

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**JOHN ROBERT SMITH, SHIRLEY HALL
AND GENE WALKER**

PLAINTIFFS

VS.

Civil Action No. 3:01-cv-855-HTW-DCB

**DELBERT HOSEMANN, Secretary of State of
Mississippi; JIM HOOD, Attorney General for the State of
Mississippi; HALEY BARBOUR,
Governor of the State of Mississippi; MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE; and
MISSISSIPPI DEMOCRATIC EXECUTIVE
COMMITTEE**

DEFENDANTS

and

**BEATRICE BRANCH, RIMS BARBER,
L.C. DORSEY, DAVID RULE,
JAMES WOODWARD, JOSEPH P. HUDSON,
and ROBERT NORVEL
INTERVENORS**

CONSOLIDATED WITH

KELVIN BUCK, ET AL.

PLAINTIFFS

VS.

Civil Action No. 3:11-cv-717-HTW-LRA

HALEY BARBOUR, ET AL.

DEFENDANTS

ORAL ARGUMENT REQUESTED

**MOTION TO VACATE INJUNCTION
AND FOR OTHER RELIEF**

COMES NOW, the Mississippi Republican Executive Committee (“Republican Party”), one of the defendants in these consolidated actions, and moves this Court, pursuant to Fed. R. Civ. P. 60(b)(5), to establish a procedure and schedule to vacate the injunction contained in its final judgment of December 30, 2011 [Dkt. #128], and to consider whether the redistricting plan adopted by the Mississippi Legislature in 2022 Miss. Gen. Laws Ch. ____ (H.B. 384),¹ satisfies all state and federal statutory and constitutional requirements, and would show unto the Court in support thereof the following:

1. The current judgment enjoins all defendants to conduct congressional elections in Mississippi according to a four-district plan devised by this Court “until such time as the State of Mississippi produces a constitutional congressional redistricting plan that is precleared in accordance with the procedures in Section 5 of the Voting Rights Act of 1965.” [Dkt. #128 at 2]. All defendants remain bound to obey that injunction until this Court should order otherwise. For two reasons, this Court must now reconsider what injunction, if any, should be in effect. First, the Legislature has adopted and the Governor has signed a new four-district plan, so this Court should determine whether the State has satisfied the conditions set out in the final judgment. Second, in any event, the 2020 census demonstrates that the districts specified in the final judgment have become malapportioned over time.

¹ A copy of the new statute, as sent to Governor Reeves, is attached hereto as Exhibit 1.

2. After the 2000 census, federal law reduced Mississippi's delegation in the House of Representatives from five Representatives to four Representatives. However, the Mississippi Legislature did not adopt a new four-district plan, leaving in place the five-district plan established by Miss. Code Ann. § 23-15-1037.

3. This Court therefore ordered into place a four-district plan which satisfied all state and federal statutory and constitutional requirements. *Smith v. Clark*, 189 F. Supp. 2d 529 (S.D.Miss. 2002), *aff'd sub nom. Branch v. Smith*, 538 U.S. 254 (2003).

4. After the 2010 census, it became apparent that the districts created by this Court's injunction had become malapportioned, but the Legislature still failed to adopt a new plan. This Court therefore modified its prior injunction by issuing a new injunction which satisfied all state and federal statutory and constitutional requirements and which would remain in place "until such time as the State of Mississippi produces a constitutional congressional redistricting plan that is precleared in accordance with the procedures in Section 5 of the Voting Rights Act of 1965." [Dkt. #128 at 2].

5. The 2020 census has made it apparent that the districts created by this Court's current injunction have become malapportioned. Although Mississippi's population has changed very little in ten years, the distribution of that population has changed substantially. District 2 is now almost 65,000 people short of having one-quarter of the population, while District 4 has over 37,000 too many people.²

6. The Legislature has responded to the new census by adopting a statute which creates a new four-district plan. 2022 Miss. Gen. Laws Ch. _____ (H.B. 384). That plan achieves

²Attached hereto as Exhibit 2 is a map prepared for the Mississippi Legislature which displays the 2020 population variances among the four current districts.

substantial population equality as required by the Equal Protection Clause of the Fourteenth Amendment.³ This Court must therefore determine whether to issue a new injunction to replace the old malapportioned plan or to allow the new statutory plan to go into effect. It should now establish a procedure for determining whether the new statutory plan has satisfied the final judgment's requirement for "a constitutional congressional redistricting plan" which may be enforced under the Voting Rights Act. [Dkt. #128 at 2].

7. In 2011, after completion of briefing on the motion which called the malapportionment to the Court's attention [Dkt. #92], the Court ordered the conduct of a status conference, at which the parties would address "whether it is appropriate for this panel to hear and determine the redistricting claims . . . and, if appropriate, to outline generally the redistricting problems that are presented by the 2010 Census." [Dkt. #105]. The minute entry reflects that the Court set a schedule for the parties to comment on the plan proposed in *Buck* [Dkt. #6-5], since consolidated herewith. [Dkt. #116]. Later, the Court proposed its own plan and set a schedule for the parties to comment thereon. [Dkt. #118]. The Court determined that it had authority to act [Dkt. #127 at 8-11], and, after a hearing, it ordered its plan into effect. [Dkt. #128]. A total of 52 days elapsed between the order setting the status conference and the imposition of the final judgment, but only 11 days between the Court's announcement of its plan and the imposition of final judgment. Here, the Legislature has already enacted a plan to be considered.

