

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

ALABAMA LEGISLATIVE BLACK \*  
CAUCUS; BOBBY SINGLETON; \*  
ALABAMA ASSOCIATION OF BLACK \*  
COUNTY OFFICIALS; FRED \*  
ARMSTEAD, GEORGE BOWMAN, \*  
RHONDEL RHONE, ALBERT F. \*  
TURNER, JR., and JILES WILLIAMS, JR., \*  
individually and on behalf of others \*  
similarly situated, \*

Plaintiffs,

v.

THE STATE OF ALABAMA; JOHN H. \*  
MERRILL in his official capacity as \*  
Alabama Secretary of State, \*

Defendants. \*

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ALABAMA DEMOCRATIC \*  
CONFERENCE et al., \*

Plaintiffs, \*

v. \*

THE STATE OF ALABAMA et al., \*

Defendants. \*

\* Civil Action No.  
\* 2:12-CV-691-WKW-MHT-WHP  
\* (3-judge court)

\* Civil Action No.  
\* 2:12-cv-1081-WKW-MHT-WHP  
\* (3-judge court)

**ALBC PLAINTIFFS' SECOND NOTICE  
OF INTERVENING CASE LAW**

Plaintiffs Alabama Legislative Black Caucus et al., through undersigned counsel, give notice of the intervening decision in *Dickson v. Rucho*, \_\_\_ S.E.2d \_\_\_, No. 201PA12-3 (N.C., Dec. 18, 2015), a copy of which is attached to this notice. This is the second decision to apply *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257 (2015), to the redistricting of a state legislature.

*Dickson v. Rucho* holds that, when addressing a claim of racial gerrymandering, the whole county provision in the North Carolina Constitution “establishes a framework to address the neutral redistricting requirement that ‘political subdivisions’ be respected.” Slip op. at 8 (citing *Shaw v. Reno*, 509 U.S. 630, 646-47 (1993)). “The United States Supreme Court has ‘emphasize[d] that these criteria are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines.’” (internal citations omitted).” Slip op. at 75 (emphasis provided by the Court) (quoting *Stephenson v. Bartlett*, 355 N.C. 354, 371, 562 S.E.2d 377, 389 (2002) (*Stephenson I*)).

*Stephenson I* requires the North Carolina Legislature to take advantage of the  $\pm 5\%$  maximum population deviation leeway authorized by the U.S. Supreme Court and to use a controversial numerical formula in preserving the integrity of county boundaries. The *Dickson* court, apparently unaware that this Court had

dismissed Count I of the ALBC complaint, thought that “Alabama’s Constitution does not contain a Whole County Provision.” Slip op. at 29. But it noted that “not splitting counties or precincts” was among the guidelines adopted by the Alabama Legislature.” Id. at 27 (citing *ALBC v. Alabama*, 135 S. Ct. at 1263; 989 F.Supp.2d 1227, 1245 (M.D. Ala. 2013) (three-judge court)).

The Alabama Legislature was not bound by any specific formula, but its guidelines gave avoiding county splits priority as a state constitutional requirement. SDX 420, ¶ IV.6.a. And, of course, the Alabama Legislature chose to restrict maximum population deviations to  $\pm 1\%$ . But the *Dickson* court’s interpretation of federal constitutional law applies to the instant action as well. “[T]he Supreme Court has recognized the importance of the states’ own traditional districting principles, holding that states can adhere to them without being subject to strict scrutiny so long as those principles are not subordinated to race.” Slip op. at 37 (citing *Bush v. Vera*, 517 U.S. 952, 978 (1996)).

Respectfully submitted this 21<sup>st</sup> day of December, 2015.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on December 21, 2015, I served the foregoing on the following electronically by means of the Court's CM/ECF system:

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