

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

FUTURE MAE JEFFERS; MARY JEFFERS; HENRY  
PEACOCK; SHIRLEY HARVELL; REV. RONALD  
WILLIAMS; PEGGY R. WRIGHT; LAURA LOVE;  
FRANK SHAW; C.W. CAMPBELL; LEO CHITMAN;  
ETTA CAMPBELL; PLEZ LUCAS; VICKIE  
ROBERTSON; JOSEPH PERRY; ELBERT SMITH;  
SANDRA BAGLEY; NIKKI DISMUKE; ALICE W.  
VALLEY; LAKETHA BROWN FLUKER; KATRINA  
HARRELL; CHESTER HARRELL; EDDIE O’NEAL;  
CHRISTOPHER FRANKLIN; and JACK BERNARD  
CRUMBLY

PLAINTIFFS

v.

No. 2:12CV00016 JLH

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

DEFENDANTS

**PLAINTIFFS’ LOCAL RULE 56.1**  
**STATEMENT OF MATERIAL FACTS IN DISPUTE**

Future Mae Jeffers, et al., come now before this honorable court and contend that the  
following material facts are in dispute and must be tried:

1. Plaintiffs allege that bloc voting by Whites usually defeats the candidate preferred by African-American voters where the Black voting-age population (“BVAP”) in the jurisdiction is significantly less than 60%. First Amended Complaint (“Compl.”) ¶ 31. This allegation is supported by the expert report, declaration, and deposition testimony of Dr. Lisa Handley. *See* Handley Report, Exhibit 1a to Handley Dep. (Exhibit 1) at 1, 6-9; Handley Decl. (Exhibit 2) at 3-10; Handley Dep. (Exhibit 12) at

- 144-48, 173-75, 195-98. Separate Defendants Governor Mike Beebe, Attorney General Dustin McDaniel, and the Arkansas Board of Apportionment (“Separate Defendants”) deny this allegation and support their denial with the expert witness report, deposition testimony, and declaration of Dr. Jeffrey Zax
2. Plaintiffs allege that “As this Court found two decades ago, ‘there is a history of racial discrimination in the electoral process in Arkansas. . . .[T]he history of racial discrimination has adversely affected opportunities for black citizens in health, education, and employment. The hangover from this history inhibits full participation in the political process.’ *Smith v. Clinton*, 687 F. Supp. 1310, 1317 (E.D. Ark. 1988).” Compl. ¶ 32. Separate Defendants deny that the first quoted sentence appears in the case cited and deny that the quoted statements apply to the present facts. The applicability of the quoted statements to the present facts is supported by the declaration of Jack B. Crumbly (Exhibit 3) ¶ 56 and the declaration of Leo Chitman (Exhibit 4) ¶ 10.
  3. Plaintiffs allege that voting in the May 2000 Democratic primary for Senate District 22 was racially polarized. Compl. ¶ 37. This allegation is supported by the expert report, declaration, and deposition testimony of Dr. Lisa Handley. *See* Handley Report, Exhibit 1a to Handley Dep. (Exhibit 1) at 8, Handley Decl. (Exhibit 2) at 5; Handley Dep. (Exhibit 12) at 149-50, 178-80. Separate Defendants deny this allegation and support their denial with the expert witness report, deposition testimony, and declaration of Dr. Jeffrey Zax
  4. Plaintiffs allege that voting in the May 2002 Democratic primary for Senate District 16 was racially polarized. Compl. ¶ 39. This allegation is supported by the expert

