IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

KAAREN TEUBER, et al.,	§	
	§	**CIVIL ACTION NO.**
Plaintiffs,	§	11-CV-00059 RAS
	§	
v.	§	
	§	
STATE OF TEXAS, et al.,	§	
	§	
Defendants.	§	

DEFENDANTS THE STATE OF TEXAS, RICK PERRY, DAVID DEWHURST, JOE STRAUS, AND HOPE ANDRADE'S MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND 12(b)(6), AND IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(e)

Defendants the State of Texas, Rick Perry, David Dewhurst, Joe Straus, and Hope Andrade (the "State Defendants") move to dismiss this lawsuit pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) because the Court lacks subject matter jurisdiction over Plaintiffs' claims, and Plaintiffs' Complaint fails to state a claim upon which relief can be granted. In the alternative, the State Defendants seek relief under Federal Rule of Civil Procedure 12(e), respectfully requesting that this Court direct Plaintiffs to make a more definite statement of their claims. In support, the State Defendants aver as follows:

ISSUES TO BE DECIDED

1. Whether this Court has subject matter jurisdiction over Plaintiffs' claims.

2. Whether Plaintiffs' claims under the Privileges or Immunities Clause of the Fourteenth Amendment (Count 3), the Fifteenth Amendment (Count 4), 42 U.S.C. § 1983 (Count 5), Section 2 of the Voting Rights Act (Count 7), and Texas Constitution Article III § 26 (Count 9) must be dismissed for failure to state a claim upon which relief can be granted.

3. Whether the Court should order Plaintiffs to amend their complaint to make a more definite statement of their claims.

BACKGROUND

Plaintiffs filed their Complaint on February 10, 2011. In their Complaint, Plaintiffs join two sets of defendants. First, Plaintiffs name the State of Texas and various officers of the state. Second, Plaintiffs name various officers of the United States government (the "Federal Defendants"). The Federal Defendants have yet to be served.

Plaintiffs' broad and general factual allegations can be generalized into three general allegations. First, the complaint appears to rely on the U.S. Census Bureau's decision to include undocumented immigrants in the 2010 Census. *See* Plaintiffs' Original Complaint and Request for Injunctive and Declaratory Relief, and Designation of a Three-Judge Court ("Complaint") ¶ 22. Plaintiffs allege that

> the inclusion of undocumented immigrants in the U.S. Census might have the purpose and effect of strengthening the Hispanic vote, and if so this practice could violate the equal protection and due process guarantees of the Fourteenth Amendment and Fifteenth Amendment to the United States Constitution, Section 2 of the Voting Rights Act, and Article I, Sections 3, 3a, 19, and 29 of the Texas Constitution.

Id. Second, Plaintiffs complain that "[t]his Court's intervention is necessary to ensure that nondiscriminatory population calculations" will be used in the reapportionment of Texas' election districts for members of Congress, the Texas House of Representatives, the Texas Senate, and the State Board of Education. *Id.* ¶ 23. Finally, the overwhelming majority of Plaintiffs' other factual allegations contend that the existing congressional, state legislative, and State Board of Education districts "are unequal in population." *See id. Id.* ¶¶ 23-31.

According to Plaintiffs, the alleged facts entitle them to at least the following relief: (i) a declaration that the use of inaccurate census data for reapportionment purposes violates the U.S. Constitution and federal law, *id.* ¶ 52; (ii) injunctive relief enjoining the State Defendants from

using the 2010 Census for reapportionment of Texas congressional, state senate, state house, and State Board of Education districts, *id.* ¶ 53; (iii) an order mandating the adjustment of the 2010 census by Federal or State Defendants for use in reapportionment of Texas congressional, state senate, state house, and State Board of Education districts, *id.* ¶ 54; and (iv) declaratory and injunctive relief against the use of existing congressional, state senate, state house, and State Board of Education districts, *id.* ¶¶ 55-56. But, despite listing nine causes of action, *see id.* ¶¶ 33-50, Plaintiffs fail to specify which facts entitle them to relief against which Defendants under which of these different legal theories.

