

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)	
_____)	
)	
DEMETRIUS NEWTON, et al.)	
)	
Plaintiffs)	
)	
vs.)	2:12-CV-01081-WKW-MHT-WHP
)	(Three Judge Court)
STATE OF ALABAMA, et al.)	
)	
Defendants)	

**NEWTON PLAINTIFFS’ RESPONSE TO DEFENDANTS’ SUGGESTION
OF DEATH AND MOTION FOR APPROPRIATE RELIEF**

COMES NOW, the Newton Plaintiffs, and hereby respectfully file this Response to Defendants’ Suggestion of Death and Motion for Appropriate Relief:

1. On September 18, 2013, Defendants notified the Court of the passing of Plaintiff Demetrius Newton on or about September 11, 2013. Newton Plaintiffs sadly admit this information is accurate. As a vehicle for doing so, Defendants filed the aforementioned Suggestion of Death.

2. In addition to the Suggestion of Death, Defendants attempt to seek additional relief in the form of a dismissal of Newton’s claims pursuant to Federal Rule of Civil Procedure (FRCP)

3. FRCP 25(a)(1) provides the following:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

4. According to FRCP 25, grounds for dismissal only exist when a motion to substitute has “not been made within 90 days after service of a statement noting the death....”

5. Consequently, a dismissal under FRCP 25 is improper; at this stage, Defendants have simply notified to Court, through a Suggestion of Death, of the passing of Plaintiff Newton. The Newton Plaintiffs have ninety (90) days from the Suggestion of Death¹ to file a Motion for Substitution, if the Newton Plaintiffs do in fact decide that a substitution is necessary.

6. Nevertheless, as grounds for seeking their “dismissal,” Defendants argue that Newton’s death extinguishes his claim because he was not deposed and he did not testify at trial. Despite this vague assertion, Defendants provide no legal support for their position, and the Newton Plaintiffs believe that none exists. Evidence, in the form of various witnesses and hundreds of pages of exhibits, was presented at trial that clearly supported Newton’s claims. There is simply no requirement that Newton himself testify in order prove his claim.

7. By way of analogy, imagine a scenario where a plaintiff citizen tax-payer filed a lawsuit challenging the constitutionality of a tax scheme that was passed by the legislature, but had yet to be implemented. The case proceeds to trial. The plaintiff citizen tax-payer does not testify, but the attorneys representing the plaintiff citizen tax-payer still submit evidence establishing that

¹ In addition to the filing of a Suggestion of Death, FRCP 25(c) requires Defendants to comply with FRCP 4 and 5 and provide service to the appropriate parties and nonparties of the Suggestion of Death. At this juncture, Newton Plaintiffs are unsure if Defendants have complied with this provision. If not, the ninety (90) day time frame for filing a Motion for Substitution would not begin until FRCP(c) has been met.

the tax scheme is unconstitutional. After the trial, but before the court has rendered a decision, the citizen tax-payer dies. Is the citizen tax-payer's claim now extinguished? Of course not. The evidence presented on his behalf does not simply evaporate because of his death. Further, the attorneys representing the plaintiff citizen tax-payer have the ability to substitute a similarly-situated plaintiff who is also affected by the unconstitutional tax scheme.

8. Similarly, imagine a scenario where a plaintiff is severely injured in a car accident. Soon after the accident, a lawsuit is filed on his behalf against the driver of the other vehicle. Unfortunately, weeks after the lawsuit is filed, the plaintiff falls into a coma. Is the plaintiff out of luck because he can no longer be deposed or testify at trial? Of course not. The plaintiff, through his counsel, can still present evidence through witnesses (i.e. individuals at the scene, police officers, doctors, accident reconstruction experts, etc.) and exhibits (i.e. police reports, medical records, expert reports, etc.) to prove his claims. There is absolutely no requirement that a Plaintiff must be deposed or testify at trial in order to prove his claims.

9. Lastly, Defendants contend that the Newton Plaintiffs should not be permitted to substitute because Defendants will be prejudiced because Defendants were unable to depose or cross-examine Newton previously, and would also have no opportunity to depose or cross-examine any substitute. The Newton Plaintiffs do not understand this contention. Trial on this matter concluded in August 2013. At that time, Newton was still alive. All of Newton's claims were presented to the court and supported by evidence. Defendants' inability to depose or cross-examine a substitute, after the conclusion of trial, does not prejudice the Defendant in any manner.

WHEREFORE, PREMISES CONSIDERED, the Newton Plaintiffs respectfully request that this Court DENY any request for relief sought by Defendants through its filing of the Suggestion of Death and any arguments for dismissal pursuant to FRCP 25. Further, Newton Plaintiffs request

leave to substitute, within ninety (90) days, a similarly situated citizen, if the Court deems it necessary for standing purposes.

Respectfully submitted this the 25th day of September, 2013.

/s/James H. Anderson

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2013, I electronically filed the foregoing document using the Court's CM/ECF system which will send electronic notification of such filing to all registered parties:

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