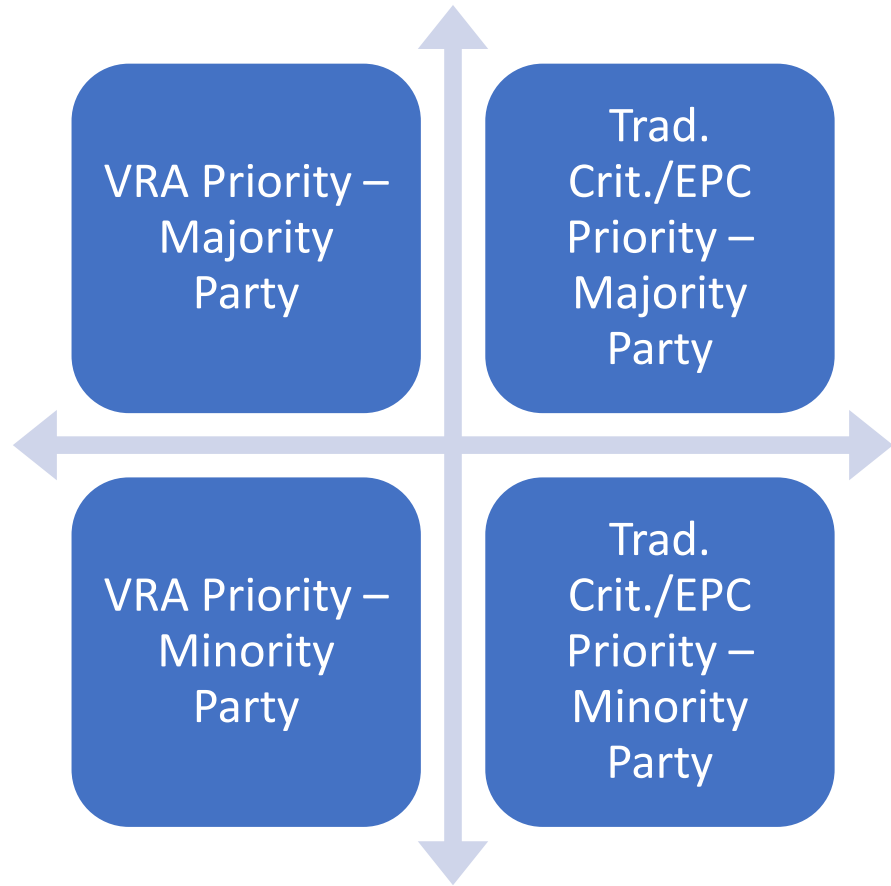
- In February 2022, the U.S. Supreme Court stayed the injunction until further review on the merits and until after the 2022 elections.
- On June 8, 2023, the U.S. Supreme Court affirmed the District Panel's decision that Alabama's congressional plan likely violated Section 2 of the Voting Rights Act.
 - However, J. Kavanaugh did not join the section of the Court's opinion discussing racial considerations in VRA Section 2 claims (Section III(B)(1)).
- What the Supreme Court's Decision Appears to Affirm (For Now):
 - **Gingles is still valid precedent.**
 - The Alabama District Court Panel's VRA Decision on Alabama's 2021 Congressional Map.
- What the Supreme Court's Decision Did Not Address:
 - Constitutional Equal Protection Clause claims.

