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

ALABAMA LEGISLATIVE BLACK CAUCUS, *et al.*,	)	
Plaintiffs,	)	CASE NO. 2:12-CV-691 (Three-Judge Court)
v.	)	
THE STATE OF ALABAMA, *et al.*,	)	
Defendants.	)	

ALABAMA DEMOCRATIC CONFERENCE, *et al.*,	)	
Plaintiffs,	)	CASE NO. 2:12-CV-1081 (Three-Judge Court)
v.	)	
THE STATE OF ALABAMA, *et al.*,	)	
Defendants.	)	

NOTICE OF SUPPLEMENTAL AUTHORITY

The State of Alabama, Governor Bentley, Secretary of State Merrill, Sen. Dial, Sen. McClendon, and Rep. Davis respectfully provide the Court with notice of a supplemental authority, *Harris v. Arizona Independent Redistricting Commission*, 578 U.S. ___ (April 20, 2016).

The Supreme Court's unanimous opinion in *Harris* is attached as an exhibit to this Notice. The opinion in *Harris* is relevant for four reasons.

First, the Court in *Harris* deferred to the judgment of Arizona's Redistricting Commission that it needed to increase the percentage of minority population in certain districts to achieve preclearance under Section 5 of the Voting Rights Act. In *Harris*, a "mapping consultant" led the

Commission to believe that it needed to create *ten* ability-to-elect districts, Slip Op. at 6, even though the benchmark plan included only *seven* such districts, *see Harris v. Arizona Indep. Redistricting Comm'n*, 993 F. Supp. 2d 1042, 1060 (D. Ariz. 2014). After the Commission drew a plan that achieved ten such districts, "one of its statisticians" suggested that "the Department of Justice might not agree that the new proposed plan contained 10 ability-to-elect districts" and that the minority percentages in the districts should be increased by lowering the overall population of the districts. Slip Op. at 6-7. Another consultant suggested that, by increasing the minority percentage in yet another district, "the Commission might be able to claim an 11th ability-to-elect district" to further "enhance chances for preclearance." Slip Op. at 8. Citing its decision in *Alabama Legislative Black Caucus v. Alabama*, the Court held that these unsubstantiated assertions were a sufficient basis for the Commission to under-populate eleven districts to increase the percentage of minority voters in those districts and make them safer ability-to-elect districts. Slip Op. at 7, 9. If the Arizona redistricting commission could reasonably rely on a consultant's unsubstantiated advice to create a certain number of ability-to-elect districts and increase the minority populations in those districts, then the Alabama legislative redistricting committee could reasonably rely on black political leaders' statements and draft plans to identify the appropriate minority percentage in ability-to-elect districts.

Second, the Court emphasized the opacity of the preclearance process as one of the considerations that redistricters can legitimately take into account. "The upshot was not random decision-making but the process did create an inevitable degree of uncertainty. And that uncertainty could lead a redistricting commission, as it lead Arizona's, to make serious efforts to make certain that the districts it believed were ability-to-elect district did in fact meet the criteria that the Department might reasonably apply." Slip Op. at 7.

Third, the Court rejected the argument that Section 5 is not a sufficient basis to sustain a race-related redistricting plan that was enacted before *Shelby County v. Holder*, 570 U.S. ____ (2013). Slip Op. at 10. The Court rejected the argument with the simple statement that "[a]t the time, Arizona was subject to the Voting Rights Act, and we have never suggested to the contrary." Slip Op. at 11.

Fourth, the Court's decision underscores that the issue of overall population deviation is not subject to challenge. Here, the challenged population deviation is 2%. In *Harris*, the challenged deviation was 10%. In *Harris*, the Court clarified its prior decision in *Cox v. Larios*, 542 U.S. 947 (2004), holding that "attacks on deviations under 10% will succeed only rarely, in unusual cases." Slip Op. at 5, 10. Thus, the Court explained that population deviations are not subject to challenge unless they are based on "illegitimate factors." Slip Op. at 10.

