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

ALABAMA LEGISLATIVE BLACK CAUCUS, et al.,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No.
v.	)	2:12-cv-691-WKW-WC
	)	
THE STATE OF ALABAMA, et al.,	)	
	)	
Defendants.	)	

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,
MOTION TO STAY**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), the State of Alabama and Beth Chapman, in her official capacity as Secretary of State of Alabama, defendants in this action (collectively, the "State Defendants"), move this Court to dismiss this action, without prejudice, or, in the alternative, to stay the proceedings pending action by the United States District Court for the District of Columbia, the Attorney General of the United States, or both, on the State's preclearance complaint and administrative submissions on the grounds that the Plaintiffs currently lack standing and that this lawsuit is not ripe. In support of this Motion, the State Defendants state:

1. The State Defendants concur in Plaintiffs' request that a three-judge court be appointed to hear this case.

2. This case involves a constitutional challenge to the redistricting plans for the Alabama State House of Representatives and State Senate which were adopted in Alabama Acts Nos. 2012-602 and 2012-603, respectively. Each of those Acts is pending judicial and administrative preclearance, and neither can be enforced unless and until they are precleared. See 42 U.S.C. § 1973c.

3. A judicial preclearance complaint seeking, among other things, the preclearance of Acts Nos. 2012-602 and 2012-603 styled *Alabama v. Holder*, Civil Action No. 12-1232-RCC-BMK-CKK, in the United States District Court for the District of Columbia, was filed on July 26, 2012, and the State Defendants believe that service on the United States was completed on August 10, 2012. The State Defendants further believe that a response to that lawsuit is due on or before October 9, 2012.

4. An administrative preclearance submission regarding Act No. 2012-603 and the State Senate plan was delivered to the Voting Section, United States Department of Justice (USDOJ) on August 7, 2012. An administrative preclearance submission relating to Act No. 2012-602 and the State House of Representatives redistricting plan was delivered to the Voting Section, SDOJ, on August 8, 2012. Those submissions have been docketed as Submission No. 2012-4129. The State Defendants believe that a response from the Attorney General of the United States is due on or before October 9, 2012.

5. The Voting Section's review of those administrative submissions is underway. The State has responded to several requests for additional information and the Voting Section has been conducting interviews with State legislators. When permitted by the legislator being interviewed, counsel for the State, for the Plaintiffs in this case, or both have sat in on the calls.

6. Because the legislative redistricting plans which Plaintiffs challenge are not enforceable until they are precleared, this Court cannot consider the Plaintiffs' claims at this time. *See Conner v. Waller*, 421 U.S. 656 (1975) (*per curiam*).

7. Put differently, this Court lacks jurisdiction over this case for two reasons. First, because any injury that the Plaintiffs allege they will suffer is not concrete, they presently lack standing. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)(The "injury-in-fact

component of the "irreducible constitutional minimum of standing" requires a showing of, *inter alia*, "an invasion of a legally protected interest which is (a) concrete and particularized … and (b)actual or imminent, not conjectural or hypothetical …."). Unless and until these plans are precleared, which the State Defendants believe should happen and which they believe the Plaintiffs or those aligned with them to be actively opposing, the Plaintiffs' injury remains hypothetical. Second, because the State's judicial and administrative preclearance submissions are pending action from USDOJ, this case is not ripe and, therefore, is not yet a live "case or controversy." *See, e.g.*, *AbbottLaboratories v. Gardner*, 387 U.S. 136, 148 (1967) ("The injunctive and declaratory judgment remedies are discretionary, and courts have traditionally been reluctant to apply them to administrative determinations unless they arise in the context of a controversy 'ripe' for judicial resolution."). The "basic rationale" of the ripeness doctrine is to keep the courts, parties and agencies free from "judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Id*., at 148-49.

8. Alternatively, this Court should stay the proceedings in this case until the proceedings related to preclearance are complete. In the 2002 redistricting cycle, the proceedings were stayed in one or more cases until the preclearance process was complete. This Court should do likewise.

9. If this Court stays the proceedings in this case, the State Defendants will advise this Court of any significant action by the Attorney General on the State's administrative submissions or by the three-judge court considering the State's judicial preclearance submission, although the State does not expect any such action before October 1, 2012.

WHEREFORE, this Court should dismiss this action without prejudice or, in the alternative, stay the proceedings pending the resolution of the State's judicial and administrative preclearance submissions.

Respectfully submitted,

Date August 31, 2012

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