Timeline of Key Events

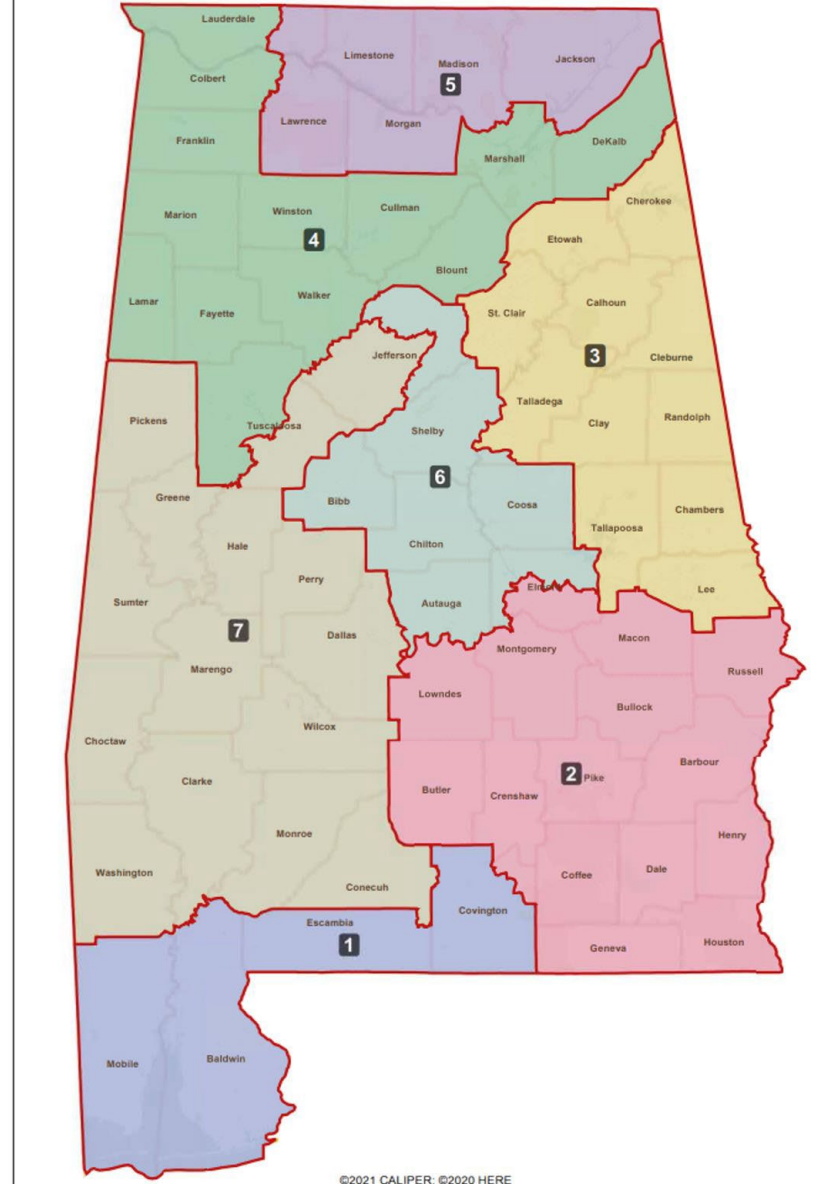
Date	Action
June 8, 2023	U.S. Supreme Court upholds 3-Judge District Court ruling in favor of plaintiffs' VRA challenge
June 27, 2023	Alabama Reapportionment Committee meeting and public hearing; Gov. Ivey issued proclamation for special session on redistricting
July 7, 2023	Deadline for plans to be submitted to the Legislature by the public
July 13, 2023	Alabama Reapportionment Committee meeting and public hearing
July 17, 2023	Ala. Reapportionment Committee meeting to recommend Remedial Plan; Special Session of Alabama Legislature convenes to draw new map
July 21, 2023	Special Session adjourned and new map delivered to the District Court
August 14, 2023	3-Judge District Court hearing on new map began
October 1, 2023	Date by which Alabama has said it needs district lines for elections
November 10, 2023	Qualifying deadline for candidates (by law it is 116 days before primary)
March 5, 2024	2024 Primary Election
April 16, 2024	2024 Primary Runoff Election
November 5, 2024	2024 General Election



