

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.	)	

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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.	)	

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**NOTICE OF SUPPLEMENTAL AUTHORITY**

The State of Alabama, Governor Bentley, Secretary of State Merrill, Sen. Dial, Sen. McClendon, and Rep. Davis respectfully provide the Court with notice of a supplemental authority, *Harris v. Arizona Independent Redistricting Commission*, 578 U.S. \_\_\_\_ (April 20, 2016).

The Supreme Court’s unanimous opinion in *Harris* is attached as an exhibit to this Notice. The opinion in *Harris* is relevant for four reasons.

First, the Court in *Harris* deferred to the judgment of Arizona’s Redistricting Commission that it needed to increase the percentage of minority population in certain districts to achieve preclearance under Section 5 of the Voting Rights Act. In *Harris*, a “mapping consultant” led the

Commission to believe that it needed to create *ten* ability-to-elect districts, Slip Op. at 6, even though the benchmark plan included only *seven* such districts, *see Harris v. Arizona Indep. Redistricting Comm'n*, 993 F. Supp. 2d 1042, 1060 (D. Ariz. 2014). After the Commission drew a plan that achieved ten such districts, “one of its statisticians” suggested that “the Department of Justice might not agree that the new proposed plan contained 10 ability-to-elect districts” and that the minority percentages in the districts should be increased by lowering the overall population of the districts. Slip Op. at 6-7. Another consultant suggested that, by increasing the minority percentage in yet another district, “the Commission might be able to claim an 11th ability-to-elect district” to further “enhance chances for preclearance.” Slip Op. at 8. Citing its decision in *Alabama Legislative Black Caucus v. Alabama*, the Court held that these unsubstantiated assertions were a sufficient basis for the Commission to under-populate eleven districts to increase the percentage of minority voters in those districts and make them safer ability-to-elect districts. Slip Op. at 7, 9. If the Arizona redistricting commission could reasonably rely on a consultant’s unsubstantiated advice to create a certain number of ability-to-elect districts and increase the minority populations in those districts, then the Alabama legislative redistricting committee could reasonably rely on black political leaders’ statements and draft plans to identify the appropriate minority percentage in ability-to-elect districts.

Second, the Court emphasized the opacity of the preclearance process as one of the considerations that redistricters can legitimately take into account. “The upshot was not random decision-making but the process did create an inevitable degree of uncertainty. And that uncertainty could lead a redistricting commission, as it lead Arizona’s, to make serious efforts to make certain that the districts it believed were ability-to-elect district did in fact meet the criteria that the Department might reasonably apply.” Slip Op. at 7.

Third, the Court rejected the argument that Section 5 is not a sufficient basis to sustain a race-related redistricting plan that was enacted before *Shelby County v. Holder*, 570 U.S. \_\_\_\_ (2013). Slip Op. at 10. The Court rejected the argument with the simple statement that “[a]t the time, Arizona was subject to the Voting Rights Act, and we have never suggested to the contrary.” Slip Op. at 11.

Fourth, the Court’s decision underscores that the issue of overall population deviation is not subject to challenge. Here, the challenged population deviation is 2%. In *Harris*, the challenged deviation was 10%. In *Harris*, the Court clarified its prior decision in *Cox v. Larios*, 542 U.S. 947 (2004), holding that “attacks on deviations under 10% will succeed only rarely, in unusual cases.” Slip Op. at 5, 10. Thus, the Court explained that population deviations are not subject to challenge unless they are based on “illegitimate factors.” Slip Op. at 10.

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**CERTIFICATE OF SERVICE**

I hereby certify that, on April 22, 2016, 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:

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