8. As this Court has done with its prior injunctions, it should convene a hearing and invite the parties to state their views on whether the new statutory plan "satisf[ies] all state and

³ Attached hereto as Exhibit 3 is a map displaying the new statutory plan, together with demographic statistics.

federal statutory and constitutional requirements.” *Smith v. Clark*, 189 F. Supp .2d 512 (S.D.Miss. 2002); [Dkt. #118]. In particular, the Court should request briefing to include the following issues:

- A. Whether the State of Mississippi has produced a constitutional congressional redistricting plan that satisfies all state and federal constitutional requirements, thus satisfying the conditions of the final judgment.
- B. Whether the districts mandated by the final judgment now are unconstitutionally malapportioned, thus rendering it inequitable that the final judgment should remain in effect.

The Republican Party suggests that the Court may wish to invite non-parties to submit any legal objections they may have to the new statute so that this Court may “consider within a single action all issues relating to the . . . apportionment plan.” *Jackson v. De Soto Parish Sch. Bd.*, 585 F.2d 726, 730 n.1 (5th Cir. 1978).

9. The Republican Party suggests the need for expedition in this matter because the qualifying deadline to run for the House of Representatives is March 1, 2022. This Court should order that responses to this motion be filed within 7 days and any rebuttal within 3 days thereafter.

WHEREFORE, PREMISES CONSIDERED, the Mississippi Republican Executive Committee respectfully prays that this Court will establish a schedule and procedure for determining whether to vacate its current injunction and whether Miss. Gen. Laws Ch. ____ (H.B. 384) satisfies all state and federal statutory and constitutional requirements.

RESPECTFULLY SUBMITTED, this the 24th day of January, 2022.

**MISSISSIPPI REPUBLICAN PARTY
EXECUTIVE COMMITTEE**

By: /s/ Michael B. Wallace
MICHAEL B. WALLACE

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, Michael B. Wallace, one of the attorneys for the Mississippi Republican Party Executive Committee, do hereby certify that I have this date filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record with ECF.

SO CERTIFIED, this the 24th day of January, 2022.

/s/ Michael B. Wallace
MICHAEL B. WALLACE

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2022

By: Representative Beckett

To: Rules

HOUSE BILL NO. 384

1 AN ACT TO AMEND SECTION 23-15-1037, MISSISSIPPI CODE OF 1972,
2 TO REAPPORTION THE CONGRESSIONAL DISTRICTS OF MISSISSIPPI; AND FOR
3 RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 **SECTION 1.** Section 23-15-1037, Mississippi Code of 1972, is
6 amended as follows:

7 23-15-1037. (1) The State of Mississippi is hereby divided
8 into * * * four (4) congressional districts below:

9 **FIRST DISTRICT.** - The First Congressional District shall be
10 composed of the following counties and portions of counties:

11 Alcorn, Benton, Calhoun, Chickasaw, Choctaw, Clay, DeSoto,
12 Itawamba, Lafayette, Lee, Lowndes, Marshall, Monroe, Pontotoc,
13 Prentiss, Tate, Tippah, Tishomingo, Union, Webster * * *; * * * in
14 Oktibbeha County, the precincts of Self Creek/Double Springs,
15 Maben and *Sturgis/North Bradley * * *.

16 **SECOND DISTRICT.** - The Second Congressional District shall
17 be composed of the following counties and portions of counties:



18 Adams, Amite, Attala, Bolivar, Carroll, Claiborne, Coahoma,
 19 Copiah, Franklin, Grenada, Holmes, Humphreys, Issaquena,
 20 Jefferson, Leake, Leflore, Montgomery, Panola, Quitman, Sharkey,
 21 Sunflower, Tallahatchie, Tunica, Warren, Washington, Wilkinson,
 22 Yalobusha, Yazoo; * * * in Hinds County Precincts 1, 2, 4, 6, 10,
 23 11, 12, 13, *16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,
 24 30, 31, 37, 38, 39, 40, 41, 42, 43, 45, *46, 47, 49, 50, 51, 52,
 25 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 70, 71,
 26 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84 * * *, 85, 86, 87,
 27 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, and the precincts of
 28 Bolton, Brownsville, Byram 1, Byram 2, Byram 3, Cayuga, Chapel
 29 Hill, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Clinton 5,
 30 Clinton 6, Clinton 7, Cynthia, Dry Grove, Edwards, Learned, Old
 31 Byram, Pine Haven, Pocahontas, Raymond 1, Raymond 2, Spring Ridge,
 32 St. Thomas, Terry 1, Terry 2, Tinnin, Utica 1 and Utica 2; * * *
 33 in Madison County the precincts of * * * Anderson Lodge, * * *
 34 Camden, Cameron, Canton Bible Church, Canton Catholic Parish
 35 Center, Canton Community Center, Canton Fire Station #4, *Canton
 36 National Guard Armory, Canton South Liberty, Canton St. Paul
 37 Methodist, Cedar Grove, *Colonial Heights, Couparle, Farmhaven
 38 Fire Station, Greater Mt. Levi Church, Madison County Baptist
 39 Family Life Center, Magnolia Heights, * * * Mount Hope, Pleasant
 40 Gift Church, Pleasant Green, Tougaloo * * *.