ARGUMENT

I. This Court Should Dismiss Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction.

A. Legal Standard

Dismissal for lack of subject matter jurisdiction under Rule 12(b)(1) is required when the court lacks constitutional and statutory power over the case. *E.g.*, *IP Innovation L.L.C. v. Google, Inc.*, 661 F. Supp. 2d 659, 662 (E.D. Tex. 2009) (citing *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998)). Plaintiffs bear the burden of establishing this Court's subject matter jurisdiction. *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). The plaintiff's standing to sue is a necessary element of subject matter jurisdiction. *See, e.g.*, *IP Innovation L.L.C.*, 661 F. Supp. 2d at 662 ("A court lacks subject matter jurisdiction over a cause of action if the plaintiff lacks standing to bring the cause of action."); *see also Cobb v. Central States*, 461 F.3d 632, 635 (5th Cir. 2006) (noting that "the issue of standing is one of subject matter jurisdiction").

Moreover, the plaintiff's claim must be ripe for adjudication. *See, e.g.*, *Lopez v. City of Houston*, 617 F.3d 336, 341 (5th Cir. 2010) ("Ripeness is a component of subject matter

jurisdiction, because a court has no power to decide disputes that are not yet justiciable."). "If the purported injury is 'contingent [on] future events that may not occur as anticipated, or indeed may not occur at all,' the claim is not ripe for adjudication." *Id.* at 342 (quoting *Thomas v. Union Carbide Ag. Prods. Co.*, 473 U.S. 568, 580–81 (1985). This Court lacks subject matter jurisdiction because Plaintiffs cannot establish standing, their claims are not ripe for consideration, and Plaintiffs' claims are barred by the Eleventh Amendment to the United States Constitution.

B. Plaintiffs Lack Standing to Challenge Existing Legislative and Congressional Districts Because the Complaint Fails to Allege a Concrete Injury.

To establish constitutional standing under Article III, § 2, the plaintiff must "demonstrate that he has suffered 'injury in fact,' that the injury is 'fairly traceable' to the actions of the defendant, and that the injury will likely be redressed by a favorable decision." *Bennett v. Spear*, 520 U.S. 154, 162 (1997) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). To the extent Plaintiffs' claims are based on the alleged malapportionment of existing legislative and congressional districts, they lack standing to sue because they have not established a legally cognizable injury. To establish standing, a plaintiff must demonstrate that he has suffered injury in fact, "a concrete and imminent invasion of a legally protected interest that is neither conjectural nor hypothetical." *Id.* at 560.

Plaintiffs' Complaint does not allege facts sufficient to support the inference that they have suffered an injury in fact. Although they complain about the current apportionment of legislative and congressional districts, Plaintiffs have not alleged that the state intends to conduct elections using the current districts, and there is no reason to believe that it will do so. *See Mayfield v. Texas*, 206 F. Supp. 2d 820, 823 (E.D. Tex. 2001) (holding that the plaintiffs had not suffered an injury in fact because "there is no threat that an election will be held with the current

districting scheme in place, and there is no reason to believe at this time that the Texas Legislature will fail to correct any malapportionment before the next election process begins"). Because Plaintiffs have not identified an injury in fact, they lack standing, and this Court lacks subject matter jurisdiction over Count 6. Further, to the extent Plaintiffs' claims are based on malapportionment of current legislative and congressional districts, this Court lacks jurisdiction over Counts 1 through 5 and 7 through 9.[1]

C. Plaintiffs Lack Standing to Assert Claims Based on Defects in the Census Because the Inclusion of Undocumented Immigrants in the United States Census Is Not Traceable to the State of Texas or its Officers.

To meet the traceability element of standing, a plaintiff must establish "a 'fairly traceable' causal link between [its] injury and the defendant's conduct." *Cadle Co. v. Neubauer*, 562 F.3d 369 (5th Cir. 2009) (quoting *Lujan*, 504 U.S. at 560–61). To the extent Plaintiffs' claims are based on the inclusion of undocumented immigrants in the 2010 United States Census, Plaintiffs cannot establish that their alleged injuries are traceable to the State Defendants. *See* Complaint ¶ 22 ("[T]he inclusion of undocumented immigrants in the U.S. Census might have the purpose and effect of strengthening the Hispanic vote, and if so this practice could violate the equal protection and due process guarantees of the Fourteenth Amendment and Fifteenth Amendment to the United States Constitution, Section 2 of the Voting Rights Act, and Article I, Sections 3, 3a, 19, and 29 of the Texas Constitution."). The United States Constitution expressly assigns to Congress the duty of conducting a decennial census. U.S. CONST. amend. XIV, § 2; *see also id.* art. I, § 2 (directing Congress to conduct an "actual Enumeration" every ten years following the initial census). The State of Texas and its officers

[1] Plaintiffs do not appear to seek an order invalidating any election conducted under the existing electoral districts. To the extent they seek such relief, they have not pleaded facts to support such a drastic remedy. *See, e.g.*, *Lopez v. City of Houston*, 617 F.3d 336, 340 (5th Cir. 2010) (describing invalidation of a past election as "an extraordinary remedy that can only be employed in exceptional circumstances, usually when there has been egregious defiance of the Voting Rights Act").

have no power to control the United States government's performance of its constitutional duty. Indeed, Plaintiffs do not appear to allege that the State Defendants are somehow responsible for the alleged defects in the U.S. Census. Thus to the extent Plaintiffs' claims are based on the conduct of the 2010 Census, any alleged injury is not traceable to the State Defendants.

D. Any Claim Alleging Defects in Legislative Districts Drawn After the 2010 Census Is Not Ripe for Adjudication Because It Is Contingent Upon Future Events.

To the extent Plaintiffs' claims are based on the failure to draw valid legislative and congressional districts based on the 2010 United States Census, their claims are not ripe for adjudication because the Texas Legislature has not yet had a chance to draw new districts. Federal courts lack subject matter jurisdiction to consider claims arising from events that have not yet occurred. *See, e.g.*, *Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.").

Plaintiffs seem to recognize the contingency of at least some of the injuries they allege. For example, they allege that "the strength of Plaintiffs' votes . . . might be diluted," Complaint ¶ 22, and that "[i]f the Texas Legislature fails to enact new . . . redistricting plans during its session, then this Court's intervention may be necessary to protect Plaintiffs' federal and state rights." *Id.* ¶ 32. These allegations are stated so tentatively as to create serious doubt whether an actual threat to their legal interest exists.

But even if Plaintiffs affirmatively alleged that these harms will occur, they do not establish standing because the factual premise of their claim is inherently speculative. As Plaintiffs acknowledge, the Texas Legislature is currently in session. *See id.* ¶ 23 ("Redistricting activities are now underway in the Legislature."). A redistricting lawsuit filed before the legislature has had a chance to enact a redistricting plan is premature and not ripe for

adjudication. *See, e.g.*, *Mayfield*, 206 F. Supp. 2d at 824 (holding that a challenge to existing congressional districts was not ripe because "the State of Texas has not been allowed to respond to the new census figures and . . . there is no reason to believe that the Texas Legislature will fail to do so"). Accordingly, to the extent they assert claims based on congressional and legislative districts drawn using 2010 Census data, Counts 1 through 9 are not ripe for adjudication and must be dismissed for lack of subject matter jurisdiction.

E. The Eleventh Amendment Bars Claims Against the State Under State Law and Section 1983.

To the extent Plaintiffs' claims under Article I, §§ 3, 3a, 19, and 29 and Article III, § 26 of the Texas Constitution, *see* Complaint ¶¶ 47–50 (Counts 8 & 9), are asserted against the State and the State Defendants, those claims are barred by the Eleventh Amendment to the United States Constitution. Eleventh Amendment immunity is a jurisdictional bar in this Court to any relief against a state or state officials, in their official capacities, on any claim for a violation of state law. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105-06 (1984) ("[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law."); *Warnock v. Pecos County*, 88 F.3d 341, 343 (5th Cir. 1996) ("Eleventh Amendment sovereign immunity deprives a federal court of jurisdiction to hear a suit against a state."). Thus the Court lacks subject matter jurisdiction over Plaintiffs' state-law claims against the State and the State Defendants and should dismiss Counts 8 and 9 for lack of subject matter jurisdiction.