- report, declaration, and deposition testimony of Dr. Lisa Handley. *See* Handley Report, Exhibit 1a to Handley Dep. (Exhibit 1) at 8; Handley Decl. (Exhibit 2) at 5; Handley Dep. (Exhibit 12) at 149-50, 178-80. Separate Defendants deny this allegation and support their denial with the expert witness report, deposition testimony, and declaration of Dr. Jeffrey Zax
5. Plaintiffs allege that elections in the seven Delta counties that are the focus of this action show that racially polarized voting has prevented Black candidates from defeating White candidates unless the BVAP in the jurisdiction exceeds 55%. Compl. ¶ 42. This allegation is supported by the expert report, declaration, and deposition testimony of Dr. Lisa Handley. *See* Handley Report, Exhibit 1a to Handley Dep. (Exhibit 1) at 6-9; Handley Decl. (Exhibit 2) at 3-6; Handley Dep. (Exhibit 12) at 144-48, 173-75, 183-86. Separate Defendants deny this allegation and support their denial with the expert witness report, deposition testimony, and declaration of Dr. Jeffrey Zax
  6. Plaintiffs allege that, between April 4, 2011, and July 20, 2011, plaintiff Senator Jack Crumbly had conversations with defendant Governor Mike Beebe concerning the boundaries of the district that would succeed District 16 and provided him with maps that responded to concerns he raised in those conversations. Compl. ¶ 50. This allegation is supported by the declaration and deposition testimony of Senator Crumbly. Crumbly Decl. (Exhibit 3) ¶¶ 10, 13, 15. Crumbly Dep. (Exhibit 5) at 68-78. Separate Defendants deny this allegation.
  7. Plaintiffs allege that, more than once, defendant Governor Mike Beebe assured plaintiff Senator Crumbly that the successor to District 16 would be the first Senate

- district drawn by the defendant Board of Apportionment, and that his concerns would be addressed by the Board in its map for that area. Compl. ¶ 54. This allegation is supported by the declaration and deposition testimony of Senator Crumbly. Crumbly Decl. (Exhibit 3) ¶ 13; Crumbly Dep. (Exhibit 5) at 73-74. Separate Defendants deny this allegation.
8. Plaintiffs allege that, on or about July 2011, defendant Governor Mike Beebe assured plaintiff Senator Crumbly that the successor to District 16 had been the first Senate district drawn by the defendant Board of Apportionment and that his concerns about the district had been addressed by the Board. Compl. ¶ 55. This allegation is supported by the declaration and deposition testimony of Senator Crumbly. Crumbly Decl. (Exhibit 3) ¶ 15; Crumbly Dep. (Exhibit 5) at 85. Separate Defendants deny this allegation.
9. Plaintiffs allege that Senate District 24, as drawn in 2011, contains 31,038 more people in Crittenden County than did Senate District 16, as drawn in 2001. Compl. ¶ 60. This allegation is supported by counts from the 2010 U.S. Census, as calculated using Maptitude for Redistricting software, Senate 2001\_District Statistics for District 16 (Exhibit 6a); Senate 2011\_Dist 24\_District Statistics (Exhibit 7a); and the declaration of Senator Crumbly. Crumbly Decl. (Exhibit 3) ¶ 19. Separate Defendants deny this allegation.
10. Plaintiffs allege that adding 31,038 people from Crittenden County to 2001 Senate District 16 meant that, in order to meet equal-population requirements, about 20,000 people needed to be removed from some other part of the district. Compl. ¶ 61. This allegation is supported by counts from the 2010 U.S. Census, as calculated using

- Maptitude for Redistricting software, Senate 2001\_District Statistics for District 16 (Exhibit 6a); Senate 2011\_Dist 24\_District Statistics (Exhibit 7a); and the declaration of Senator Crumbly. Crumbly Decl. (Exhibit 3) ¶ 20. Separate Defendants deny this allegation.
11. Plaintiffs allege that the Board of Apportionment chose to remove from 2011 Senate District 24 about 15,000 people in St. Francis County who had been included in 2001 Senate District 16. Compl. ¶ 62. This allegation is supported by counts from the 2010 U.S. Census, as calculated using Maptitude for Redistricting software, Senate 2001\_Dist 16\_Plan Components (PSW)\_County (Exhibit 6b); Senate 2011\_Dist 24\_Plan Components (PSW)\_County (Exhibit 7b), and the declaration of Senator Crumbly. Crumbly Decl. (Exhibit 3) ¶ 21. Separate Defendants deny this allegation.
12. Plaintiffs allege that a voting-age population of 11,952 in St. Francis County that had been included in 2001 Senate District 16 was removed from 2011 Senate District 24. Compl. ¶ 63. This allegation is supported by counts from the 2010 U.S. Census, as calculated using Maptitude for Redistricting software, Senate 2001\_Dist 16\_Plan Components (PSW)\_County (Exhibit 6b); Senate 2011\_Dist 24\_Plan Components (PSW)\_County (Exhibit 7b), and the declaration of Senator Crumbly. Decl. (Exhibit 3) ¶ 22. Separate Defendants deny this allegation.
13. Plaintiffs allege that St. Francis County is the base of political support of Senator Jack Crumbly, and that removing 11,952 of the voters in his base county removed 61% of his voting base. Compl. ¶ 64. This allegation is supported by counts from the 2010 U.S. Census, as calculated using Maptitude for Redistricting software, and the declaration of Senator Crumbly. Senate 2001\_Dist 16\_Plan Components

