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

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

ALBC PLAINTIFFS' FIFTH NOTICE OF INTERVENING CASE LAW

Plaintiffs Alabama Legislative Black Caucus et al., through undersigned counsel, give notice of the intervening decision in *Covington v. North Carolina*, __ F.Supp.3d __ , 2016 WL 4257351 (M.D. N.C., Aug. 11, 2016). The ADC

plaintiffs have filed the manuscript opinion as Doc. 308-1. The three-judge district court unanimously held that all twenty-eight challenged districts in the House and Senate plans enacted by the North Carolina General Assembly in 2011 were unconstitutional racial gerrymanders. There are important similarities between the facts and issues in *Covington* and the facts and issues in the instant action, including the following:

1. Like the drafters of Alabama's House and Senate plans, the drafters of North Carolina's plans, as here, the two redistricting committee chairs and their paid consultant, adopted a "policy of prioritizing mechanical racial targets." 2016 WL 4257351 at *7. Only, instead of attempting to maintain the black percentage in each majority-black district, North Carolina's drafters adopted as their "paramount" requirement that each majority-black district be "at least 50%-plus-one BVAP." Id. at *8. The consultant, "Dr. Hofeller[,] paid little attention to political subdivisions or communities of interest as he drew his lines, and he divided precincts as necessary in order to satisfy the 50%-plus-one target." Id. at *15.

2. The three-judge court held that "[f]or all the challenged districts, the overwhelming statewide evidence provides decisive proof that race predominated. But a look to the district-specific evidence in this case supports and confirms that

conclusion...." Id. at *18 (citation omitted). It then proceeded to examine each challenged districts separately.

3. The court's district-specific analyses focused in particular on the following indicia of racial predominance:

a. The race of persons added or subtracted from the old districts to reach the 50%-plus-one target. E.g., id. at *20.

b. The number of counties and municipalities split by the districts. E.g., id. at *15.

c. The number of precincts split by the districts. E.g., id. at *15.

d. Bizzare district shapes, with repeated references to crab-like images. E.g., id. at *22, 25.

e. The frequent use of "land bridges" to connect racial populations. E.g., id. at *19.

f. "Racial density maps," like the precinct split maps submitted by the ALBC and ADC plaintiffs in the instant action, which revealed the consultant's persistent attempts to lasso black populations. E.g., id. at *19.

4. The three-judge court held that none of the twenty-eight majority-black districts drawn with racial predominance could survive strict scrutiny:

a. The drafters misconstrued the standards of Section 2 of the Voting

Rights Act by thinking evidence of racially polarized voting was sufficient, without evidence satisfying the third factor of *Thornburg v. Gingles*, 478 U.S. 30 (1986), showing that black voters' choices were usually defeated. Id. at *46-47.

b. The drafters misconstrued Section 5 by thinking their 50%-plus-one BVAP rule was sufficient to satisfy its no-retrogression standard. "*Alabama* makes clear that such a 'mechanically numerical view' is not narrowly tailored to avoid retrogression. 135 S. Ct. at 1273...." Id. at *55.

c. In any case, the defendants did not have a "strong basis in evidence" for relying on the Voting Rights Act to justify their racial gerrymanders "in each of the districts at the time they were drawn." The consultant never even did a polarized voting analysis. Id. at *46-47.

5. The court emphasized that majority-black districts can be drawn, and should be drawn, lawfully and constitutionally in North Carolina. "For instance, if during redistricting the General Assembly had followed traditional districting criteria and, in doing so, drawn districts that incidentally contained majority-black populations, race would not have predominated in drawing those districts." Id. at *58. As an example, the court pointed out that "Plaintiffs did not even challenge House Districts 23 and 27, which are reasonably compact majority-black districts that follow county lines." Id.

6. The court found "there is insufficient time, at this late date, for the General Assembly to draw and enact remedial districts; this Court to review the remedial plan; the state to hold candidate filing and primaries for the remedial districts; absentee ballots to be generated as required by statute; and for general elections to still take place as scheduled in November 2016." Id. at *57. It ordered the General Assembly to draw remedial plans "in their next legislative session" and ordered the parties to brief "an appropriate deadline for such action by the legislature, on whether additional or other relief would be appropriate before the regularly scheduled elections in 2018...." Id. at *58.

Plaintiffs concede it is too late in Alabama as well to hold 2016 elections with remedial House and Senate plans. But it is not too late for remedial plans to be enacted and approved by this Court in time for mid-term elections in 2017, and there is Alabama precedent for such relief. *Burton v. Hobbie*, 561 F.Supp. 1029 (M.D. Ala. 1983) (three-judge court). Plaintiffs respectfully request that this Court expedite its ruling on the pending remand issues to afford Alabamians the same opportunities for relief from unconstitutional legislative districts that North Carolina citizens now have been provided. 2016 WL 4257351 at *59.

Respectfully submitted this 15th day of August, 2016.

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