To the extent Plaintiffs' section 1983 claim (Count 5) is asserted against the State of Texas, that claim is also barred by the Eleventh Amendment. The Eleventh Amendment to the United States Constitution bars private suits in federal court against states, unless the state has waived, or Congress has abrogated, the state's sovereign immunity. *Pennhurst*, 465 U.S. at 98-

100; *Aguilar v. Texas Dep't of Criminal Justice*, 160 F.3d 1052, 1054 (5th Cir. 1998); *see also* U.S. CONST., amend. XI. It is well established that Congress has not abrogated the states' sovereign immunity under section 1983. *See Quern v. Jordan*, 440 U.S. 332, 340-45 (1979); *Aguilar*, 160 F.3d at 1054. Thus the State is immune from Plaintiffs' section 1983 claims, and Count 5 should be dismissed for lack of subject matter jurisdiction to the extent it is asserted against the State of Texas.

II. This Court Should Dismiss Counts 3, 4, 5, 7, and 9 of the Complaint for Failure to State a Claim Upon Which Relief Can Be Granted.

A. Legal Standard

A court considering a motion to dismiss for failure to state a claim under Rule 12(b)(6) must accept all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff. *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004). The plaintiff must provide more than conclusory factual allegations or a mere recitation of the elements of its claims, however. *See Ashcroft v. Iqbal*, 556 U.S. __, 129 S.Ct. 1937, 1949 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice."); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007) ("[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."). "To survive a Rule 12(b)(6) motion, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Twombly*, 550 U.S. at 547). The Court's obligation to accept a plaintiff's allegations does not apply to statements of law. *Iqbal*, 129 S.Ct. at 1950 ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.").

B. Count 3: Privileges or Immunities Clause of the Fourteenth Amendment

To the extent Count 3 of Plaintiffs' Complaint is based on state elections or legislative districts, Plaintiffs fail to state a claim upon which relief can be granted because the Fourteenth Amendment's Privileges or Immunities Clause does not protect "rights pertaining to state citizenship and derived solely from the relationship of the citizen and his state established by state law." *See, e.g.*, *Snowden v. Hughes*, 321 U.S. 1, 7 (1944). "The right to vote for state officers or initiatives 'is a right or privilege of state citizenship, not of national citizenship which alone is protected by the privileges and immunities clause.'" *Broyles v. Texas*, 618 F. Supp. 2d 661, 688 (S.D. Tex. 2009) (quoting *Snowden*, 321 U.S. at 7).

To the extent Count 3 is based on congressional elections or districts, Plaintiffs fail to state a claim upon which relief can be granted because they do not identify any act by the State or the State Defendants that is alleged to abridge a privilege or immunity of United States citizenship. *See Twombly*, 550 U.S. at 547; *cf. Minor v. Happersett*, 88 U.S. 162, 171–75 (1874) (holding that the Fourteenth Amendment did not add the right of suffrage to the privileges and immunities of United States citizenship, and suffrage was not an existing privilege or immunity of citizenship at the time of its adoption).

C. Count 4: Fifteenth Amendment

Plaintiffs claim a violation of their Fifteenth Amendment rights, but they do not identify any relevant conduct by the State or the State Defendants. The Fifteenth Amendment provides, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." U.S. CONST. amend. XV. A Fifteenth Amendment claim requires a showing of intent to deprive a citizen of the right to vote on account of race. *E.g.*, *City of Mobile v. Bolden*, 446 U.S. 55 (1980). To prove that a defendant acted with the requisite intent, a plaintiff must satisfy the test established

in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264–68 (1977). Plaintiffs do not make a single factual allegation that the State or the State Defendants acted with the purpose of denying or abridging Plaintiffs' right to vote on account of race or color. Because their Fifteenth Amendment claim against the State Defendants is not supported by any factual allegations, Plaintiffs' claim must be dismissed for failure to state a claim upon which relief can be granted. *See Iqbal*, 129 S.Ct. at 1949 (instructing that conclusory statements are not sufficient, and legal allegations are not accepted as true).

