

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; BETH \*  
CHAPMAN, in her official capacity as \*  
Alabama Secretary of State, \*

Defendants. \*

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DEMETRIUS NEWTON 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

**ALBC PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE  
TO PLAINTIFFS' MOTION FOR RECONSIDERATION  
AND MOTION FOR PERMANENT INJUNCTION**

Plaintiffs Alabama Legislative Black Caucus et al., through undersigned counsel submit this reply to defendants' response, Doc. 109, in opposition to ALBC plaintiffs' motion for reconsideration of their second motion for partial summary judgment, Doc. 107, and ALBC plaintiffs' motion for a permanent injunction, Doc. 108.

This reply is limited to responding to defendants' erroneous assertion, Doc. 109 at 16, that this Court is bound by the conclusion in *DeJulio v. Georgia*, 290 F.3d 1291 (11<sup>th</sup> Cir.), cert. denied, 537 U.S. 948 (2002), that Alabama's local legislative delegations, like local delegations in Georgia, are not exercising general governmental functions. 290 F.3d at 1296. *DeJulio* did not address the one-person, one-vote question presented in Count III of ALBC plaintiffs' amended complaint. The different contexts of the constitutional issues are critically important. The *DeJulio* plaintiffs were seeking to reform the uncodified internal procedures of the Georgia Assembly, that is, they challenged how local delegations operated and how those delegations' votes were counted. The Eleventh Circuit did not dispute that the exercise of power to enact local laws is a "governmental function." *Id.* at 1295-96. Rather, it held that, because "[l]ocal legislation is not officially enacted until it is voted on by a majority of the full House and Senate and signed by the Governor[,] . . . the General Assembly, which has undisputedly been

apportioned in accordance with the ‘one person, one vote’ requirement, engages in the governmental function of lawmaking, not the local delegations.” *Id.* at 1296. The focus in *DeJulio* was thus on the formality of final participation of the entire Assembly in the passage of local laws.

By contrast, this case challenges not how legislators vote within the legislature, but how citizens vote in electing their legislators. The difference between *DeJulio* and this case is the presence here of a clear, familiar, and judicially manageable remedy – the apportionment of populations to legislative districts. Under our theory, *DeJulio* may have reached the right result but erred in basing it on the mistaken conclusion that Georgia’s local delegations were not exercising governmental functions.

The constitutional rights of the people to a full and undiluted vote do not depend on whether governmental powers are exercised formally or informally, directly or indirectly. “One must be ever aware that the Constitution forbids ‘sophisticated as well as simpleminded modes of discrimination.’” *Reynolds v. Sims*, 377 U.S. 533, 563 (1964) (quoting *Lane v. Wilson*, 307 U.S. 268, 275 (1939); *Gomillion v. Lightfoot*, 364 U.S. 339, 342 (1960)); accord, e.g., *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 829 (1995) (“As we have often noted, ‘[c]onstitutional rights would be of little value if they could be ... indirectly

denied.”) (quoting *Harman v. Forssenius*, 380 U.S. 528, 540 (1965), and *Smith v. Allwright*, 321 U.S. 649, 664 (1944)) (internal quotation marks omitted).

The question presented by Count III of the amended ALBC complaint is whether residents of counties are protected by the Equal Protection Clause from having their votes diluted by statutes that designate the legislators who will exercise those informal – but real – powers over local laws that apply only to their counties. And when it comes to the equal protection rights of voters, as opposed to the equal powers of their elected representatives, the Supreme Court has said that “the Equal Protection Clause reaches the exercise of state power **however manifested**, whether exercised directly or through subdivisions of the State.” *Avery v. Midland County*, 390 U.S. 474, 479-80 (1968) (quoting *Cooper v. Aaron*, 358 U.S. 1, 17 (1958)) (bold emphasis added). The Court used sweeping language in *Avery* to say that the equal, undiluted voting rights of citizens must be protected regardless of how the state legislature “delegate[s] . . . power to local units,” *id.* at 481, and regardless of the fact that “unit[s] of local government cannot easily be classified in the neat categories favored by civics texts.” *Id.* at 482. *Cooper v. Aaron* held it is irrelevant which “agency of the State, or [which] officers or agents by whom its powers are exerted” are involved, “the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws;

whatever the agency of the State taking the action, or whatever the guise in which it is taken.” 358 U.S. at 17.

WHEREFORE, plaintiffs pray that this Court will grant their motion to reconsider their second motion for partial summary judgment, that it will schedule a hearing promptly, and that following said hearing it will enter the permanent injunction plaintiffs have requested.

Respectfully submitted this 6<sup>th</sup> day of May, 2013.

Edward Still  
Bar No. ASB-4786-I 47W  
130 Wildwood Parkway  
STE 108 PMB 304  
Birmingham, AL 35209  
205-320-2882  
fax 205-320-2882  
E-mail: [still@votelaw.com](mailto:still@votelaw.com)

Attorneys for Plaintiffs

s/ James U. Blacksher  
Bar No. ASB-2381-S82J  
P.O. Box 636  
Birmingham AL 35201  
205-591-7238  
Fax: 866-845-4395  
E-mail: [jblacksher@ns.sympatico.ca](mailto:jblacksher@ns.sympatico.ca)

U.W. Clemon  
Bar No. ASB-0095-076U  
WHITE ARNOLD & DOWD P.C.  
2025 Third Avenue North, Suite 500  
Birmingham, AL 35203  
Phone: (205)-323-1888  
Fax: (205)-323-8907  
E-mail: [uwclemon@waadlaw.com](mailto:uwclemon@waadlaw.com)

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 6, 2013, I served the foregoing on the following electronically by means of the Court’s CM/ECF system: