

**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
v.)	WKW-MHT-WHP
)	
THE STATE OF ALABAMA, et al.,)	
)	
Defendants.)	
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DEMETRIUS NEWTON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:12-cv-1081
)	WKW-MHT-WHP
THE STATE OF ALABAMA, et al.,)	
)	
Defendants.)	

**MOTION FOR CLASS CERTIFICATION
SCHEDULING CONFERENCE**

Pursuant to Federal Rule of Civil Procedure 23(c), the State of Alabama, Robert J. Bentley, in his official capacity as Governor of Alabama, and Beth Chapman, in her official capacity as Secretary of State of Alabama, defendants in this action (the “State Defendants”), move this Court for an order setting a scheduling conference with respect to the proposed ALBC class action so that the

ALBC Plaintiffs and the Newton Plaintiffs can, among other things, reconcile their competing views as to whether this case should proceed as a class action. As grounds for this Motion, the State Defendants state:

1. In their Complaint, the ALBC Plaintiffs seek, among other things, to be certified as class representatives of the following plaintiff classes: “(1) of residents of Alabama counties whose boundaries have been unnecessarily split among more House and/or Senate districts than are necessary to satisfy the Fourteenth Amendment requirement of substantial population equality, (2) of all African-American voters of Alabama, and (3) of all Alabama voters who support and wish to elect white and black Democratic members of the Legislature.” *ALBC* No. 1 at 7-8, ¶ 18.

2. In their Complaint, the individual Newton Plaintiffs are each putative members of one or more of the proposed ALBC plaintiff classes. The African-American Plaintiffs (Newton, Stallworth, and Pettway) appear to be included in proposed classes (2) and (3), and Plaintiffs Weaver and Toussaint appear to be members of proposed class (3). See *Newton* No. 1, at 2-3, ¶¶ 2, 4, 5, 6, 7.

3. This case cannot proceed as both a class action and as individual lawsuits. In that regard, Federal Rule of Civil Procedure 23 premises the certification of a plaintiff class on findings of typicality and adequacy of

representation. If those prerequisites are met, the certification of one or more plaintiff classes on the lines requested by the ALBC Plaintiffs would be preclusive of the interests of the individual Newton Plaintiffs unless this Court allowed for opt-out.

4. The ALBC Plaintiffs cannot solve this problem by simply dropping their request for the certification of plaintiff classes. Federal Rule of Civil Procedure 23(e) conditions the voluntary dismissal of a certified plaintiff class on court approval. This provision applies to proposed plaintiff classes that have not yet been certified as well. See *Doe v. Lexington-Fayette Urban County Government*, 403 F. 3d 755, 761 (6th Cir. 2005); *Culver v. City of Milwaukee*, 277 F. 3d 908, 914-15 (7th Cir. 2002). Such a voluntary dismissal might not prejudice the Newton Plaintiffs, but there are a large number of unnamed class members whose interests might be prejudiced. The State Defendants don't know, one way or the other, but this Court should find out.

5. Federal Rule of Civil Procedure 23(c)(1)(A) calls for the issuance of a class certification order “[a]t an early practicable time.” That cannot take place unless this Court sets a class certification scheduling conference at which, among other things, the ALBC and Newton Plaintiffs resolve their competing claims.

Accordingly, this Court set a class certification scheduling conference so that, among other things, the ALBC Plaintiffs and the Newton Plaintiffs can reconcile their views on whether their claims against the State Defendants can or should proceed as a class action.

Date: January 25, 2013

Respectfully submitted,
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