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,	*	Civil Action No. 2:12-CV-691-WKW-MHT-WHP (3-judge court)
v.	*	
THE STATE OF ALABAMA; JOHN H. MERRILL in his official capacity as Alabama Secretary of State,	*	
Defendants.	*	
ALABAMA DEMOCRATIC CONFERENCE et al.,	*	
Plaintiffs,	*	Civil Action No. 2:12-cv-1081-WKW-MHT-WHP (3-judge court)
v.	*	
THE STATE OF ALABAMA et al.,	*	
Defendants.	*	

ALBC PLAINTIFFS' SECOND NOTICE OF INTERVENING CASE LAW

Plaintiffs Alabama Legislative Black Caucus et al., through undersigned counsel, give notice of the intervening decision in *Dickson v. Rucho*, __ S.E.2d __, No. 201PA12-3 (N.C., Dec. 18, 2015), a copy of which is attached to this notice. This is the second decision to apply *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257 (2015), to the redistricting of a state legislature.

Dickson v. Rucho holds that, when addressing a claim of racial gerrymandering, the whole county provision in the North Carolina Constitution "establishes a framework to address the neutral redistricting requirement that 'political subdivisions' be respected." Slip op. at 8 (citing *Shaw v. Reno*, 509 U.S. 630, 646-47 (1993)). "The United States Supreme Court has 'emphasize[d] that these criteria are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines.'" (internal citations omitted))." Slip op. at 75 (emphasis provided by the Court) (quoting *Stephenson v. Bartlett*, 355 N.C. 354, 371, 562 S.E.2d 377, 389 (2002) (*Stephenson I*)).

Stephenson I requires the North Carolina Legislature to take advantage of the ± 5% maximum population deviation leeway authorized by the U.S. Supreme Court and to use a controversial numerical formula in preserving the integrity of county boundaries. The *Dickson* court, apparently unaware that this Court had

dismissed Count I of the ALBC complaint, thought that "Alabama's Constitution does not contain a Whole County Provision." Slip op. at 29. But it noted that "not splitting counties or precincts" was among the guidelines adopted by the Alabama Legislature." Id. at 27 (citing *ALBC v. Alabama*, 135 S. Ct. at 1263; 989 F.Supp.2d 1227, 1245 (M.D. Ala. 2013) (three-judge court)).

The Alabama Legislature was not bound by any specific formula, but its guidelines gave avoiding county splits priority as a state constitutional requirement. SDX 420, ¶ IV.6.a. And, of course, the Alabama Legislature chose to restrict maximum population deviations to ± 1%. But the *Dickson* court's interpretation of federal constitutional law applies to the instant action as well. "[T]he Supreme Court has recognized the importance of the states' own traditional districting principles, holding that states can adhere to them without being subject to strict scrutiny so long as those principles are not subordinated to race." Slip op. at 37 (citing *Bush v. Vera*, 517 U.S. 952, 978 (1996)).

Respectfully submitted this 21st day of December, 2015.

Edward Still
Bar No. ASB-4786-I 47W
429 Green Springs Hwy
STE 161-304
Birmingham, AL 35209
205-320-2882
fax 205-320-2882
E-mail: still@votelaw.com

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

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

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2015, I served the foregoing on the following electronically by means of the Court's CM/ECF system:

Andrew L. Brasher
Megan A. Kirkpatrick
Misty S. Fairbanks Messick
James W. Davis (ASB-4063-I58J)
William G. Parker, Jr.
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Post Office Box 300152
Montgomery, Alabama 36130-0152
email: mmessick@ago.state.al.us
email: jimdavis@ago.state.al.us.
email: abrasher@ago.state.al.us
email: mkirkpatrick@ago.state.al.us

David B. Byrne, Jr.
OFFICE OF THE GOVERNOR
Alabama State Capitol
600 Dexter Avenue, Suite NB-05
Montgomery, AL 36130
(334) 242-7120 P
(334) 242-2335 F
david.byrne@governor.alabama.gov
pam.chesnutt@governor.alabama.gov

John J. Park, Jr.
Deputy Attorney General
Strickland Brockington Lewis LLP
Midtown Proscenium Suite 2200
1170 Peachtree Street NE
Atlanta, GA 30309
email: jjp@sbllaw.net.

Walter S. Turner, Esq.
Post Office Box 6142
Montgomery, AL 36106-0142
email: wsthayer@juno.com

John K. Tanner, Esq.
3743 Military Road NW.
Washington, DC 20015
email: john.k.tanner@gmail.com

William F. Patty, Esq.
The Gardner Firm, P.C.
P.O. Box 991
Montgomery, AL 36101-0991
email: bpatty@thegardnerfirm.com

Richard H. Pildes
40 Washington Square South
New York, NY 10012-1005
email: pildesr@juris.law.nyu.edu

Joe M. Reed, Esq.
Joe M. Reed & Associates, LLC
524 South Union Street
Montgomery, AL 36104-4626
email: joe@joereedlaw.com

Dorman Walker
dwalker@balch.com
Louis M. Calligas
lcalligas@balch.com
BALCH & BINGHAM LLP
Post Office Box 78
Montgomery, AL 36101-0078

James H. Anderson
Joel T. Caldwell
Copeland, Franco, Screws & Gill, P.A.
P.O. Box 347
Montgomery, AL 36101-0347
Telephone: (334) 834-1180
Email: caldwell@copelandfranco.com
anderson@copelandfranco.com

Algert S. Agricola
60 Commerce Street, Suite 1400
Montgomery, AL 36104
(334) 834-5290 P
(334) 834-5297 F
aagricola@rdafirm.com
aandrews@rdafirm.com

s/ James U. Blacksher

Attorney for ALBC plaintiffs