

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.

Response to Governor Mike Beebe, Attorney General Dustin McDaniel
and the Arkansas Board of Apportionment's Motion to Dismiss

The Plaintiffs, through counsel, state, in response to the Rule 12(b)(6) motion to dismiss filed by separate defendants, that the motion should be denied. In support of Plaintiffs' response, they state as follows:

1. That Plaintiffs bring this cause of action against the defendants for its actions in diluting the voting strength of African-Americans in eastern Arkansas in general and State Senate District 24 in particular. This voter dilution violates Section 2 of the

Voting Rights Act, 42 U. S. C. § 1973, and the Fourteenth and Fifteenth Amendments to the U. S. Constitution.

2. This is true because the district as drawn has total black population on only 57.05% and a total black voting age population (“BVAP”) of only 53.88%.
3. That the complaint, as filed on January 23, 2012, sufficiently states a cause of action against the defendants and does not consist of “mere formulaic recitations of the elements under *Thornburg v. Gingles*, 478 U. S. 30, 46 (1986).” (quoting Defendant’s Motion at Paragraph 3).
4. The defendants are attempting to convince this court to apply *Bartlett v. Strickland*, 556 U. S. 1 (2009) to this case when it has absolutely no relation to these facts. *Bartlett v. Strickland* is a threshold case and once the parties cross the threshold of having a simple majority, that case no longer applies. Here all parties agree that there are a sufficient number of African-Americans to comprise a majority in State Senate District 24.
5. While the Board of Apportionment has no “duty” to predict demographic trends, it does have a duty to avoid dilution of the voting strength of the plaintiffs and others and should consider all reasonable things that would impact their voting strength.
6. That the Plaintiffs’ have filed a Motion for Leave to Amend their Complaint. That complaint has with it six (6) exhibits setting with detailed information that would permit a reasonable fact-finder to believe that material fact questions persists in this case.
7. That the Plaintiffs have proposed, in Exhibit 6, to the First Amended Complaint, a map which affects on Districts 23 and 24 and moves people around within those two districts. This map, which meets all of the constitutional requirements, produces a district with a BVAP of 58.41%. The BVAP numbers could be pushed higher and

closer to the ideal 60% mark, however, Plaintiffs used a very conservative approach in creating the new map.

8. Exhibit 6 shows that both district 23 and 24 meet the traditional redistricting guidelines and are well within the ten percent deviation range. District 23 has positive deviation of nearly 2% or about 1600 people and District 24 has a positive deviation of about 1% or roughly 800 people.
9. With the First Amended Complaint and the Exhibits attached to it, the Plaintiffs have narrowed the focus of this litigation to only two (2) of the State's 35 senate districts. A decision in this case, while granting adequate relief to the Plaintiffs, will now only impact State Senate Districts 23 and 24.
10. The original complaint alleged that there is sufficient population of African-Americans in "the Delta" to comprise a majority State Senate District. Complaint Paragraph 30.
11. The complaint alleges that districts with significantly less than 60% BVAP are not sufficient to permit African-American voters to elect a candidate of their choice. Complaint Paragraph 31.
12. It is worth noting that the Incumbent Senator Alvin Simes, was defeated in 2002 to by a white candidate, Steve Higginbotham, in the only race where a white person sought the office of Senator in District 16. Higginbotham's election was made possible by the redistricting efforts employed following the 2000 census which had the net effect of reducing the voting strength of the African-American voters. The 2010 effort has further reduced the voting strength is the reduction is now sufficient enough that the Plaintiffs are compelled to challenge the dilution.
13. The Plaintiffs will not belabor the point by going through each and every averment in the complaint. Suffice it to say, the complaint clearly states a case of action for dilution of voter strength under Section 2 of the Voting Rights Act.

14. This is a case which will turn on expert testimony. The experts will provide information on how well the State Board of Apportionment has complied with the Voting Rights Act or whether, as contended by the Plaintiffs, the Board of Apportionment has produced a map which dilutes the voting strength of the Plaintiffs. Because the Plaintiffs have stated a cause of action under Section 2 of the Voting Rights Act, the motion by separate defendants 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. Valley".

James F. Valley