

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; BETH *
CHAPMAN, in her official capacity as *
Alabama Secretary of State, *

Defendants. *

DEMETRIUS NEWTON 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

**ALBC PLAINTIFFS' SECOND SUBMISSION OF
SUPPLEMENTAL AUTHORITIES IN SUPPORT OF
SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs Alabama Legislative Black Caucus et al., through undersigned counsel, respectfully call to this Court's attention *Kostick v. Nago*, ___ F.Supp.2d ___, 2013 WL 3487694 (D. Hawai'i, July 11, 2013) (3-judge court), ruling on cross-motions for summary judgment in the action challenging Hawaii's new House and Senate districts. The three-judge district court upheld the plans drawn by the Hawaii Reapportionment Commission, even though the House and Senate districts have overall population deviations of 21% and 44% respectively, because they preserved the integrity of counties.

Kostick differs procedurally from the instant action. The *Kostick* court based its decision on the constitutional standards of deference federal court's owe the state's choices in redrawing its legislative districts, while the ALBC plaintiffs ask this Court to hold that Alabama's redistricting choices violate the Equal Protection Clause by unnecessarily diluting the votes of county residents. And *Kostick* differs factually, in that Hawaii's counties are islands "all separated by 30 to 70 miles of open ocean." 2013 WL 3487694 at *25. But much of the *Kostick* court's reasoning bears on the issues presented in the ALBC plaintiffs' motion for reconsideration of their second motion for partial summary judgment, Doc. 107.

For example:

1. Hawaii's post-2010 census plans are a major revision from its 2001 plans,

which had created “canoe districts” dividing and combining the island counties in order to maintain smaller population deviations. 2013 WL 3487694 at 26.

2. The Hawaii legislators restored the integrity of the county boundaries in response to “the overwhelming public sentiment voiced against the use of ‘canoe districts’ at the Commission's public hearings and meetings,” 2013 WL 3487694 at *26, and in response to constituents’ complaints about not respecting the integrity of counties, *id.* at *28-29. “[T]he constituents in the less-populated portion of canoe districts felt effectively disenfranchised.” *Id.* at *30. These are similar to the pleas from county officials and residents in the public hearings held by Alabama’s Legislative Reapportionment Committee.

3. Although the district court did not say whether or not the Hawaii Legislature operates under the county delegation and local courtesy customs observed in the Alabama Legislature, the *Kostick* court took account of similar circumstances in the Hawaii Legislature that diluted the electoral strength of residents in counties where their legislators do not reside. *Id.* at *28-29. Citing, *inter alia*, *Reynolds v. Sims*, 377 U.S. 533, 580-81 (1965), the court said that “[b]ecause Hawaii’s government is highly centralized and the State legislature controls many matters typically left to local governments, ensuring that political subdivisions have a voice in the State legislature is particularly important in

Hawaii.” 2013 WL 3487694 at *30.

4. The *Kostick* court upheld large population deviations on the ground that they satisfied the “no greater than necessary” standard the ALBC plaintiffs propose in their motion for permanent injunction. Compare 2013 WL 3487694 at *31 with Docs. 107 and 108 at ¶ (1). Hawaii’s House and Senate plans were able to satisfy the same “dual goals,” 2013 WL 3487694 at *31, of fair representation both statewide and at the county level that the ALBC plaintiffs contend the Equal Protection Clause not only allows but, in light of Alabama’s local delegation customs, requires.

Respectfully submitted this 22nd day of July, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2013, I served the foregoing on the following electronically by means of the Court's CM/ECF system:

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