D. Count 5: 42 U.S.C. § 1983

Section 1983 creates a remedy for the deprivation of rights created by other sources of federal law. It creates no substantive rights. *See, e.g.*, *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) ("As we have said many times, § 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'") (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979)). Even if section 1983 created substantive rights, Plaintiffs could not state a claim against the State of Texas because a state is not a "person" subject to suit under section 1983. *See, e.g.*, *Will v. Michigan Dep't of State Police*, 491 U.S. 58, (1989). To the extent Plaintiffs' section 1983 claim is asserted against the individual State Defendants, it should be dismissed for failure to state a claim because Plaintiffs fail to articulate any factual or legal basis for the claim. *See Iqbal*, 129 S.Ct. at 1949.

E. Count 7: Voting Rights Act § 2

Plaintiffs fail to state a claim upon which relief can be granted under the Voting Rights Act because they fail to plead the elements of their cause of action, much less factual allegations sufficient "to raise [their] right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Section 2 of the Voting Rights Act prohibits the use of a voting practice or procedure "in a manner which results in a denial or abridgement of the right of any citizen of the United States to

vote on account of race or color [or membership in a language minority group]." 42 U.S.C. § 1973(a). To establish a violation of section 2, a plaintiff must show

> based on the totality of circumstances, . . . that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Id. § 1973(b).

The elements of a claim under Section 2 of the Voting Rights Act were established by the United States Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and have been applied consistently by the Fifth Circuit:

> First, plaintiffs must satisfy, as a threshold matter, three preconditions. Specifically, the minority group must demonstrate that: (1) it is sufficiently large and geographically compact to constitute a majority in a[n additional] single-member district; (2) it is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it-in the absence of special circumstances-usually to defeat the minority's preferred candidates. Failure to establish all three of these elements defeats a [§ 2] claim. Second, if the preconditions are proved, plaintiffs must then prove that based on the totality of the circumstances, they have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Fairley v. Hattiesburg, 584 F.3d 660, 667 (5th Cir. 2009) (quoting *Sensley v. Albritton*, 385 F.3d 591, 595 (5th Cir. 2004)). Thus to state a claim for relief under section 2, Plaintiffs must allege facts that demonstrate the *Gingles* factors. No such factual allegations appear in the Complaint. As such the Complaint falls far short of the basic notice pleading standard articulated by *Twombly* and *Iqbal.*

F. Count 9: Texas Constitution Article III, § 26

Plaintiffs allege, in Count 9, that Defendants have violated the following provision of the Texas Constitution:

> The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed . . . .

TEX. CONST. art. III, § 26. Plaintiffs' claim fails to state a claim for relief because they do not identify any act by any defendant that is alleged to violate this constitutional provision. To the extent Plaintiffs' claim is based on a failure to apportion Texas House districts, it is unripe because, as the Plaintiffs recognize, "[r]edistricting activities are now underway in the Legislature." Complaint ¶ 23. To the extent Plaintiffs' claim is based on the use of allegedly defective data from the U.S. Census, their claim fails on its own terms. The Texas Constitution requires that Texas House districts be apportioned according to population "as ascertained by the most recent United States census."

III. Alternatively, This Court Should Order Plaintiffs to Provide a More Definite Statement of Their Claims.

A. Legal Standard

Whether to grant a motion for a more definite statement is a matter within the discretion of the court. *Mitchell v. E-Z Way Towers, Inc.*, 269 F.2d 126, 132 (5th Cir. 1959). A motion for a more definite statement is properly granted where the pleading is "so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e); *see also, e.g., Sisk v. Texas Parks & Wildlife Dept.*, 644 F.2d 1056, 1059 (5th Cir. 1981). In contrast, if the moving party merely complains of matters that can be clarified and developed during discovery, the motion should be denied. *Arista Records LLC v. Greubel*, 453 F.Supp.2d 961, 972 (N.D. Tex. 2006) (citing *Mitchell*, 269 F.2d at 132).

