

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JAMES THOMAS, <i>et al.</i> ,)	
)	
<i>Plaintiffs</i> ,)	
)	
v.)	Case No. 2:21-cv-1531-AMM
)	
JOHN H. MERRILL, in his official)	THREE-JUDGE COURT
capacity as Alabama Secretary of State,)	
<i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**SEN. JIM MCCLENDON AND REP. CHRIS PRINGLE’S
ANSWER TO PLAINTIFFS’ COMPLAINT**

Come now Sen. Jim McClendon and Rep. Chris Pringle, the Senate and House Chairs of the Alabama Permanent Legislative Committee on Reapportionment (“the Reapportionment Committee”), and for their Answer to Plaintiffs’ Complaint (doc. 1), state as follows:

Answer to Numbered Paragraphs

Sen. McClendon and Rep. