

No. 13-895

IN THE
Supreme Court of the United States

ALABAMA LEGISLATIVE BLACK CAUCUS, *et al.*,
Appellants,

v.

THE STATE OF ALABAMA, *et al.*,
Appellees.

**On Appeal from the United States District Court
for the Middle District of Alabama**

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL
BRIEF AND SUPPLEMENTAL BRIEF**

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**MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF AFTER ARGUMENT**

Pursuant to Supreme Court Rule 25.7, the Appellants Alabama Legislative Black Caucus, *et al.*, respectfully move for leave to file the accompanying supplemental brief.

The Jurisdictional Statement set out two Questions Presented. In addition to seeking review of the racial discrimination claim, the Jurisdictional Statement also asked the Court to decide whether the 2012 redistricting plans allocate control of local delegations in a manner which violates Equal Protection, effectively denying certain county residents equal voting rights. J.S. i. Although the District Court reached the merits of that one-person-one-vote claim, the District Court majority also held that the claim could not be ripe, and the plaintiffs could not have standing, until January 2015, when the newly elected Legislature would hold its organizational session. J.S.App. 297-309. The Appellees' Joint Motion to Dismiss or Affirm, filed in the spring of 2014, also argued that the one-person-one-vote claim would not be ripe until that January 2015 organizational session of the Legislature. Appellees' Joint Motion to Dismiss or Affirm, 7. In June 2014 this Court noted probable jurisdiction, but only with regard to the racial discrimination claim.

The Alabama Legislature has now held its January 2015 organizational session, at which it adopted Rules and Committees which eliminate the ripeness problem and the related standing issue. The proposed supplemental brief describes the 2015 Rules and

Committees, and sets forth our views regarding how this Court should address the now-ripe one-person-one-vote claim.

Respectfully submitted,

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SUPPLEMENTAL BRIEF

THE RULES AND COMMITTEES ADOPTED AT THE JANUARY 2015 ORGANIZATIONAL SESSION OF THE ALABAMA LEGISLATURE RESOLVE THE RIPENESS AND RELATED STANDING ISSUE RELATED TO APPELLANTS' ONE-PERSON, ONE-VOTE CLAIM

(1) The Jurisdictional Statement set out two distinct Questions Presented. In addition to the racial discrimination claim, the Jurisdictional Statement also asked the Court to decide whether the 2012 redistricting plans allocate control of local delegations in a manner which violates Equal Protection, effectively denying county residents equal voting rights. J.S. i.¹

The briefing and argument in this Court regarding the racial discrimination claim explained the operation of the Alabama county legislative delegation system, which is described in detail in the opinions below. Most of the authority to adopt laws for a particular county is held by the legislative delegations for that county, one in the House and one in the Senate; the local county commissions themselves have little such power. J.S.App. 280-82, 341-42. The legislative delegation that wields that law-making authority includes every Senator or Representative whose district includes even a small part of the county at issue, even if most of his or

¹ “Whether a state violates the requirement of one person, one vote by enacting a state legislative redistricting plan that results in large and unnecessary population deviations for local legislative delegations that exercise general governing authority over counties[?]”

her constituents (and the Senator or Representative) live in another county. J.S.App. 342.

The appellants contend that the 2012 districting plan violated the principle of one-person-one-vote by repeatedly and unnecessarily creating multiple districts that cross county boundaries. For example, Jefferson County has a population of 658,466, a little less than the number needed for five Senate districts.² Under the 2012 plan there are three Senate districts wholly within Jefferson County. J.S.App. 370.³ The remaining 252,779 county residents, however, although in number only about the size of two additional districts, are divided among five other Senate districts⁴; a large majority of the voters in each of those five districts actually live outside Jefferson County. All five of the Senators from those trans-county districts sit on the Jefferson County delegation. Thus the 405,687 residents of the three Jefferson-County-only Senate districts, although constituting 61% of the county population, elect only 37.5% (3/8) of the eight member Senate Jefferson County delegation⁵ that (together with the House Jefferson County delegation) effectively

² APX 10. The ideal size of a Senate district is 136,564. APX 31.

³ These are majority-black SD 18, 19, and 20. APX 17, 18, and 43.

⁴ These are majority-white SD 5, 14, 15, 16, and 17. APX 17, 18, and 43.

