

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

**ALABAMA LEGISLATIVE BLACK
CAUCUS, et al.,**

Plaintiffs,

v.

THE STATE OF ALABAMA, et al.,

Defendants.

**CIVIL ACTION NO.
2:12-cv-691-WKW-MHT-WHP
(3-judge court)**

DEMETRIUS NEWTON, et al.,

Plaintiffs,

v.

THE STATE OF ALABAMA, et al.,

Defendants.

**CIVIL ACTION NO.
2:12-cv-1081-WKW-MHT-WHP
(3-judge court)**

**DEFENDANTS’ OPPOSITION TO ADC PLAINTIFFS’ MOTION TO REQUIRE
DEFENDANTS TO EXPLAIN COMPLIANCE WITH RECENT SUPREME
COURT RULINGS (DOC 333)**

The Court should deny the ADC plaintiffs’ unusual motion to require the defendants¹ to “explain” how the remedial plans enacted by the Legislature “comply” with *Bethune-Hill v. Virginia*, 15-680 (U.S. 2017) and *Cooper v. Harris*, 15-1282 (U.S. 2017). This is so for several reasons.

First, the ADC plaintiffs are putting the cart before the horse. The agreed scheduling order for the remedial phase of this case requires the defendants to file the

¹ The defendants (including the defendant-intervenors) are the State of Alabama, the Governor of Alabama, the Secretary of State of Alabama, Senator Gerald Dial, Senator Jim McClendon, and Representative Randy Davis.

proposed plans in court on May 30. *See* Doc. 327. Certain statistical and other information must be provided with that filing, including the basis for the Legislature's consideration of race if any. Then, the plaintiffs are afforded a period of time to review those plans and object. If the ADC plaintiffs believe that a certain district (or all the districts) fail to "comply" with *Bethune-Hill* and/or *Cooper*, then they can object on that basis. *See* Doc. 327. The defendants are then afforded a period of time to respond to that objection. *See* Doc. 327. If plaintiffs object to the plans on the ground that certain of the remedial districts are racially gerrymandered, then the defendants will respond to those allegations. That response will obviously address all relevant legal authorities.

Second, it makes no sense to say that a redistricter must "comply" with *Bethune-Hill* or *Cooper*. Those cases are about how a court should adjudicate claims of racial gerrymandering; they do not require a redistricter to take any particular action. A redistricter can no more "comply" with *Bethune-Hill* or *Cooper* than a police officer can "comply" with *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), which provides the standard for assessing qualified immunity, or a newspaper can "comply" with *New York Times Co. v. Sullivan*, 376 US 254 (1964), which addresses the burden of proof in a case alleging defamation of a public figure.

Third, it is not the defendants' burden to establish that the remedial districts are constitutional. These new plans are duly enacted statutes, which are afforded a presumption of constitutionality. If the plaintiffs believe these statutes are unconstitutional, then it is the plaintiffs' burden to identify the alleged legal infirmity. They can do that by raising an objection to any districts that they believe are racially gerrymandered.

We should follow the agreed scheduling order for the remedial phase of this case and address all relevant legal authorities in the filings contemplated by that schedule.

Respectfully submitted this the 26th day of May, 2017.

s/Andrew Brasher

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CERTIFICATE OF SERVICE

I certify that May 26, 2017 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and service will be perfected upon the following by email and/or US mail:

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