B. The State Defendants Cannot Reasonably Prepare a Response to the Complaint Because Plaintiffs Fail Entirely to Identify the Factual Basis of their Numerous Claims for Relief.

While the State Defendants believe that much or all of Plaintiffs' Complaint should be dismissed under Federal Rule of Civil Procedure 12(b), should this Court determine otherwise, the State Defendants are still entitled to a more definite statement of Plaintiffs' claims. Plaintiffs' Complaint generally fails to marry factual allegations to the legal theories they assert and the relief that they request, such that the State Defendants are unable to properly frame a responsive pleading. Instead, as is evident from the discussion above, the State Defendants are forced to guess. In short, Plaintiffs fail to make "a short and plain statement of the claim showing that [they are] entitled to relief" in accordance with Federal Rule of Civil Procedure 8(a)(2). The State Defendants' inability to frame a responsive pleading is based on the following specific deficiencies in the Complaint:

1. The Complaint Fails to Specify the Defendant Against Whom Each Claim Is Asserted.

Whereas Count 5 specifically states that "[w]ith regard to State Defendants, the facts set forth above demonstrate a violation of [42 U.S.C. § 1983]," *id.* ¶ 42, each other count contains an identical, generic allegation that "[t]he facts set forth above demonstrate a violation of" the law underlying the specific count. *See id.* ¶¶ 33-40, 43-50. The vagueness of Plaintiffs' claims for relief prevents the State Defendants from determining whether a particular count is directed toward them and, if so, which factual allegations support the claim for relief. *See, e.g.*, *Mason v. County of Orange*, 251 F.R.D. 562, 563 (C.D. Cal. 2008) (granting a motion for more definite statement on the grounds that "each claim for relief in the Complaint generally realleges all the preceeding allegations, regardless of whether those allegations conflict with the claim for relief," and "each claim for relief is alleged against all eleven defendants, regardless of whether the facts

alleged support such an allegation."). Without such information, the State Defendants are unable to answer.

Even Count 5 is insufficient. As noted above, Plaintiffs allege that State Defendants violate 42 U.S.C. § 1983. While that statute is the proper vehicle for asserting ongoing violations of federal law against state officials, here, Plaintiffs fail to specifically identify which federal law the State Defendants are violating. It would be impossible for the State Defendants to answer (in good faith) allegations of a section 1983 violation without knowing which federal law they are allegedly to have violated.

2. The Complaint Fails to Provide Notice to the State Defendants of the Conduct Underlying Plaintiffs' Claims.

The factual allegations of the Complaint fail to provide reasonable notice to the State Defendants of the conduct that form the basis of the Plaintiffs' claims for relief. The Supreme Court has made clear that "a formulaic recitation of the elements of a cause of action" is not sufficient to meet the basic notice pleading standard. *See Twombly*, 550 U.S. at 545. Plaintiffs' Complaint does not provide even that level of detail. The Complaint does not identify, for example, the nature of the duty imposed by the Fourteenth Amendment's Privileges or Immunities Clause, the Fifteenth Amendment, or the Voting Rights Act, nor do Plaintiffs identify the acts by which the State Defendants allegedly violated those provisions. In fact, the Complaint does not identify a single act by any of the State Defendants. As a result, the State Defendants cannot formulate a responsive pleading without guessing what conduct the law required of them and how they might have fallen short.

CONCLUSION

For the foregoing reasons, the State Defendants respectfully request that this Court dismiss Plaintiffs' Complaint, or, in the alternative, order Plaintiffs to make a more definite statement of their claims.

Respectfully Submitted,

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rules 7(h) and 7(i), I certify that I conferred by telephone on 4 May 2011 with Mike Hull, counsel for Plaintiffs, with respect Defendants' motion for a more definite statement. Mr. Hull stated that the Plaintiffs were opposed to the relief requested.

Certified on May 10, 2011.

/s/ David Schenck
DAVID SCHENCK

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent *via* the court's electronic notification system on May 10, 2011, to:

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