41 **THIRD DISTRICT.** - The Third Congressional District shall be
 42 composed of the following counties and portions of counties:



Clarke, Covington, * * * Jasper, Jefferson Davis, Kemper,
Lauderdale, * * * Lawrence, Lincoln, Marion, Neshoba, Newton,
Noxubee, * * * Pike, Rankin, Scott, Simpson, Smith, Walthall,
Winston; * * * in Hinds County the precincts of 8, 9, 14, *16, 17,
32, 33, 34, 35, 36, 44, *46 and 78; in Jones County the precincts
of * * * Matthews, Shady Grove, Sharon, * * * and Sandersville
Civic Center * * *; * * * in Madison County * * * the precincts of
First Presbyterian, *Canton National Guard Armory, China Grove,
*Colonial Heights, Fellowship Baptist Church, Ferns Chapel
Freewill, First Baptist, Franklin Bible Church, Gluckstadt, Grace
Crossing, Highland Colony Baptist Church, Lake Caroline Clubhouse,
Mark Apartments, New Life, NorthBay, Parkway Church, Ridgeland
First Methodist Church, Ridgeland Recreational Center, SunnyBrook,
Trace Ridge, Twin Lakes Baptist, Vertical Church, Victory Baptist
Church and Victory Christian; * * * in Oktibbeha County * * * the
precincts of Bell Schoolhouse, Center Grove/North Adaton, Central
Starkville, Craig Springs/South Bradley, East Starkville, Hickory
Grove/Southeast Oktibbeha, Needmore Voting District, North
Longview, North Starkville 2, North Starkville 3, Oktoc, Osborn,
Sessums, South Adaton, South Longview, South Starkville,
*Sturgis/North Bradley and West Starkville * * *.

FOURTH DISTRICT. - The Fourth Congressional District shall
be composed of the following counties and portions of counties:

* * * Forrest, George, Greene, Hancock, Harrison, Jackson,
Lamar, Pearl River, Perry, Stone, Wayne; * * * in Jones



County * * * the precincts of Antioch, Blackwell, Bruce, Calhoun, Centerville, County Barn, Currie, Erata, G.V. Harrison Multipurpose Building, Gitano, Glade School, Hebron, Johnson, Landrum Community Center, Lt. Ellis Center, Magnolia Center, Mauldin Community Center, Moselle, Myrick, North Laurel, Oak Park School, Ovelt, Parkview Baptist Church, Pinegrove, Pleasant Ridge, Powers Community Center, Rainey, Rustin, Sandhill, Shelton, Soso, Tuckers, Union and West Ellisville.

* * *

(2) The boundaries of the congressional districts described in subsection (1) of this section shall be the boundaries of the counties * * * along such congressional district boundaries as the boundaries of such counties existed on January 1, 2022, and the precinct boundaries along such congressional district boundaries as such precinct boundaries are contained in Census Bureau's P.L. 94-171 geographic support products provided for use with the September 16th data deliveries officially called the "2020 Census State Redistricting Data (Public Law 94-171) Summary Files."

SECTION 2. Partial or split precincts contained in Section 1 are identified in Section 1 by an asterisk (*) which shall precede its designation within the description of a district. The Chair and Vice Chair of the Standing Joint Congressional Redistricting Committee shall file with the Secretary of State the Split Precinct Block List developed in conjunction with the plan contained in this House Bill No. 384, 2022 Regular Session, that



93 details the portions of the partial or split precincts that are
94 contained within a district by census block number, and such
95 document duly filed with the Secretary of State is hereby
96 incorporated into and shall be construed to be an integral part of
97 this House Bill No. 384, 2022 Regular Session.

98 **SECTION 3.** (1) This act shall be liberally construed to
99 effectuate the purposes thereof and to redistrict the
100 Congressional Districts of this state in compliance with
101 constitutional requirements. It is the intent of the Legislature
102 that this act, and the districts described herein, completely
103 encompass all the area within the state. It is also intended that
104 such districts contain all the inhabitants in this state. It is
105 further intended that the redistricting provided for in this House
106 Bill No. 384, 2022 Regular Session, results in the creation of
107 districts which are as close to equal in population as
108 practicable. It is also intended that no district shall include
109 any of the area included within the description of any other
110 district.

111 (2) If the districts described in Section 1 do not carry out
112 the purposes thereof, because of unintentional omissions;
113 duplications; overlapping areas; erroneous nomenclature; lack of
114 adequate maps or descriptions of political subdivisions, wards or
115 other divisions thereof, or of their boundary lines, then the
116 Secretary of State, at the request of the Chair or Vice Chair of
117 the Standing Joint Congressional Redistricting Committee shall, by



118 order, correct such omissions, overlaps, erroneous nomenclature or
119 other defects in the description of districts so as to accomplish
120 the purposes and objectives of this House Bill No. 384, 2022
121 Regular Session.