⁵ Those eight Senators compose the Senate's Standing Committee on Jefferson County Local Legislation.

controls the local laws for Jefferson County. See J.S.App. 368-72 (dissenting opinion).

The August 2013 district court decision was sharply divided about the merits of this one-person-one-vote claim. J.S.App. 314-38 (majority opinion), 366-406 (dissenting opinion). Throughout the proceedings below, appellants contended that respecting country boundaries—the most important traditional districting principle in Alabama—is central to assuring one-person, one-vote and to constraining racial discrimination.⁶ The majority below held that this traditional districting principle, although embedded in Alabama’s Constitution, laws, customs, and legislative rules, could not be considered in evaluating appellants’ claim that the creation of numerous districts crossing county lines frequently violates the federal one-person-one-vote rights of county residents. J.S.App. 315.

(2) The majority below also believed that this claim was not yet ripe. J.S.App. 297-303. Although the local delegation system is largely a matter of longstanding custom, it rests in part on the Rules and Standing Committees of the Alabama House and Senate. “[T]he ability of local delegations to serve as gate-keepers for local legislation . . . is dependent upon and enshrined in the formal rules and standing committees.” J.S.App. 302. Those Rules and that Committee structure are not permanent, but must be readopted (and could be changed) by each Legislature at its organizational session, held in January of the year after each election.

⁶ See appellants’ original and amended complains. Docs. 1 and 60.

“[T]he Legislature creates . . . the rules and standing committees during its organizational session, . . . [and] the rules and standing committees are the formal governmental mechanisms through which the local delegations operate. . . .” *Id.* “[T]he rules of the legislature, including those governing local legislative delegations, are adopted each quadrennium at the organizational session. . . . The next legislature will establish its own rules and committees in January 2015.” *Id.* at 301. The majority below reasoned that the plaintiffs’ one-person-one-vote claim would not be ripe until and unless the Legislature to be elected in November 2014 were to adopt in January 2015 “the formal rules and standing committees” that were a necessary part of the local delegation system. *Id.* “Because we can neither know whether the Legislature elected in 2014 will adopt a system of local delegations, nor how that system, if adopted, will be structured, the [one-person-one-vote] claim . . . rests on contingent future events and is not sufficiently concrete and definite to be fit for judicial review.” *Id.* at 300.

The majority also held that the plaintiffs could not have standing until and unless the Legislature in January 2015 adopted the Rules and Standing Committees that “enshrined” the local delegation system. J.S.App. 302. “The Black Caucus plaintiffs cannot establish the existence of an injury-in-fact [necessary for standing] for many of the same reasons that their claim under the Equal Protection Clause is not ripe.” *Id.* at 305. “[T]he injury alleged by the Black Caucus plaintiffs is dependent entirely on the independent action of a future Alabama Legislature . .

..” *Id.* at 306. “Only the next Alabama Legislature can create the system of local delegations. . . . [T]he constitutional injury alleged by the Black Caucus plaintiffs under the Equal Protection Clause can arise only if the next Alabama Legislature adopts a system of local delegations at its organizational session” *Id.* at 309.

In its April 2014 Motion to Dismiss or Affirm, the state reiterated this argument that the one-person-one-vote claim could not be ripe until January 2015. “[T]he ‘rules for local legislation,’ . . . must be affirmatively adopted with each new Legislature.” Appellees’ Joint Motion to Dismiss or Affirm, 8. “The relevant rules regarding local delegations will not be crafted until after th[e] [2014] election, and until then the courts cannot know what those rules will be.” *Id.* at 7. “The relevant rules concerning local delegations will not be proposed or established until January 2015.” *Id.* (bold omitted). “The majority . . . was right to say that the plaintiffs will suffer no hardship from having to wait for the new Legislature to decide how it wants to deal with local delegations.” *Id.* at 14.

(3) In June 2014 this Court noted probable jurisdiction only with regard to plaintiffs’ race discrimination claim. 134 S.Ct. 2695 (2014). Since then the anticipated January 2015 organizational session of the Alabama Legislature has now occurred⁷; at that

⁷ The 2015 organizational session convened on January 13 and adjourned on January 14. See <http://alisondb.legislature.state.al.us/acas/acasloginFire.asp?SESSION=1063> (last visited January 28, 2015).

recent session, the Legislature adopted again the Rules and Standing Committees that undergird and enshrine the local delegation system. The ripeness problem and the related standing problem that concerned the court below have now been resolved.

