

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DAN ALLEN, BOBBY WATKINS)
and ALBERTA LEE)

Plaintiffs,)

vs.)

Case Nos.: 1:12-cv-00496—CG-M

CITY OF EVERGREEN, ALABAMA;)
PETE WOLFF, III, Mayor of the City of)
Evergreen, Alabama; LUTHER UPTON,)
DIANE SKIPPER, JOHN SKINNER, JR.,)
VIVIAN FOUNTAIN, and MAXINE)
HARRIS Council Members of the City)
of Evergreen, Alabama; BECKY B.)
ROBINSON, City Clerk for the City of)
Evergreen, Alabama)

Defendants.)

MOTION FOR ENTRY OF COURT-ORDERED REDISTRICTING PLAN

Plaintiffs respectfully move this Court for entry of the accompanying plan of single-member districts for elections of the City Council of the Defendant City of Evergreen (hereinafter, “Defendant”). As set forth herein, Plaintiffs brought this action challenging both the current (2001) and proposed (2012) redistricting plans for Defendant under Sections 2 and 5 of the Voting Rights Act and the 14th and 15th Amendments based on claims of racial discrimination and mal-apportionment. Dkt. 1. As the parties previously have agreed and as this Court has found, “[t]he 2010 census established that the city council districts in place since 2001 are mal-apportioned so that their continued use for elections would violate the 14th Amendment.” Dkt. 8 at 3. The 2012 redistricting plan adopted by Defendants has failed to receive preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, and its use has

been enjoined by this Court. Dkt 8. The Attorney General has made a timely request to Defendants for specific additional information relevant to the Section 5 burden.

Pursuant to a joint motion of the parties, an election was scheduled for December 15, 2012 in anticipation that the parties would have agreed upon a redistricting plan. *Id.* Months have passed since August 20, 2012, when this Court enjoined the August 28, 2012 regular election date, and the parties have been unable to agree on a new districting plan. Indeed the Defendants have declined to respond substantively to settlement plans offered by the Plaintiffs, nor have Defendants submitted any additional information to the Attorney General.

The parties have agreed that a new election should go forward and have distilled their disagreement over the contours of a city council redistricting plan to a choice for the Court between the unprecleared districts initially adopted by Defendants and the districts proposed by Plaintiffs in the instant Motion. Dkt. 17.

As set forth in the accompanying Brief, this is a straightforward choice. The Court cannot adopt Defendants' unprecleared plan. As the Supreme Court reiterated earlier this year in *Perry v. Perez*, 132 S.Ct. 934, 940 (2012), "[t]his Court has been emphatic that a new electoral map cannot be used to conduct an election until it has been precleared. See, *e.g.*, *Clark v. Roemer*, 500 U.S. 646, 652 (1991)."

Further, Plaintiffs have raised substantial claims, *Perry v. Perez*, 132 S.Ct. 934, 942 (2012) as set forth in the accompanying Brief, and Plaintiffs have drawn a plan of compact and contiguous council districts that meets the standards of "the body of administrative and judicial precedents developed in Section 5 cases." *McDaniel v. Sanchez*, 421 U.S. 130, 149 (1981). And the plan provides for *de minimis* population deviations (no district varies from the ideal

population by more than two persons.) Finally, the plan also retains each incumbent in a separate district that retains the core of the original district.

Plaintiffs have contacted counsel for Defendants and they do not agree to entry of Plaintiffs' proposed redistricting plan. This Motion is accompanied by applicants' Brief in support of the motion and by a proposed Order.

WHEREFORE, Plaintiffs respectfully move the adoption by the Court of the redistricting plan attached to the Proposed Order supporting Brief as Attachment A.

Dated: December 11, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2012, I served a copy of the foregoing was duly served on the below counsel for the defendants by electronic filing and transmitted to the Clerk of Court for filing in the Federal Court ECF system:

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