122 (3) In promulgating such orders, the Secretary of State, in
123 addition to achieving equality in the population of districts and
124 ensuring that all areas of the state are completely and accurately
125 encompassed in such districts, shall be guided by the following
126 standards:

127 (a) In any instance in which there is a conflict
128 between the description of a district as set out in this House
129 Bill No. 384, 2022 Regular Session, and the map of the
130 Congressional Districts developed by the Standing Joint
131 Congressional Redistricting Committee in conjunction with the
132 adopted redistricting plan, the map shall control; however, in
133 instances in which the map is inconclusive, the criteria set out
134 in paragraphs (b) through (f) shall control House Bill No. 384,
135 2022 Regular Session, and any dispute or issue regarding the
136 composition of any Congressional District;

137 (b) Gaps in the description of any district shall be
138 completed in a manner which results in a total description of that
139 district in a manner which is consonant with the description of
140 adjacent districts and results in complete contiguity of
141 districts;



142 (c) Areas of the state included within the descriptions
143 of more than one (1) district shall be allocated to the district
144 having the lowest population;

145 (d) Areas of the state not included within the
146 descriptions of any district shall be allocated to the adjacent
147 district having the lowest population;

148 (e) In the event that the area subject to corrected
149 description or allocation as provided in paragraphs (b), (c) and
150 (d) of this subsection is of such size or contains such population
151 that its inclusion as a unit in any district would result in
152 substantial disparity in the size, shape or population of such
153 district, then the Secretary of State may allocate portions of
154 such area to two (2) or more districts; and

155 (f) In any allocation of area or correction of
156 descriptions made pursuant to this House Bill No. 384, 2022
157 Regular Session, the Secretary of State shall, consistent with the
158 foregoing standards, preserve the contiguity and compactness of
159 districts and avoid the unnecessary division of political
160 subdivisions.

161 (4) Copies of such orders shall be filed by the Secretary of
162 State in his or her own office and in the offices of the affected
163 election commissioners and registrars. The Secretary of State may
164 adopt reasonable rules regulating the procedure for applications
165 for orders under this House Bill No. 384, 2022 Regular Session, in
166 the manner of serving and filing any notice or copy of orders



167 relating thereto. Upon the filing of such an order, the
168 description of any affected district shall be deemed to have been
169 corrected in the manner provided in such order to the full extent
170 as if such correction had been contained in the original
171 description set forth in this House Bill No. 384, 2022 Regular
172 Session.

173 **SECTION 4.** The Standing Joint Congressional Redistricting
174 Committee is directed to provide all information necessary to
175 assist the counties in identifying the boundaries of the districts
176 described in Section 1.

177 **SECTION 5.** The redistricting contained in Section 1 shall
178 supersede any prior redistricting, and any prior redistricting
179 shall be null and void upon the date this House Bill No. 384, 2022
180 Regular Session, is effectuated.

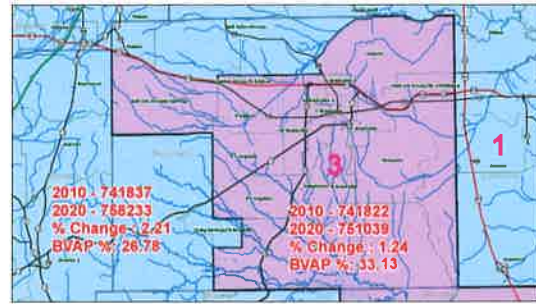
181 **SECTION 6.** If any paragraph, sentence, clause, phrase or any
182 part of this bill is declared to be unconstitutional or void or if
183 for any reason is declared to be invalid or of no effect, the
184 remaining paragraphs, sentences, clauses, phrases or parts thereof
185 shall be in no manner affected thereby but shall remain in full
186 force and effect.

187 **SECTION 7.** This act shall take effect and be in force from
188 and after its passage.