- (PSW)\_County\_VAP (Exhibit 6c); Senate 2011\_Dist 24\_Plan Components  
(PSW)\_County\_VAP (Exhibit 7c); Crumbly Decl. (Exhibit 3) ¶ 23. Separate Defendants deny this allegation.
14. Plaintiffs allege that the Board of Apportionment, in drawing the Senate plan adopted on July 29, 2011, did not remove voters from the base county of any other Democratic member of the Arkansas Senate who is seeking re-election in 2012. Compl. ¶ 65. This allegation is supported by the declaration of Senator Crumbly. Decl. (Exhibit 3) ¶ 24. Separate Defendants deny this allegation.
15. Plaintiffs allege that 2011 Senate District 24 has the largest population of any Senate district. Compl. ¶ 67. This allegation is supported by the 2011 Senate Matrix of the Board of Apportionment (Exhibit 8). Separate Defendants deny this allegation.
16. Plaintiffs allege that St. Francis, Lee, and Phillips counties have economies that are based on agriculture, have limited industrial work, and have struggling schools. The natural grouping would be to put the three counties together in District 24. Compl. ¶ 68. This allegation is supported by the declaration of Senator Crumbly, Decl. (Exhibit 3) ¶ 27. Separate Defendants deny this allegation.
17. Plaintiffs allege that the populations of St. Francis, Lee, and Phillips counties each have an African American majority. This allegation is supported by the declaration of Senator Crumbly, Decl. (Exhibit 3) ¶ 27, and by Separate Defendants' Exhibit 20, attached to their Motion for Summary Judgment. Separate Defendants deny this allegation.
18. Plaintiffs allege that the 2011 Senate plan adopted by defendant Board of Apportionment divides the three Delta counties among three senate districts (23, 24,

- and 25), with the purpose and effect of cracking a compact African-American population and reducing their ability to elect their choice of candidates to the Arkansas Senate from two (Districts 24 and 25) to one (District 25). Compl. ¶ 69. This allegation is supported by the declaration of Senator Crumbly. Decl. (Exhibit 3) ¶ 28. Separate Defendants deny this allegation.
19. Plaintiffs allege that, by comparison with 2001 Senate District 16, the African-American population of 2011 District 24 was reduced from 66% of the total population and 61% of the voting age population to 57% of the total population and 53% of the voting age population. Compl. ¶ 70. This allegation is supported by population reports from the 2010 U.S. Census, as calculated using Maptitude for Redistricting software, Senate 2001\_District Statistics for District 16 (Exhibit 6a); Senate 2011\_Dist 24\_District Statistics (Exhibit 7a); and the declaration of Senator Crumbly. Crumbly Decl. (Exhibit 3) ¶ 29. Separate Defendants deny this allegation.
20. Plaintiffs allege that their proposed plan, Jeffers\_03, splits fewer precincts (9 split) than 2011 District 24 (13 split) and fewer precincts (6 split) than 2011 District 23 does (10 split). Compl. ¶73. This allegation is supported by counts from the 2010 U.S. Census, as calculated using Maptitude for Redistricting software, Jeffers\_03\_Plan Components (PSW) (Exhibit 9d); Senate 2011\_Dist 24\_Plan Components (PSW) (Exhibit 7d); Senate 2011\_Dist 23\_Plan Components (PSW) (Exhibit 7e); and the declaration of Senator Crumbly. Decl. (Exhibit 3) ¶ 33. Separate Defendants deny this allegation.
21. Plaintiffs allege that 2011 Senate District 24 was drawn by defendant Board of Apportionment to avoid contests between White incumbent legislators, at the expense

