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

The United States Supreme Court is hearing two cases this Term that involve similar racial gerrymandering issues to those at issue in this case and that rely centrally on the Supreme Court's decision in *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1273 (2015) (*Alabama*). The Solicitor General of the United States recently filed its amicus brief in the first of these cases that will be heard, *Bethune-Hill v. Virginia State Bd. of Elections* (No.15-680); *see also McCrory v. Harris* (no.15-1262). The ADC files this notice to inform this Court of the United States' understanding of the proper application of the *Alabama* decision in respects that

bear directly on a critical issue in this case.

As the State of Alabama told this Court, the Supreme Court in the *Alabama* case "adopted the arguments" of the United States, which filed a brief on behalf of neither party in the Supreme Court phase of this case.[1] In the view of the United States' recent filing, it is "the unjustified sorting of individuals into separate districts based on race" that violates the Equal Protection clause. Br. of the US in *Bethune-Hill* at 7. Thus, the correct understanding of the *Alabama* decision is that race can predominate, thereby triggering strict scrutiny, even when a district remains compact or does not otherwise violate traditional districting principles:

> The injury underlying a racial gerrymandering claim stems from the racial classification itself, not the classification's outward manifestation. [citing *Miller v. Johnson*, 515 U.S. 900], at 913 (1995) (observing that the "racial purpose of state action, not its stark manifestation" is "the constitutional violation"). If a plaintiff can prove that the State predominantly and unjustifiably relied on race in drawing district lines, therefore, a cognizable injury exists *even if that classification did not contort the district's shape or otherwise violate traditional redistricting principles*. See *id.* at 910-914. Br. of the US in *Bethune-Hill* at 16 (emphasis added).

As the United States further explains the *Alabama* decision:

> […] plaintiffs who can establish racial predominance in the absence of a conflict should not be "confined in their proof to evidence regarding the district's geometry" or face an "artificial rule" linking constitutional injury to their district's shape. *Miller*, 515 U.S. at 913, 915. For example, if the evidence shows that a jurisdiction set a particularly high racial target—*e.g.*, 70% BVAP—and the mapmaker states that he moved large numbers of voters in and out of the district to satisfy that target, with those moved in being almost all black and those moved out being almost all white, a court could conclude that race pre-dominated, even if the district were relatively compact and consistent with other traditional redistricting principles. See *Alabama*, 135 S. Ct. at 1263 (indicating that stark demographic evidence is significant when observing that the legislature sought to maintain a BVAP of 72.75% in a challenged district and drew the district to add 15,785 new individuals,

[1] "Let us be frank about what happened in the appeal of this case. Neither the plaintiffs nor the defendants suggested the disposition that the Supreme Court ultimately adopted. Instead, the Court adopted the arguments of two *amici* that filed briefs in support of neither party: the United States and the Lawyers Committee on Civil Rights." AL Brief on Remand, Doc. 263 at 11.

only 36 of whom were white). . Br. of the US in *Bethune-Hill* at 19.

As the United States continues:

> Alternatively, a showing that the legislature relied on racial data and did not have access to or did not consider non-racial information that might otherwise explain the challenged district's lines could establish predominance in the absence of a conflict with traditional districting criteria. See, *e.g.*, [*Bush v.*] *Vera* 517 U.S. at 966-967 (plurality opinion) (emphasizing that the State had detailed racial data available but not other data implicating traditional districting principles); *Page* v. *Virginia State Bd. of Elections*, No. 13-cv-678, 2015 WL 3604029, at *14 (E.D. Va. June 5, 2015) (relying on mapmaker's statement that he did not consider partisan performance as evidence indicating racial predominance), appeal dismissed *sub nom. Wittman* v. *Personhuballah*, 136 S. Ct. 1732 (2016). Br. of the US in *Bethune-Hill* at 19-20.

The position of the United States in this recent *amicus* filing to the Supreme Court is precisely the same position the ADC has taken on remand regarding the proper analysis of "predominance" the *Alabama* decision requires.

Respectfully submitted this 26th day of September, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 26, 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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