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

ALABAMA LEGISLATIVE BLACK CAUCUS, et al.,	)	
Plaintiffs,	)	
v.	)	**2:12-CV-00691-WKW-MHT-WHP (Three Judge Court)**
THE STATE OF ALABAMA, et al.,	)	
Defendants.	)	
ALABAMA DEMOCRATIC CONFERENCE, et al.,	)	
Plaintiffs,	)	
v.	)	**2:12-CV-01081-WKW-MHT-WHP (Three Judge Court)**
STATE OF ALABAMA, et al.,	)	
Defendants.	)	

ADC's NOTICE OF SUPPLEMENTAL AUTHORITY

Applying the Supreme Court's decision in this case, *Alabama Legislative Black Caucus v. Alabama,* 135 S. Ct. 1257, 1273 (2015) (*Alabama*), the three-judge federal court for the Middle District of North Carolina has now held nearly all of North Carolina's majority-black state legislative districts (28 districts in total) to be unconstitutional racial gerrymanders. *Covington v. The State of North Carolina,* No. 1:15-CV-399, 2016 U.S.Dist. LEXIS 106162 (M.D.N.C., August 11, 2016).

Because that unanimous decision is nearly 170 pages long, the ADC seeks to assist this court by identifying the bases of that court's analysis that directly bear on the issues here. The

most important common issue involves the court's analysis of the "racial predominance" issue. The court devotes the first 32 pages of its analysis to the general, state-wide evidence common to all districts that helps establish racial predominance in each of the challenged districts (pp.17-49).

First, the court established the general framework of analysis on racial predominance the *Alabama* decision requires. The court held that "in light of *Alabama,* we are mindful that "a legislature's 'policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote)' provides particularly strong evidence of racial predominance." (*quoting Alabama*, 135 S. Ct. at 1267). Similarly, the court concluded that "the predominance of racial considerations is evident where . . . traditional districting principles were applied only *after* the race-based decision had been made." (*quoting Shaw v. Hunt* (*Shaw II*), 517 U.S. 899, 907 (1996) (emphasis added)).

Second, in applying this framework, the court gave great weight to the fact that the mapmakers proceeded on the basis of "three main instructions:" (1) to draw VRA districts that met certain mechanical black-population percentage target figures (in North Carolina, the target was 50%-plus-one BVAP, while in Alabama, it was to recreate the prior black-population percentage): (2) to draw the VRA districts first; (3) to draw these districts wherever it was practical to do so and, if possible, in rough proportion to the state's black-population percentage. (p.19). Thus, meeting these mechanical racial targets was the mapmakers' "first consideration – both in time and in priority – in drawing all VRA districts and thus all challenged districts." (p.26). Meeting these targets, the court therefore concluded, "took precedence in the redistricting process." (p.32). These were the criteria that "could not be compromised." (p.33) (*quoting Shaw* II, 517 U.S. at 907).

After establishing the general legal framework and applying it to the statewide policy the mapmakers applied to each district, the court thus concluded that the mechanical racial targets "*necessarily predominated*" over other traditional state districting principles. (p.46). Some traditional state districting principles certainly "influenced" the districting process for the VRA districts, but these principles came into play only "after the race-based decision[s] had been made." (p.47) (*quoting Shaw* II, 517 U.S. at 907) (emphasis added). Thus, that these principles influenced the process "does not in any way refute . . . that race was the . . . predominant consideration." Id.

On the basis of this statewide evidence, the court held that, "for all the challenged districts, the overwhelming statewide evidence provides *decisive proof* that race predominated." (p. 49) (emphasis added). Only after reaching that conclusion did the court turn to the district-specific evidence, which the court characterized as "support[ing] and confirm[ing] that conclusion" and providing concrete *illustrations* of how North Carolina's statewide policies operated. Id. And in assessing the design of each VRA district, the court always viewed the district-specific evidence "in conjunction with the strong statewide evidence" in reaching the conclusion that race had predominated. (p. 56 and *passim*).

Covington is now the third three-judge federal court decision holding, in light of *Alabama*, that purported "VRA districts" are unconstitutional racial gerrymanders. *Page v. Va. State Bd. of Elections*, No. 3:13CV678, 2015 WL 3604029 (E.D. Va. June 5, 2015), appeal dismissed sub nom. *Wittman v. Personhuballah*, 136 S. Ct. 1732 (2016); *Harris v. McCrory*, No. 1:13-CV-949, 2016 WL 482052,(M.D.N.C. Feb. 5, 2016), prob. juris. noted, No. 15-1262, 2016 WL 1435913 (U.S. June 27, 2016); *Bethune-Hill v. Va. State Bd. of Elections*, 141 F. Supp. 3d 505, 535 (E.D. Va. 2015), prob. juris. noted, 136 S. Ct. 2406 (2016). The specific "mechanical racial target" North

Carolina used differs from the one Alabama employed; North Carolina sought to create 50%-plus-one "VRA districts," while Alabama sought to create "VRA districts" whose black-population percentage matched the districts' prior black-population percentage. But for constitutional purposes, the cases are the same: both involve giving priority to the application of statewide mechanical racial targets that could not be compromised, based on the States' erroneous view that the VRA required doing so. The unanimous decision in *Covington* endorses precisely the framework of analysis ADC has asserted on remand that is required, in light of the Supreme Court's prior decision in this case.

Respectfully submitted this 12th day of August, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 12, 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:

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