- of creating a contest between a White and a Black incumbent legislator. Compl. ¶ 75. This allegation is supported by the declaration and deposition testimony of Senator Crumbly. Decl. (Exhibit 3) ¶34; Dep. (Exhibit 5) at 113-20, 165-69. Separate Defendants deny this allegation. They support the denial with the deposition testimony of Defendant Governor Beebe. Beebe Dep. (Exhibit 10) at 55. They assert that Governor Beebe's testimony is not in dispute. Separate Defendants' Statement of Undisputed Facts, ¶171. On the contrary, it is politely and respectfully disputed by the deposition testimony of Senator Crumbly. Dep. (Exhibit 5) at 165-69. The finder of fact must determine whose testimony, that of Senator Crumbly or Governor Beebe, is more credible.
22. Plaintiffs allege that Defendant Board of Apportionment drew 2011 Senate District 24 so that the number of voters in the base counties of White incumbents was increased, while the number of voters in the base county of the African American incumbent was reduced. Compl. ¶ 87. This allegation is supported by the declaration of Senator Crumbly. Decl. (Exhibit 3) ¶ 46. Separate Defendants deny this allegation.
23. Plaintiffs allege that the base county of White Representative Keith Ingram is Crittenden and that, as compared to 2001 Senate District 16, the number of voters in Crittenden County within 2011 Senate District 24 was increased by 22,672. Compl. ¶ 88. This allegation is supported by counts from the 2010 U.S. Census, as calculated using Maptitude for Redistricting software, and the declaration of Senator Crumbly. Senate 2001\_Dist 16\_Plan Components (PSW)\_County\_VAP (Exhibit 6c); Senate

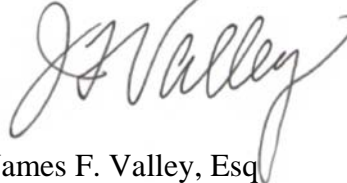


- 2011\_Dist 24\_Plan Components (PSW)\_County\_VAP (Exhibit 7c); Crumbly Decl. (Exhibit 3) ¶ 47. Separate Defendants deny this allegation.
24. Plaintiffs allege that the base county of African American Senator Jack Crumbly is St. Francis and that, as compared to 2001 Senate District 16, the number of voters in St. Francis County within 2011 Senate District 24 was reduced by 11,592. Compl. ¶ 89. This allegation is supported by counts from the 2010 U.S. Census, as calculated using Maptitude for Redistricting software, and the declaration of Senator Crumbly. Senate 2001\_Dist 16\_Plan Components (PSW)\_County\_VAP (Exhibit 6c); Senate 2011\_Dist 24\_Plan Components (PSW)\_County\_VAP (Exhibit 7c); Crumbly Decl. (Exhibit 3) ¶ 48. Separate Defendants deny this allegation.
25. Plaintiffs allege that the intent of defendant Board of Apportionment in adding to District 24 the predominantly White voters of Crittenden County and removing 61% of the voting base of plaintiff Senator Jack Crumbly in St. Francis County was to enable White candidate Keith Ingram to defeat Black candidate Jack Crumbly and that, if not enjoined by this Court, those changes are likely to have the intended effect. Compl. ¶ 90. This allegation is supported by the declaration and deposition testimony of Senator Crumbly. Crumbly Decl. (Exhibit 3) ¶¶ 49-55; Crumbly Dep. (Exhibit 5) at 102-06. Separate Defendants deny this allegation.

Plaintiffs allege that the 2011 plan creates a Senate District 24 that is no longer an effective majority-minority district because its African-American voting strength is significantly reduced in a part of the state where African Americans face some of the toughest challenges — ranging from ballot access to unemployment, education, criminal justice and a host of other important issues. Each of these issues contributes to the

African-American community's inability to elect a candidate of its choice, unless placed in a district with a BVAP exceeding 55%. Compl. ¶ 91. This allegation is supported by the declaration of Senator Crumbly and by the deposition testimony of Defendant Secretary of State Martin. Crumbly Decl. (Exhibit 3) ¶ 56; Martin Dep. (Exhibit 11) at 133-39. Separate Defendants deny this allegation.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I, James F. Valley, certify that on April 27, 2012, consistent with the requirements of FRCP 5, I served a complete copy of this document with any attachments to counsel as listed below:

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A handwritten signature in cursive script that reads "J. Valley". The signature is written in black ink and is positioned above a horizontal line.

James F. Valley