

**In the
Supreme Court of the United States**

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

The defendants respectfully move to file the accompanying supplemental brief in response to the ALBC plaintiffs' supplemental brief, which this Court accepted on February 23, 2015.

In addition to the racial-gerrymandering claim on which this Court noted probable jurisdiction, the ALBC plaintiffs made a factually and legally meritless claim about "county-splitting" in the district court. The gist of the claim is that the Constitution requires that people who live outside a particular county should have no input over the laws or taxes of that county, and that this purported constitutional principle must be reflected in legislative districts. The district court granted summary judgment on this claim. The ALBC plaintiffs have twice attempted to appeal that summary judgment, and the Court has twice declined to note probable jurisdiction. *See* Order, Appeal No. 13-395 (Dec. 2, 2013); Order, Appeal No. 13-895 (June 2, 2014).

Now, months after oral argument on the racial gerrymandering claim, the ALBC plaintiffs have filed a supplemental brief that attempts, yet again, to secure plenary review on their meritless county-splitting claim. The plaintiffs suggest that their claim is now ripe and that this Court should act to preserve it, regardless of how it rules on the racial gerrymandering claim. Our proposed supplemental brief explains that the Court should not remand or note probable jurisdiction on the county-splitting claim.

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Respectfully submitted,

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SUPPLEMENTAL BRIEF

The plaintiffs' supplemental brief argues that their county-splitting claim is now ripe because the Alabama House and Senate have adopted rules that provide for standing committees to consider local legislation. On that basis, the plaintiffs request that, no matter how the Court resolves the racial gerrymandering claim on which it noted probable jurisdiction, it should review or preserve the county-splitting claim as well.

The plaintiffs are wrong. The county-splitting claim is still not justiciable. And it is factually and legally meritless in any event.

I. The county-splitting claim is still not justiciable.

Even if the county-splitting claim is now ripe, it is still not justiciable. The district court found the claim to be nonjusticiable for *two* reasons: ripeness and standing. The plaintiffs' supplemental brief simply ignores the standing problems that continue to make their claim nonjusticiable. As explained in our motion to affirm, Mot. to Affirm 11-18, the claim is nonjusticiable for four reasons in addition to ripeness.

First, all three judges on the district court agreed that the plaintiffs failed to "provide any . . . standard with which [the court] could adjudicate this claim." J.S. App. 315; *accord id.* at 404 (dissenting opinion). Because the plaintiffs cannot identify any judicially discernible or management standards for

adjudicating their claim, it is nonjusticiable. *See Vieth v. Jubelirer*, 541 U.S. 267, 281 (2000).

Second, the district court explained that “the use of the new districts . . . will not, by itself, cause any harm to the” plaintiffs. J.S. App. 300. Instead, the purported harm they are complaining about arises from “a system of local delegations” that they never challenged. *Id.*

Third, the plaintiffs’ purported one-person, one-vote problem will not be solved by requiring new legislative districts. The plaintiffs admitted below and on appeal that it is “impossible” to redistrict the Legislature to satisfy one-person, one-vote statewide *and* within committees for local legislation. J.S. 7. The plaintiffs’ proposed redistricting maps do not satisfy their own criteria. J.S. App. 311.

Fourth, the only meaningful relief, if a constitutional violation could be shown, would be to enjoin the local-legislation practice. This has been the request in every comparable case. *See DeJulio v. Georgia*, 290 F.3d 1291, 1294 (11th Cir. 2002); *Vander Linden v. Hodges*, 193 F.3d 268, 272 (4th Cir. 1999); *McMillan v. Love*, 842 A.2d 790, 793 (Md. 2004). But here, the plaintiffs “repeatedly asked [the court] not to enjoin the use of local delegations.” J.S. App. 311.

II. The county-splitting claim is factually and legally meritless.

Moreover, as explained in our motion to affirm, the district court’s alternative ruling on the merits was correct. *See* Mot. to Affirm 18-23. The new Senate and House rules only further undermine the merits of plaintiffs’ claim.

The new rules establish that the local delegations are *not* engaged in a governmental function to which the principle of one-person, one-vote would apply. The requirement of one-person, one-vote applies only to bodies that “perform governmental functions.” *Hadley v. Junior College District*, 397 U.S. 50 (1970). And, as the district court explained, “the legislature, not the local delegations, is engaged in the governmental function of lawmaking.” J.S. App. 321 (citing *DeJulio*, 290 F.3d at 1296). “[L]ocal legislation, like all other legislation, is not officially enacted until it is approved by majorities of both houses and signed by the Governor or approved by majorities of both houses over the veto of the Governor.” *Id.* at 323.

The new Senate and House Rules confirm that the district court was correct. Senate Rule 48 and House Rule 65 establish *all* standing legislative committees, such as the judiciary and ways and means, on the same terms as the committees that consider local legislation. *See* Ala. Sen. R. 48(17)(a)¹; Ala. House R. 65(23)-(31).² And the new Senate and House rules expressly provide that any member can contest local legislation, even though it affects a part of the state that he or she does not represent. *See* Ala. Sen. R. 81 (“Any member may contest any specific or all local bills as delineated in Rule 8 by filing a letter each legislative day with the Secretary of the

¹ at

http://www.legislature.state.al.us/aliswww/ALSenRules_Comm.aspx (last visited February 24, 2015).

² at

http://www.legislature.state.al.us/aliswww/ALHseRules_Comm.aspx (last visited February 24, 2015).

Senate.”);³ Ala. House R. 23 (“Any local bill may be contested by one or more member(s) filing a written statement of contest with the clerk.”).⁴ As the district court explained, the record contains undisputed evidence about legislators who have “prevent[ed] the enactment of certain pieces of local legislation,” even though they were not on a committee for local legislation. J.S. App. 324.

The plaintiffs state in their supplemental brief that “[m]ost of the authority to adopt laws for a particular county is held by the legislative delegations for a particular county.” Supp. Br. 1. But the actual House and Senate rules establish that this assertion is false; the Legislature as a body has the authority to enact or decline to enact local legislation. The committees for local legislation do not perform any governmental functions. They are no more subject to one-person, one-vote than the judiciary committee or the ways and means committee.

* * *

The Court should neither remand nor note probable jurisdiction on the county-splitting claim. If the Court affirms on the racial gerrymandering claim, it should also affirm on the county-splitting claim. If it reverses on the racial gerrymandering claim, then there is no reason for the Court to address the county-splitting claim at all.

³ at

http://www.legislature.state.al.us/aliswww/ALSenRules_Secretary.aspx. (last visited February 24, 2015).

⁴ at

http://www.legislature.state.al.us/aliswww/ALHseRules_General.aspx (last visited February 24, 2015).

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