

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
EASTERN (HELENA) DIVISION**

FUTURE MAE JEFFERS, et al.

PLAINTIFFS

vs.

No.: 2:12-CV-16-JLH

MIKE BEEBE, in his official capacity as Governor of Arkansas and Chairman of the Arkansas Board of Apportionment; MARK MARTIN, in his official capacity as Secretary of State of Arkansas and as a member of the Arkansas Board of Apportionment; DUSTIN MCDANIEL, in his official capacity as Attorney General and as a member of the Arkansas Board of Apportionment; and THE ARKANSAS BOARD OF APPORTIONMENT DEFENDANTS

**RESPONSE OF DEFENDANT SECRETARY MARK MARTIN TO MOTION FOR
SUMMARY JUDGMENT**

The Separate Defendant Secretary Mark Martin hereby responds to the Motion for Summary Judgment filed by the Separate Defendants Governor Mike Beebe, Attorney General Dustin McDaniel and the Arkansas Board of Apportionment, and, in support, states as follows:

1. On Plaintiffs' Section 2 claim, the Defendant Martin opposes the Motion for Summary Judgment because there remains genuine issues of material fact to be determined at the trial of this case.

2. Plaintiffs have presented a factual basis for a Section 2 liability claim through the testimony of their expert, Dr. Lisa Handley. Dr. Handley presents in her report that voting in the Delta counties remains racially polarized, with black voters cohesive in support for their candidates of choice and whites bloc voting to defeat the minority-preferred candidate. See Handley Report, Exhibit 1a to Handley Dep. (Exhibit 1), P. 11. While this opinion has been challenged by the expert report of Dr. Jeffrey Zax, it remains as a disputed issue of the most

critical facts in determining the merits of a Section 2 claim under the guidelines set by the U.S. Supreme Court. It would be an injustice to prevent a full hearing on the merits of Plaintiffs' claim.

3. On Plaintiffs' constitutional claims of intentional discrimination under the Fourteenth and Fifteenth Amendment, Defendant Martin agrees that there are no genuine issues of material fact and, as a matter of law, the claim should fail and be dismissed as to Secretary Martin. Plaintiffs have no evidence to support a claim of intentional discrimination against the Defendant Martin and the Plaintiff Senator Jack Crumbly so testified in his deposition. See Crumbly Dep. (Exhibit 2), P. 164. Further, Defendant Martin dissented and refused to support the final plan of the Board of Apportionment which plaintiffs' now challenge.

4. In support of this Response, Defendant Martin has submitted his Brief in Support along with the following exhibits:

- (a) Excerpts from the deposition of Dr. Lisa Handley. See attached Exhibit 1
- (b) Excerpts from the deposition of Senator Jack Crumbly. See attached Exhibit 2
- (c) Excerpts from the deposition of Dr. Jeffrey Zax. See attached Exhibit 3
- (d) Excerpts from the deposition of Secretary Mark Martin. See attached Exhibit 4
- (e) June 20, 2010 letter of Secretary Mark Martin. See attached Exhibit 5

5. Defendant Martin also submits his Statement of Material Facts in Dispute in accordance with Local Rule 56.1.

WHEREFORE, the Defendant Secretary of State Mark Martin prays that the Court deny Summary Judgment as to the Section 2 claim under the Voting Rights Act and grant Summary Judgment in favor of the Defendant Martin on the intentional discrimination claim.

Respectfully submitted,

/s/ Asa Hutchinson
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his official capacity as Secretary of State of
Arkansas and as a member of the Arkansas Board
of Apportionment*

CERTIFICATE OF SERVICE

I, Asa Hutchinson, hereby certify that on April 27, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the listed CM/ECF participants as follows:

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