

**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
) (Three-Judge Court)
v.)
)
THE STATE OF ALABAMA, et al.,)
)
Defendants.)

ALABAMA DEMOCRATIC)
CONFERENCE, et al.,)
)
Plaintiffs,) CASE NO. 2:12-CV-1081
) (Three-Judge Court)
v.)
)
THE STATE OF ALABAMA, et al.,)
)
Defendants.)

**TIME-SENSITIVE UNOPPOSED MOTION TO APPROVE REMEDIAL
PLAN FOR ANTICIPATED SD 26 SPECIAL ELECTION**

Defendants¹ respectfully request that this Court authorize and direct them to use the district lines from the Legislature's 2017 remedial plan, SB 403, for an anticipated special election in Senate District 26. In support of this motion, Defendants state as follows:

1. SD 26 is a majority-black district in Montgomery. Over the life of this case, the Supreme Court, this Court, and the parties have extensively scrutinized the 2011 lines of SD 26. Along with several other districts, this Court found that SD 26 was racially gerrymandered and enjoined the Defendants from using the 2011 lines for future elections. *See* Doc. 316 at 448.

2. The Legislature responded to this Court's ruling by enacting remedial plans for the House and Senate that redrew all the challenged districts, including SD 26, without regard to race. Plaintiffs have not objected to the lines of SD 26 in the Legislature's 2017 remedial plan. *See* Doc. 345; Doc. 349. The Legislature's remedial Senate plan provides that it "shall be effective for the election of members of the Senate at the General Election of 2018." *See* SB 403 § 5.

3. Defendants anticipate the need to hold a special election in SD 26 before the regularly scheduled 2018 election. The incumbent in SD 26, Sen. Quinton

¹ The defendants (including the defendant-intervenors) are the State of Alabama, the Governor of Alabama, the Secretary of State of Alabama, Senator Gerald Dial, Senator Jim McClendon, and Representative Randy Davis.

Ross, has been selected to be the President of Alabama State University.² Under state law, he must resign from the Senate before he accepts that position. Ala. Code § 29-1-26. When he resigns, the Governor must call a special election to fill the vacancy. Ala. Code § 17-15-1(1) & -2.

4. SD 26 currently lacks court-approved boundaries for the contemplated special election. Defendants cannot use the 2011 lines because of the Court's injunction. But they also cannot use the 2017 lines (without direction from this Court) because the 2017 remedial plan is not effective by its terms until 2018.

5. When Sen. Ross resigns from SD 26, the Governor intends to call the special election quickly so that there is a realistic possibility that a new Senator may be seated before the next regularly-scheduled Legislative Session. But the absence of court-approved boundaries for SD 26 threatens to delay and complicate that process.³

6. As an equitable remedy for the unconstitutional 2011 lines, the Court should direct and authorize the Defendants to use the Legislature's 2017 remedial

²See, e.g., Andrew J. Yawn and Deborah Barfield Berry, "Blessed" Quinton Ross Ready for ASU Challenge, *Montgomery Advertiser* (Sept. 18, 2017) available at <http://www.montgomeryadvertiser.com/story/news/education/2017/09/18/blessed-quinton-ross-ready-asu-challenge/677290001/>

³ Whether a new Senator is in fact seated in time for the next Session will depend on many factors, including the actual date of Sen. Ross's resignation.

lines for the contemplated special election in SD 26. *See Perry v. Perez*, 565 U.S. 388, 395 (2012) (courts must incorporate legislative policies into interim remedial plan); *Upham v. Seamon*, 456 U.S. 37, 42 (1982) (same). Plaintiffs have not objected to those lines, they are presumptively constitutional, and they reflect a legislative consensus on how SD 26 should be defined. Moreover, in light of the Court's injunction against the 2011 lines, the only realistic alternative to the 2017 lines would be to keep the seat vacant—leaving thousands of voters, most of whom are African-American, without representation in the next Legislative Session.

7. Plaintiffs' have communicated to Defendants that they do not oppose this motion.

For the foregoing reasons, Defendants respectfully request that the Court authorize and direct them to use the district lines from the Legislature's 2017 remedial plan, SB 403, for the anticipated special election in Senate District 26.

Respectfully submitted this the 20th day of September, 2017.

s/ Andrew Brasher

One of counsel for the defendants the
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CERTIFICATE OF SERVICE

I hereby certify that, on September 20, 2017, I served the foregoing by electronic mail on the following counsel of record:

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