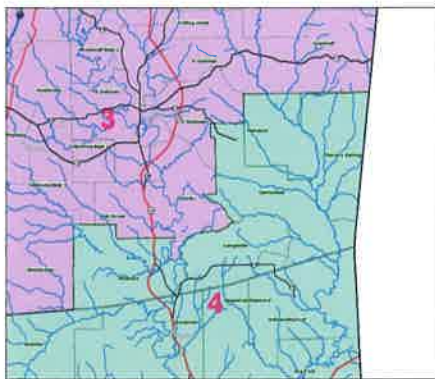




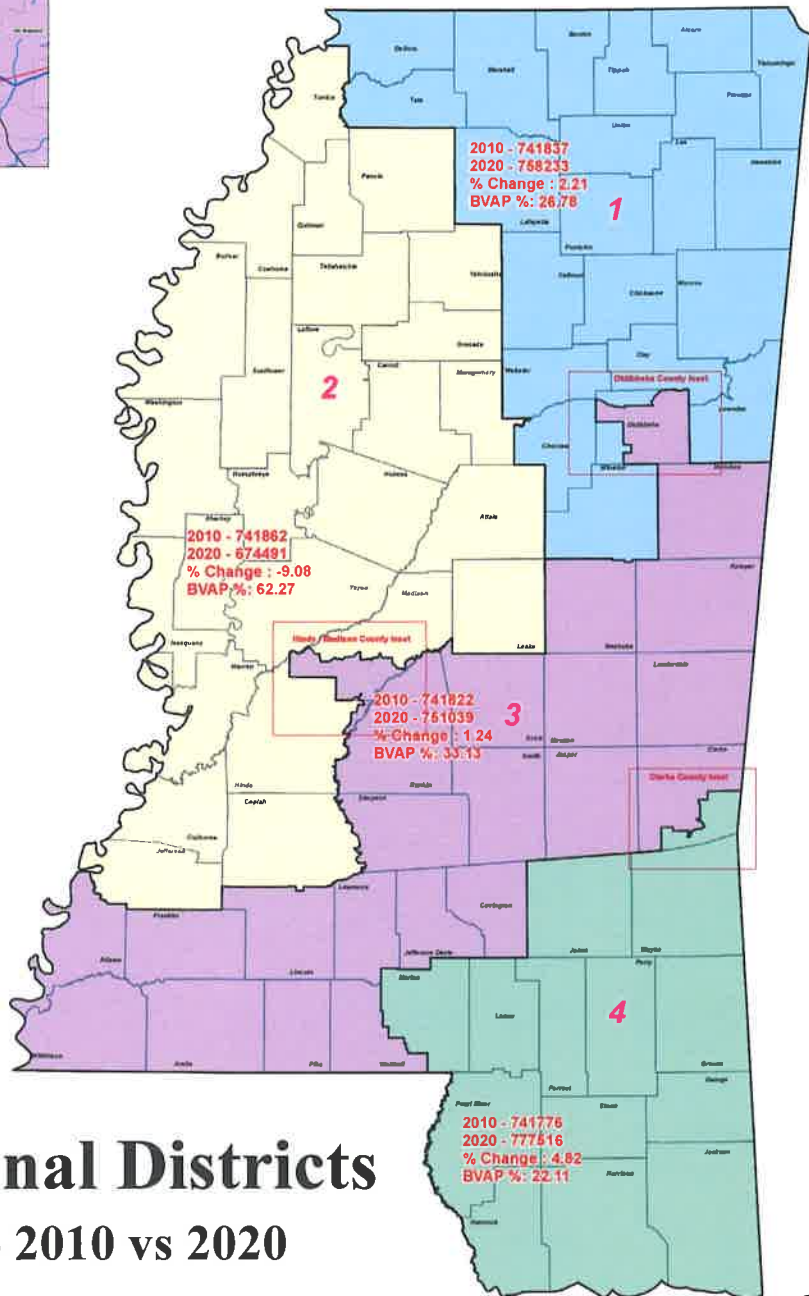
Hinds / Madison County Inset



Oktibbeha County Inset



Clarke County Inset



U.S. Congressional Districts

Population Change - 2010 vs 2020

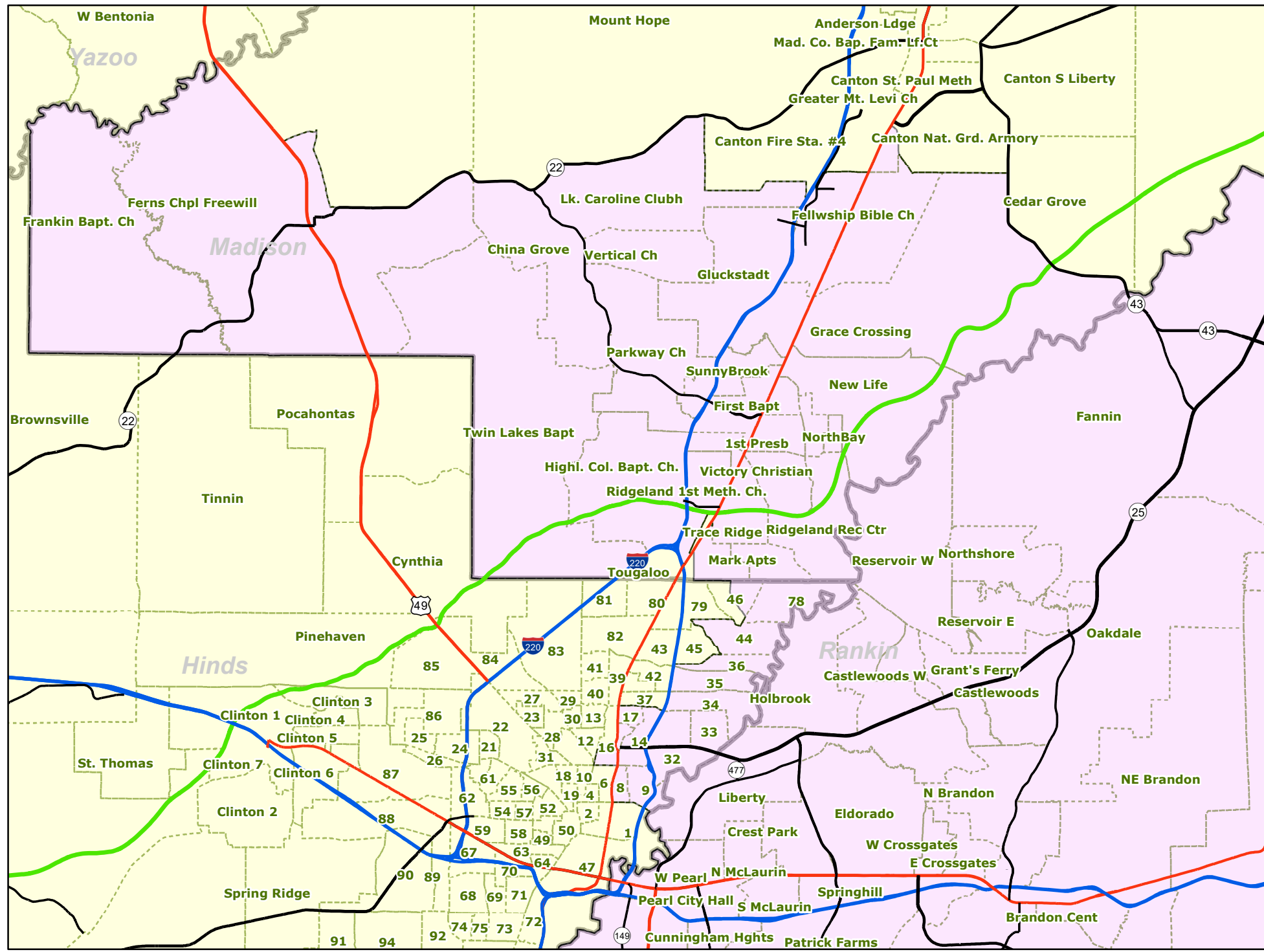


Map prepared by MARIS - 8/13/2021

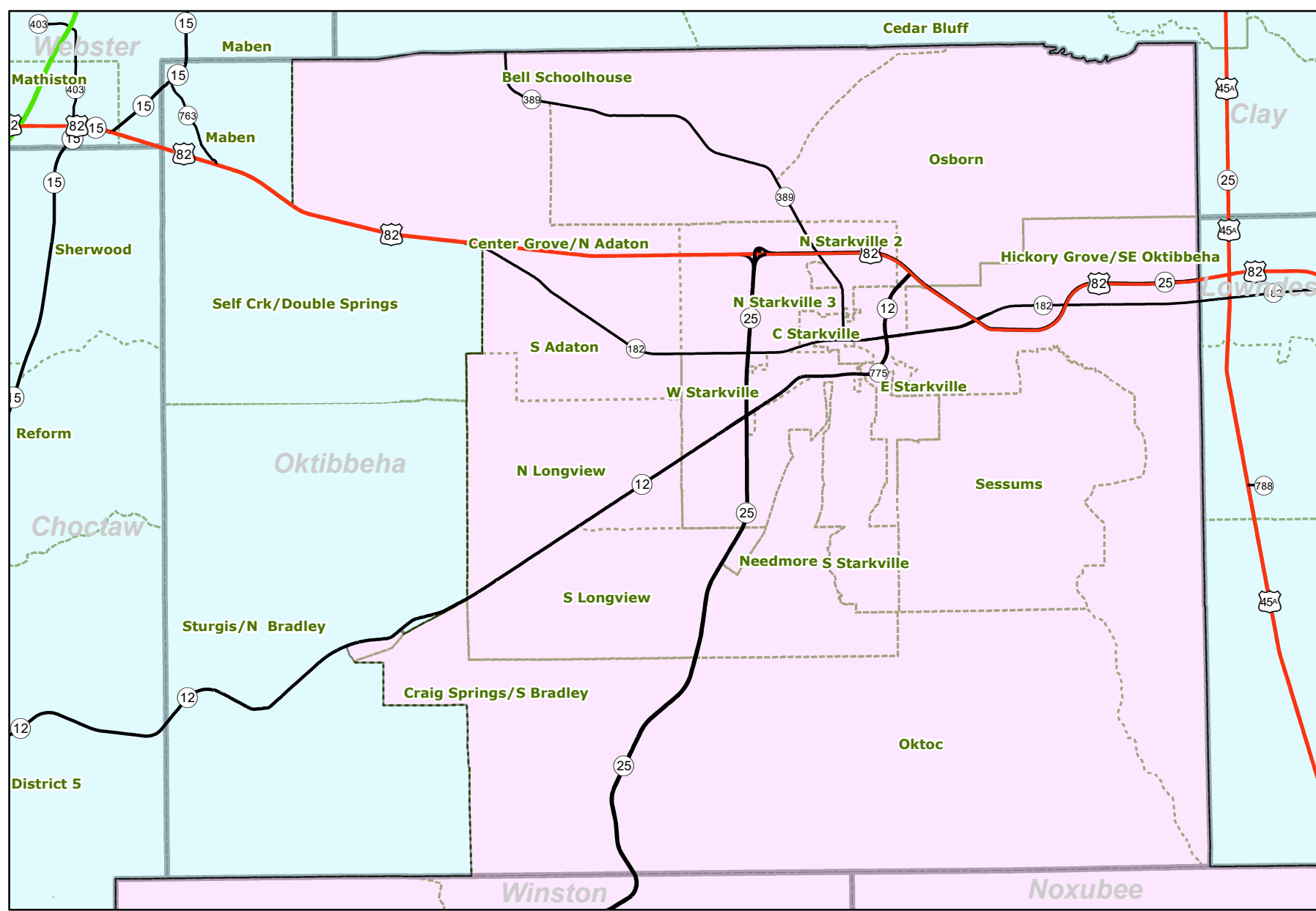
Electoral Districts were compiled on a whole block basis by Legislative staff. Base data (roads, cities, and counties) were compiled from 2010 U.S. Census Bureau TIGER files. Although the information contained on this map is believed to be accurate, the District of Columbia State boundaries of Virginia and Maryland are shown as best estimates. No responsibility is assumed for any errors or omissions. The map is provided for informational purposes only and should not be used for any other purpose.