Respectfully submitted,

LUTHER STRANGE
Attorney General of Alabama

By:
s/ Andrew L. Brasher
Andrew L. Brasher (ASB-4325-W73B)
Solicitor General
Megan Kirkpatrick (ASB-2652-M66K)
Deputy Solicitor General
James W. Davis (ASB-4063-I58J)
Assistant Attorney General
Office of the Attorney General
State of Alabama
Post Office Box 300152
Montgomery, AL 36130-0152
Telephone: 334-242-7300
Fax: 334-353-8440
abrasher@ago.state.al.us
mkirkpatrick@ago.state.al.us
jimdavis@ago.state.al.us

John J. Park, Jr. (ASB-xxxx-P62J)
Deputy Attorney General
Strickland Brockington Lewis LLP
Midtown Proscenium Suite 2200
1170 Peachtree Street NE
Atlanta, GA 30309
Telephone: 678-347-2200
Fax: 678-347-2210
jjp@sbllaw.net

Counsel for the State Defendants

s/ David B. Byrne, Jr.
Legal Advisor to Governor Robert Bentley
Office of the Governor
Alabama State Capitol
600 Dexter Avenue, Suite NB-05
Montgomery, Alabama 36130
Telephone: 334-242-7120
Fax: 334-242-2335
david.byrne@governor.alabama.gov

s/ Algert S. Agricola, Jr.
Ryals, Donaldson & Agricola, P.C.
60 Commerce Street, Suite 1400
Montgomery, Alabama 36104
Telephone: 334-834-5290
Fax: 334-834-5297
aagricola@rdafirm.com

Counsel for the State of Alabama and Governor Bentley

s/ Dorman Walker
Dorman Walker (ASB-0717-R81J)
Balch & Bingham LLP
Post Office Box 78
Montgomery, AL 36101-0078
Telephone: 334-834-6500
Fax: 334-269-3115
dwalker@balch.com

Counsel for Defendants-Intervenors, Jim McClendon, Gerald Dial and Randy Davis

CERTIFICATE OF SERVICE

I hereby certify that, on April 22, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

James U. Blacksher
Post Office Box 636
Birmingham, Alabama 35201
jblacksher@ns.sympatico.ca

Edward Still
Edward Still Law Firm LLC
429 Green Springs Hwy, Ste 161-304
Birmingham, Alabama 35209
still@votelaw.com

U.W. Clemon
White Arnold & Dowd, P.C.
2025 Third Avenue North, Suite 500
Birmingham, Alabama 35203
uwclemon@whitearnolddowd.com

James H. Anderson
Copeland, Franco, Screws & Gill, P.A.
Post Office Box 347
Montgomery, Alabama 36101-0347
anderson@copelandfranco.com

Joe M. Reed
Joe M. Reed & Associates, LLC
524 South Union Street
Montgomery, Alabama 36104
joemreed@wowway.net

John K. Tanner
Attorney at Law
3743 Military Road, NW
Washington, DC 20015
john.k.tanner@gmail.com

Walter S. Turner
Walter S. Turner, Esq.
Post Office Box 6142
Montgomery, Alabama 36106
wsthayer@juno.com

William F. Patty
The Gardner Firm, P.C.
Post Office Box 991
Montgomery, Alabama 36101-0991
bpatty@thegardnerfirm.com

Joel Caldwell
Copeland, Franco, Screws & Gill, P.A.
444 South Perry Street
Montgomery, Alabama 36104
caldwell@copelandfranco.com

Richard Pildes
40 Washington Square S
New York, NY 10012
rick.pildes@nyu.edu

Additionally, I hereby certify that, on April 22, 2016, I am placing a copy of the foregoing in the U.S. Mail, postage pre-paid, to the following counsel of record:

Jesse K. Anderson
Hill Hill Carter Franco Cole & Black
Post Office Box 116
Montgomery, AL 36101-0116

s/Andrew L. Brasher
Of Counsel