Redistricting Special Session Considerations & Process



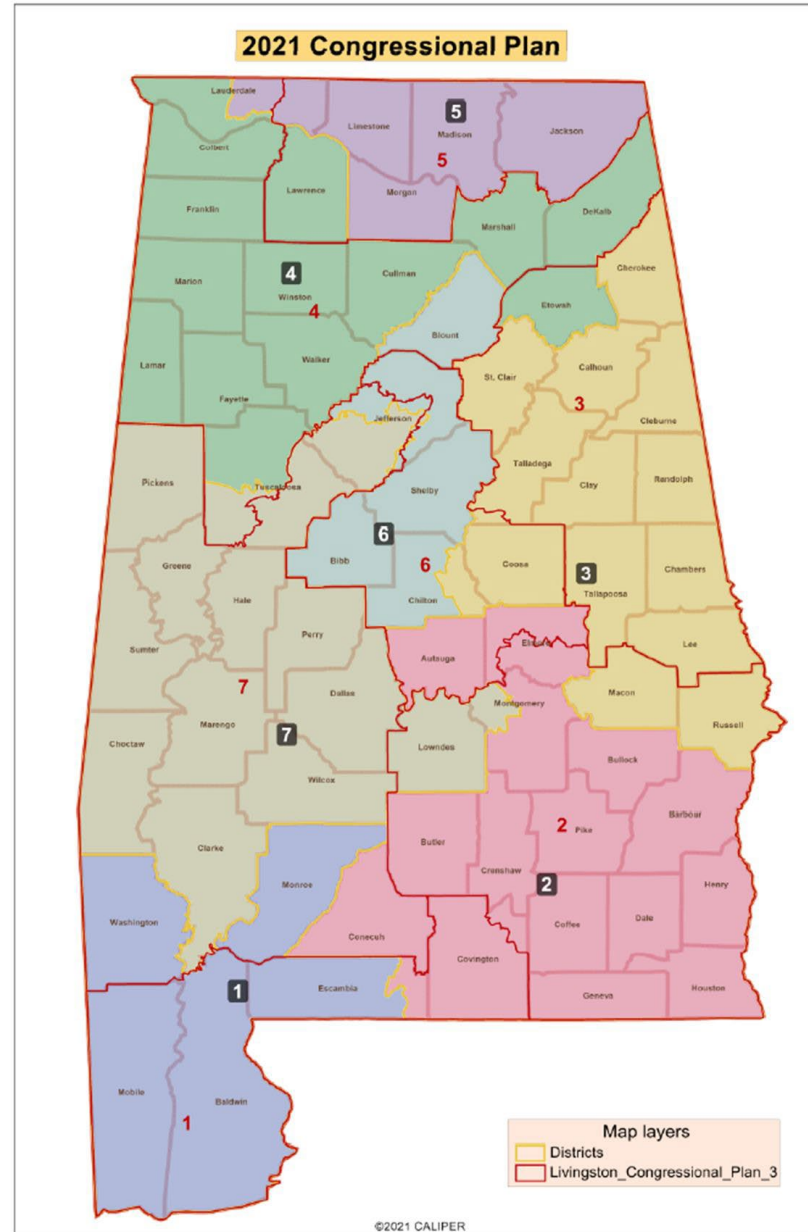
Livingston Congressional Plan 3-2023



Alabama 2023 Enacted Congressional Plan



Overlay of 2023 Changes to 2021 Congressional Plan



Black Voting Age Population Breakdown by District in 2023 Plan

	BVAP in 2020 Districts (post-2010 Census)	BVAP in 2022 Districts (Approved in 2021)	BVAP in 2023 Legislature-Approved Districts
CD 1 (Carl)	26.2	25.6	24.64
CD 2 (Moore)	29.6	30.1	39.93
CD 3 (Rogers)	30.7	25.0	20.7
CD 4 (Aderholt)	5.0	7.7	7.22
CD 5 (Strong)	17.6	18.1	18.33
CD 6 (Palmer)	12	18.9	19.26
CD 7 (Sewell)	60	55.3	50.65



The VRA and Racial Gerrymandering

- How will *Milligan* impact Section 2 litigation in the coming years?
- What, if anything, should we make of Justice Kavanaugh's concurrence?
- In light of *Milligan*, how should states reconcile complying with the VRA and the Equal Protection Clause?





Questions?

Hang around and
we'll answer them!