

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
EASTERN (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, JACK BERNARD CRUMBLY, DONALD GANT

PLAINTIFFS,

VS. CASE NUMBER: 2:12-cv-0016-JLH  
Three Judge Panel: Smith, Holmes and Wright

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, and DUSTIN MCDANIEL, in his capacity as Attorney General of Arkansas and a member of the Arkansas Board of Apportionment; and THE ARKANSAS BOARD OF APPORTIONMENT

DEFENDANTS.

**Plaintiffs' Brief In Support of its Response to Governor Mike Beebe, Attorney General Dustin McDaniel and the Arkansas Board of Apportionment's Motion to Dismiss**

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief . . ." A 12(b)(6) motion is therefore a test of the sufficiency of the complaint.

The Eighth Circuit Court of Appeals has addressed this issue on numerous occasions and found:

The federal rule that governs pleadings requires only that a complaint be "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). This short and plain statement must provide "fair notice of the plaintiff's claim and grounds for relief." *Smith v. St. Bernards Reg'l Med. Ctr.*, 19 F.3d 1254, 1255 (8th Cir.1994); see also *Bramlet v. Wilson*, 495 F.2d 714, 716 (8th Cir.1974). Furthermore, a court should construe the complaint liberally in the light most favorable to the plaintiff. See *Luney v. SGS Auto. Servs., Inc.*, 432 F.3d 866, 867 (8th Cir. 2005). Nonetheless, the complaint must still provide the defendant with "fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions. . . ." *Bell Atl. Carp. v. Twombly*, 550 U.S. \_\_\_\_, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 (2007) (internal citation omitted) (alteration in original).

See Generally, *Eckert v. Titan Tire Corp.*, 514 F.3d 801 (8th Cir., 2008)(citations contained in the original). The complaint must contain factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

Under this standard, the Plaintiffs have well and sufficiently pled a viable cause of action in both the Original Complaint and the proposed First Amended Complaint filed on February 22, 2012. Therefore, the Motion to Dismiss should be denied.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I, James F. Valley, certify that on February 22, 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, appearing to read "J F Valley".

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James F. Valley