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

ALABAMA LEGISLATIVE BLACK CAUCUS, et al.,	)	
Plaintiffs,	)	
	)	Case No. 2:12-cv-691 WKW-MHT-WHP
THE STATE OF ALABAMA, et al.,	)	
Defendants.	)	
DEMETRIUS NEWTON, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 2:12-cv-1081 WKW-MHT-WHP
THE STATE OF ALABAMA, et al.,	)	
Defendants.	)	

Defendants' Joint Notice of Objections or, in the alternative, Motion in Limine

Come now jointly the State Defendants and the Defendants-Intervenors in these consolidated cases and in compliance with the Court's July 16, 2013 order, doc. no. 153, ¶ 5, submit the following:

The Defendants expect Plaintiffs to offer certain evidence that should not be admitted. While the Court has indicated that motions in limine are not favored in non-jury proceedings, Defendants give this notice of their objections to the expected evidence for the convenience of the parties and the Court, and in compliance with the Court's order of July 16, 2013, doc. no. 153, ¶ 5.

Evidence that is not relevant to an issue in the case is not admissible. Fed.R.Ev. 402. Evidence is admissible only if "it has any tendency to make a fact more or less probable than it would be without the evidence." The following evidence is not relevant to the claims in this case, or is otherwise inadmissible, and therefore should not be admitted or made part of the record:

1. Evidence of alleged discriminatory acts that are remote in time.

In the past, Alabama indisputably discriminated on the basis of race. "But history did not end in 1965." *Shelby County v. Holder*, ___ U.S. ___, ___, 133 S.Ct. 2612, 2617 (2013). Today is not 1901, nor is it the Jim Crow era nor the Civil Rights era.

If Plaintiffs seek to present evidence of prior discriminatory acts such as the Constitutional Convention of 1901 or 1960's-era voting rights abuses, or any act that is remote in time, such evidence should not be admitted. The people responsible for such acts did not draft the 2012 redistricting plans.

It is true that *Arlington Heights* permits consideration of historical background. *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977). However, the historical background at issue is "[t]he historical background *of the decision*." *Id.* (emphasis added). "Historical background" does not include all of recorded history, and remote prior acts of the dead are not relevant to the motives or effects of the subject plans.

2. Evidence of statements by single legislators unrelated to the redistricting process

Plaintiffs may seek to introduce prior statements by an individual member of the Legislature made while wearing a wire in the context of an unrelated investigation. One Senator, however, cannot pass a redistricting plan, and the *Arlington Heights* test does not include an element of "any bad thing any member of the Legislature has ever done."

Arlington Heights permits consideration of "contemporaneous statements." 429 U.S. at 266-268. However, statements made wholly removed from the redistricting process by a single Senator, well before redistricting took place, are not "contemporaneous." And there is irony indeed if Plaintiffs, in a suit based on a statute designed to battle discrimination, ask the court to take a statement by a single Senator and draw an inference that others who look like him share the same views.

Such a statement is therefore not relevant to the motives of the Legislature as a whole in passing the redistricting plans (and obviously has no relevance to an effects test).

3. Evidence related to the District Court's decision in *Central Alabama Fair Housing Center v. Magee.*

In *Central Alabama Fair Housing Center v. Magee*, plaintiffs challenged the application of Alabama's immigration law to housing regulations dealing with mobile homes. 835 F.Supp.2d 1165 (M.D. Ala. 2011), *vacated*, 2013 WL 2372302 (11th Cir. May 17, 2013). The District Court found that the legislation had a discriminatory purpose aimed at Hispanics and cited statements by both white and African-American legislators in its decision. *Id.*

Should Plaintiffs seek to use that opinion to argue that discrimination against one group in one context is discrimination against another group in a separate context, such evidence should not be admitted. The State disagreed with the District Court's findings and inferences and appealed the decision. Before the State's appeal could be heard, the case was mooted; State agencies revised their interpretation of the law so that it no longer applied to mobile home registration, and the Alabama Legislature amended the statute. The Eleventh Circuit then dismissed the appeal and vacated the District Court's decision. 2013 WL 2372302.

It would not be fair if Plaintiffs' were allowed to use the *Magee* decision as establishing facts when the State had no opportunity to test the decision on appeal and when the appeal has been vacated.

