

**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.)	
<hr/>)	
ALABAMA DEMOCRATIC)	
CONFERENCE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	2:12-CV-01081-WKW-MHT-WHP
)	(Three Judge Court)
STATE OF ALABAMA, et al.,)	
)	
Defendants.)	

ADC NOTICE OF INTERVENING COURT DECISION IN RELATED CASE

The Alabama Democratic Conference, through undersigned counsel, give notice of the intervening three-judge federal court decision in *Harris v. McCrory*, ___ F. 3d ___, No. ____ (M.D. N.C., Feb. 5, 2016), a copy of which is attached to this notice. This is the second three-judge federal court decision to apply *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257 (2015) (*Alabama*) and, in light of the *Alabama* decision, to hold congressional districts unconstitutional.

McCrory holds that North Carolina’s two “Voting Rights Act” districts were unconstitutional racial gerrymanders in violation of the Equal Protection Clause of the Fourteenth Amendment. After the 2010 Census, the North Carolina legislature had increased the

black voting-age population of these two districts, based on the position that the VRA required doing so. The three-judge court held that race had predominated in the drawing of these districts because “race was the only nonnegotiable criterion” in the design of these districts. The court concluded that “a BVAP-percentage floor, or a racial quota, was established” in both districts and “that floor could not be compromised.”

In applying the Supreme Court’s *Alabama* decision, the three-judge court also held that a “congressional district necessarily is crafted because of race when a racial quota is the single filter through which all line-drawing decisions are made, and traditional redistricting principles are considered, if at all, solely insofar as they did not interfere with this quota.” The court concluded that race had predominated: “[b]ecause traditional districting criteria were considered, if at all, solely insofar as they did not interfere with this 50-percent-plus-one-person minimum floor, see *Shaw II*, 517 U.S. at 907, the quota operated as a filter through which all linedrawing decisions had to pass.” As a result, the court concluded that strict scrutiny applied and North Carolina had to have a compelling interest to justify the way it used race in designing these districts. The court further recognized that the *Alabama* decision requires a “strong basis in evidence” for a state’s position that the VRA requires the specific use of race at issue. North Carolina lacked that basis because it had incorrectly applied the VRA and the court therefore held the districts unconstitutional.

The Alabama Democratic Conference has made the exact same argument in this case: race predominated in the drawing of all the VRA districts because Alabama considered traditional districting principles “solely insofar as they did not interfere” with the racial targets the state had set for each district. Just as in North Carolina, race predominated and the VRA does not provide a compelling justification for that use of race in these districts.

Respectfully submitted this 8th day of February, 2016.

s/ James H. Anderson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 8, 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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