

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

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

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

Defendants’ Reply in Support of their Motion to Amend the Briefing Schedule, for Leave to Conduct Limited Discovery, etc. (doc. 288)

Defendants respectfully submit this reply in support of their Motion to Amend the Briefing Schedule, for Leave to Conduct Discovery, etc.:

Plaintiffs oppose Defendants’ motion for leave to serve interrogatories because, they say, it is entirely irrelevant whether Plaintiffs like their own plans. Defendants disagree.

Plaintiffs seem to argue that because they have now produced plans that abide by the Legislature's \pm 1% deviation standard, and those plans have lower black population percentages in some districts, these new plans prove that race predominated in the 2012 plans. If, however, the plans that have just been produced by the Plaintiffs are plans that nobody wants (or that nobody would have wanted in 2012), then they really do not prove anything at all. If the approach taken by the Plaintiffs in their new plans would never pass, then it was not an alternative available to the Legislature. And if the Plaintiff legislators do not like their own districts in the proposed plans or believe they include insufficient opportunities for black voters, why should the Court draw any conclusions from the plans?

If, for example, Senator Sanders does not like his 53.8% black district in the ALBC 1% plan, that is something the Court should know as it determines what, if anything, the new plans prove. And if the plaintiffs believe that a 53.8% black district, or a 50.98% black district (SD 28), or a 52.5% black district (HD 19 in the ADC Plan) does not provide a sufficient opportunity for blacks to elect their candidate of choice, that goes to whether the plans would have had any hope of being precleared, and whether the plans comply with the Court's directives that they satisfy the Voting Rights Act.

If Plaintiffs are using the plans to argue that the Legislature could have done things a very different way and still satisfied their \pm 1% standard, then it matters if the plans would have had no chance of passing in 2012, and it matters in turn if the

plaintiffs are dissatisfied with their own districts in their proposals. Defendants would probably prefer to depose the plaintiffs at length about their opinions concerning their own (and each other's) proposals, but the modest discovery requested seemed a far quicker and less intrusive option.

The interrogatories proposed by the Defendants would therefore provide relevant information and should be allowed. Unless Plaintiffs will stipulate that the plans they just filed would never have passed in 2012, would probably have not been precleared, and probably do not comply with the Voting Rights Act, then this is information Defendants are entitled to have.

As for other objections identified in the Plaintiffs' oppositions:

- Plaintiffs say it would be burdensome to contact thousands of ADC members. Defendants would be happy to limit their requests to ADC to the senior leadership of ADC and to ADC members who are legislators.
- Plaintiffs say that the requests will "intrude on the attorney-client relationship." (Doc. 290 at 1). That seems unlikely. The interrogatories ask nothing about what has been shared between attorneys and their clients. They ask only about the plaintiffs' own opinions about the plan they have presented to the Court.
- ADC says that the requests for production are no longer needed because of information they have already provided. Now that ADC has provided its plans to the Reapportionment Office, Defendants will be able to receive the

necessary demographic information from the Reapportionment Office. That will take time, of course, but Defendants agree that it can be obtained outside the discovery process. Thus, if the Court grants leave to conduct discovery, and if Defendants are able to receive the reports they need from the Reapportionment Office, the requests to ADC would not include the Requests for Production, but would be limited to the proposed interrogatories.

* * *

Defendants are in the process of reviewing the exhibits and obtaining the additional information needed to test Plaintiffs' assertions about the new plans. A brief extension is needed to gather and assess all the information, to study the precinct splits and county splits, and to do all the work needed to respond to two sets of entirely new plans. Even with the extension, Defendants will have had far less time to address two plans than the years Plaintiffs have had to address one. Defendants' motion should therefore be granted.

Respectfully submitted,

LUTHER STRANGE
Attorney General of Alabama

By:
s/ James W Davis _____
Andrew L. Brasher (ASB-4325-W73B)
Solicitor General
Megan Kirkpatrick (ASB-2652-M66K)
James W. Davis (ASB-4063-I58J)
Misty S. Fairbanks Messick
Assistant Attorneys General
Office of the Attorney General

State of Alabama
Post Office Box 300152
Montgomery, AL 36130-0152
Telephone: 334-242-7300
abrasher@ago.state.al.us
mkirkpatrick@ago.state.al.us
jimdavis@ago.state.al.us
mmessick@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@sblaw.net

Counsel for the State Defendants

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

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 October 1, 2015, 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
Attorney at Law
Post Office Box 636
Birmingham, Alabama 35201
jblacksher@ns.sympatico.ca

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

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

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

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

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

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

Richard H. Pildes
40 Washington Square South
New York, NY 10012-1005

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

s/ James W Davis _____
Of Counsel