4. Various Affidavits, Declarations, and Depositions

The Plaintiffs have designated affidavits and declarations, as exhibits. (ALBC Nos. 7-1, 35-9, 66-4, 125-10, 131-1, 131-2, 141-8, 141-9, and 142). On their own, each such statement is inadmissible hearsay for trial purposes even if admissible in connection with motions. Fed.R.Ev. 802. It could be admissible as a prior statement under Fed.R.Ev. 613, but only if the declarant's credibility is attacked on points raised in the declaration.

In addition, plaintiffs have designated multiple non-party depositions, including depositions of witnesses who are expected to testify or who reside within the subpoena power of the Court. These depositions should not be allowed without a showing that the live witnesses are not available.

5. Newspaper Articles

The Plaintiffs have designated a number of newspaper articles, some of which contain statements of parties or witnesses. The articles themselves are hearsay and inadmissible as direct evidence for that reason. Statements in an article attributed to a party or a witness may provide a basis for impeachment, but

should not otherwise be seen as evidence. This Court should consider all of those newspaper articles with care, assigning them the weight to which they are entitled.

6. The ACS Survey Results

The Newton Plaintiffs have designated American Community Survey Results as Newton Exhibit 45 (No. 137-3). These results are not census data-, so they cannot support a remedy if one is found warranted. Moreover, they are survey data that lack the rigor of a census. Those results are entitled to little or no weight.

7. The Newton Plaintiffs' Illustrative Remedies for Montgomery and Madison County

The Newton Plaintiffs have identified illustrative remedies for Montgomery and Madison County that differ from documents produced in discovery.

With respect to Montgomery, the remedy produced in discovery (No. 124-3, MCH v1, April 18, 2013) contains a white-majority HD 75 that is 4.85% over the ideal population, while the other districts are all within the ±1% deviation. That illustrative remedy provided a basis for questions posed to Newton Plaintiffs Stacey Stallworth and Lynn Pettway. See No. 124-7 at 28:5 through 32:2; No 124-8 at 24:1 through 26:22.

In contrast, Newton Exhibit 1 (No. 138-6) bears the legend MCH 1pctv1 and the date June 24, 2013. In that exhibit, all of the districts are within the ±1% deviation.

With respect to Madison County, the remedy produced in discovery (No. 124-2), Madison County Senate v1, April 21, 2013) contains a "minority opportunity" district that is -5.01% below the population of an ideal House district.

In contrast, Newton Exhibit 3 (No 138-7) bears the legend Madison County Senate v1, May 1, 2013. In that exhibit, the proposed "minority opportunity" district is -4.96% below the population of an ideal Senate district.

Newton Exhibits 1 and 3 should not be admitted unless and until the discrepancies are explained.

8. NAACP Letter to Beth Chapman, dated June 13, 2012

The Newton Plaintiffs have listed as Exhibit 45 a letter dated June 13, 2012, sent on behalf of the Alabama Conference of the National Association for Advancement of Colored People, addressed to Secretary of State Beth Chapman. The letter alleges that the State of Alabama failed to fully implement "Section 7 of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-5, which requires States, including Alabama, to provide individuals with the opportunity to register to vote with every application for public assistance and every public assistance recertification, renewal, and change of address."

The letter, of course, is hearsay. The State has not cross-examined the sender on the identity of persons allegedly surveyed or the methods used to gather data forming the basis of the allegations. And it is not relevant to the questions before

the Court. When there is no significant gap in voter registration rates,[1] and when African-Americans voted at greater rates that white voters in 2012,[2] it can hardly be said that Alabama maintains barriers to participation in the political system or that any alleged NVRA violation has had an impact on minority voting. Nor is it relevant to the specific question of whether Legislators, who do not implement the NVRA, discriminated when drawing the redistricting plans.

Respectfully submitted this the 30th day of July, 2013.

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[1] 72.8% for whites, 68.5% for blacks. Voting and Registration in the Election of November 2012 - Detailed Tables; Table 4b – Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2012 (available at http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html) (last visited July 29, 2013).

[2] *The Diversifying Electorate – Voting Rates by Race and Hispanic Origin in 2012 (and Other Recent Elections)*, U.S. Census Bureau (available at http://www.census.gov/prod/2013pubs/p20-568.pdf) (last visited July 29, 2013)

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