Rule 65 of the pre-2015 House Rules established separate standing committees for local legislation for each of eight specific counties. Rule 65 in the 2015 House Rules contains identical provisions establishing the same eight standing local legislation committees for the same eight counties.⁸ Consistent with longstanding custom, the House members appointed to each of these standing committees are the members whose districts include any part of the county involved.⁹ Rule 48 of the pre-2015 Senate Rules established separate standing committees for local legislation for each of three specific counties.¹⁰ Rule 48 of the 2015 Senate rules increases the number of such county-specific standing committees

⁸ There are separate House local legislation committees for Baldwin, Jefferson, Lee, Madison, Mobile, Montgomery, Shelby and Tuscaloosa Counties. Available at http://www.legislature.state.al.us/aliswww/ALHseRules_Comm.aspx (last visited January 28, 2015).

⁹ See <http://www.legislature.state.al.us/aliswww/HouseCommittees.aspx> (last visited January 28, 2015).

¹⁰ The pre-2015 Senate rules established specific standing local legislation committees for Jefferson, Mobile and Madison Counties.

to four¹¹, and now expressly mandates that each of those committees be composed of “all those Senators whose districts include any part of [the county in question].”¹²

As adopted in 2015, House Rule 65 and Senate Rule 48, like their predecessors, also create in each body a general Standing Committee on Local Legislation with responsibility for local legislation regarding the counties that are not the subject of one of the county-specific committees. House Rule 77 provides in 2015, as it did before, that “[t]he chair of the standing committee on Local Legislation may report any bill out of the Committee without a meeting of that committee if he or she has the unanimous consent of all members whose districts are affected by the proposed legislation.” What this rule means in practice is that “[t]he [general Local Legislation] committee does not vote on the local legislation; instead, the local delegations of the counties [affected] sign the legislation out of that committee.” J.S.App. 281. The 2015 version of Senate Rule 81 in 2015, like its predecessors, embodies the practice of approving any local bill that has the support of the delegation from the county affected. “The Senate encourages ‘Local Courtesy’ when voting on local bills and members are requested to vote for local bills that relate to political subdivisions that they do not

¹¹ The 2015 Senate Rules added a standing committee for Shelby County. Sen.Res. 2 (adopted January 14, 2015), available at <http://alisondb.legislature.state.al.us/acas/acasloginFire.asp?SESSION=1063> (last visited January 28, 2015).

¹² *Id.*

represent in order for these local bills to receive the constitutional majority needed to become law.” This deference to the wishes of Senators who “do . . . represent” the counties to which a local bill “relate[s]” lies at the core of the local delegation system.

(4) Because this case is an appeal, the one-person-one-vote claim is still pending before the Court. A decision to note probable jurisdiction regarding only one of two questions set out¹³ in a jurisdictional statement does not limit the Court’s authority over the other question; rather, it represents a tentative decision either that there may be no jurisdiction over that other question (e.g., because of a lack of ripeness) or that the question is not sufficiently substantial to warrant plenary consideration. The actions of the Alabama Legislature have solved the jurisdictional question regarding ripeness and the related standing issue.

In light of the fact that the race discrimination claim has already been briefed and argued, the Court should deal in the following manner with the now-ripe one-person-one-vote claim:

- (a) If the Court decides to remand the race discrimination claim for further proceedings, it should vacate and remand as well the one-person-one-vote claim. Should plaintiffs

¹³ Supreme Court Rule 18.12 does not specifically address a situation, like that in the instant case, in which the Court notes probable jurisdiction with regard to only one of two questions presented in a jurisdictional statement, and with regard to the other question neither summarily affirms nor dismisses for lack of jurisdiction. See 28 U.S.C. § 1253.

ultimately prevail on the race discrimination claim, the resulting new districting plan may resolve or narrow the one-person-one-vote claim. Should the one-person-one-vote claim not be mooted by subsequent developments regarding the race claim, the district court will enter a fresh order regarding the one-person-one-vote claim, and the Court can then consider whether to hear a later appeal of that question.

(b) If the Court decides to affirm the district court's rejection of the race discrimination claim, it should note probable jurisdiction regarding the one-person-one-vote claim and set it for argument in October Term 2015.

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