U.S. Congressional Districts

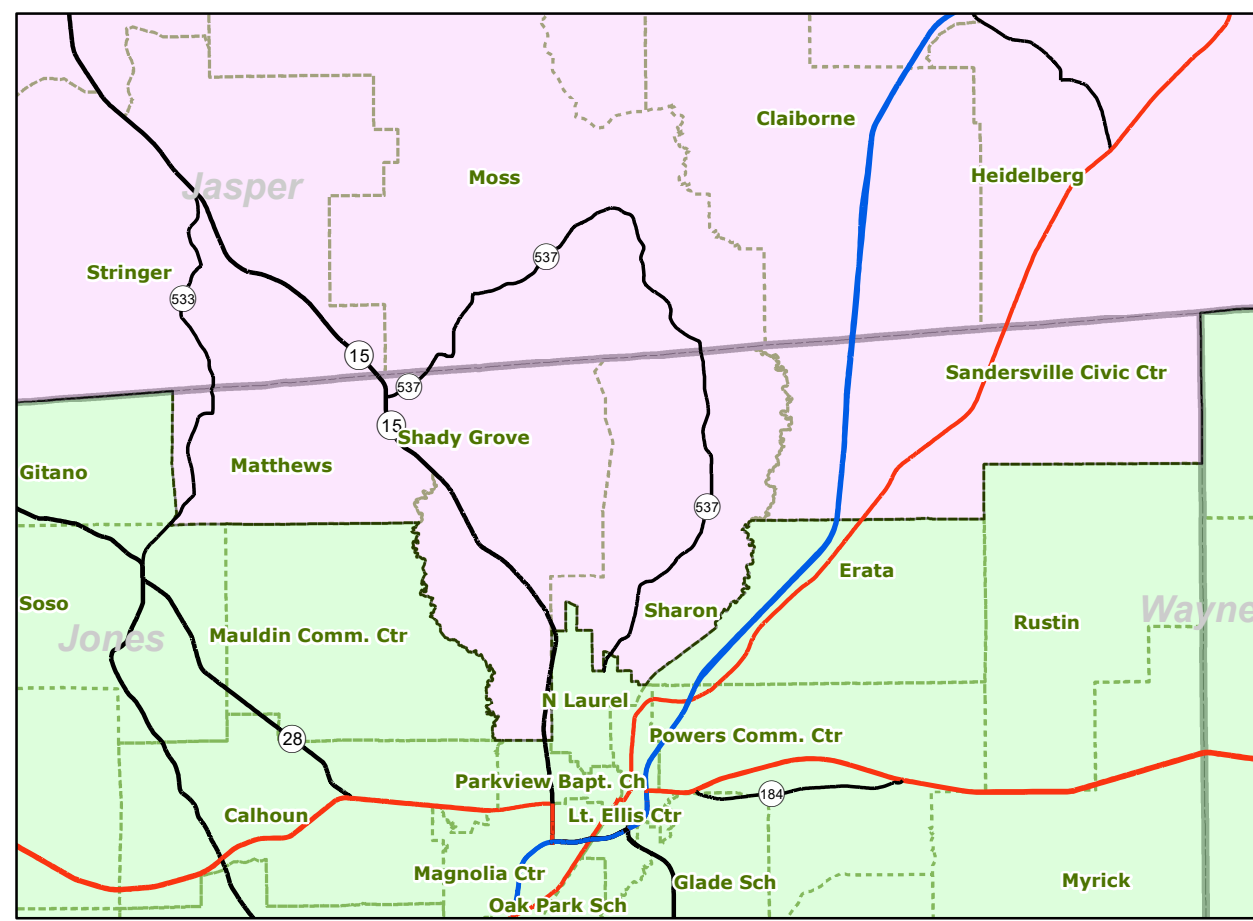
Proposed by the Committee - December 15, 2021



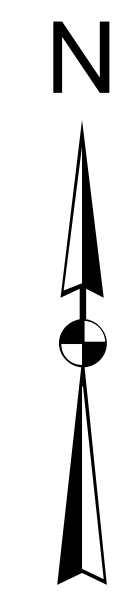
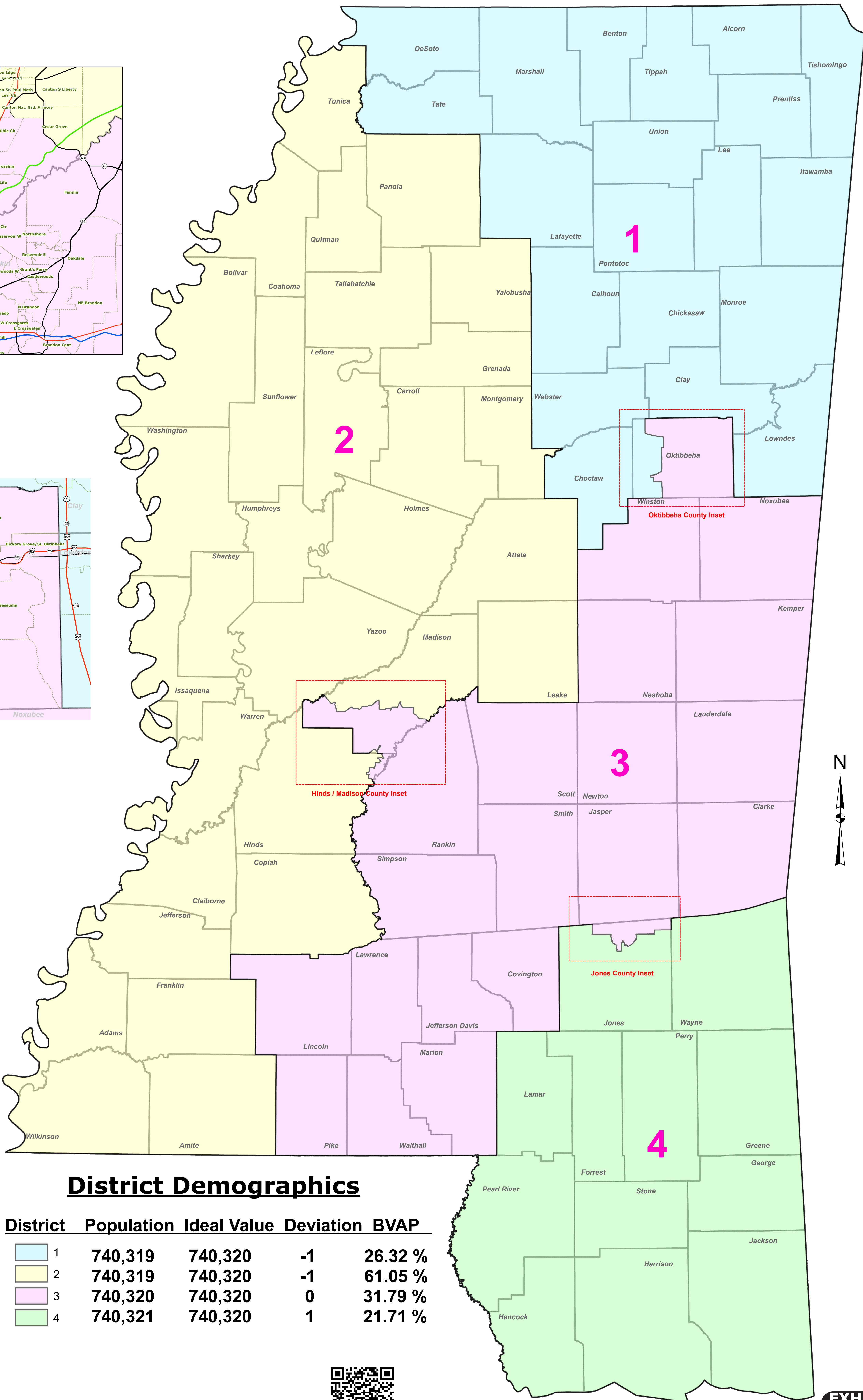
Hinds / Madison County Inset



Oktibbeha County Inset



Jones County Inset



District Demographics

District	Population	Ideal Value	Deviation	BVAP
1	740,319	740,320	-1	26.32 %
2	740,319	740,320	-1	61.05 %
3	740,320	740,320	0	31.79 %
4	740,321	740,320	1	21.71 %



Map prepared by MARIS - 12/15/2021

0 15 30 60 Miles

Election Districts were compiled on a whole block basis by Legislative staff. Base data (roads, cities, and counties) were compiled from 2020 U.S. Census Bureau TIGER Files. Although the information contained on this map is believed to be accurate, the Board of Trustees, State Institutions of Higher Learning/MARIS, the Standing Joint Committee on Reapportionment make no warranties as to the completeness, accuracy, reliability or suitability of the data for any use, or for any conclusions derived from this map.