

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' OPPOSITION TO  
DEFENDANTS' MOTION TO AMEND BRIEFING SCHEDULE  
IN ORDER TO CONDUCT ADDITIONAL DISCOVERY**

Plaintiffs Alabama Legislative Black Caucus et al., through undersigned counsel, oppose defendants' motion to amend the briefing schedule and for leave to conduct limited discovery filed September 29, 2015, Doc. 288. As grounds for their opposition plaintiffs would show as follows:

1. The discovery defendants seek in the interrogatories attached to their motion, Docs. 288-1 and 288-2, is irrelevant and immaterial to the issues raised by this Court's order of August 28, 2015, Doc. 283.

2. The August 28 order required plaintiffs to file new statewide redistricting plans meeting the  $\pm 1\%$  requirement and other redistricting criteria in the Reapportionment Committee Guidelines, specifically those enumerated in the order. None of those enumerated criteria included "the political viability of the plans," which is the object of defendants' proposed discovery. Doc. 288 at 3.

3. The purpose of the August 28 order is to test the State's defenses that the race-neutral requirements of the Guidelines, the  $\pm 1\%$  maximum deviation requirement most of all, explain the racial composition of the majority-black districts, not the black percentage targets that the drafters admitted they were pursuing. Whether the members of the ALBC supported the Act 2012-602 and 603 plans was irrelevant to this liability question. (In any event, those plans passed even though every ALBC member voted against them.) Similarly, whether

today's black incumbents would have voted for or against the 1% plans presented by plaintiffs in response to the August 28 order is irrelevant.

4. The issue presently before the Court is not whether the plaintiffs' 1% plans would be appropriate remedies, but whether they demonstrate that race predominated in drawing the majority-black districts in the 2012 plans. That is the liability issue for this Court to determine, not the ALBC or ADC members.

5. The ALBC 1% plans are modifications of the 5% plans sponsored by the ALBC leadership in 2012, HB 16 and SB 5, APX 20-26, and the 5% plans sponsored by ALBC leaders following remand from the Supreme Court, APSX 26-43. But even these facts are irrelevant to the liability questions this Court must determine.

6. Certainly, asking the views of ALBC and ADC members about whether plaintiffs' 1% plans satisfy all state and federal constitutional and statutory requirements calls for legal conclusions that are irrelevant and immaterial. Even the question whether the black percentages in the plaintiffs' 1% plans provide black voters the opportunity to elect candidates of their choice is a question for this Court to decide, based on the evidence already in the record. Defendants should not be granted leave to reopen the record of evidence to seek the opinions of today's black incumbents, opinions which were not before the drafters of the

challenged districts in 2012.

7. As a practical matter, adequately informing and then polling the 35 members of the ALBC and the thousands of members of ADC would be difficult and onerous, if not impossible.

8. The depositions of the experts who drew the ADC and ALBC 1% plans are scheduled to be taken next week on October 6 and 7, which is the only discovery allowed by this Court's August 28 order.

9. Granting defendants' latest motion would further delay final resolution of these consolidated actions and the creation of new, constitutional redistricting plans.

WHEREFORE, plaintiffs pray that the Court will deny defendants' motion.

Respectfully submitted this 30<sup>th</sup> day of September, 2015.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on September 30, 2015, I served the foregoing on the following electronically by means of the Court's CM/ECF system:

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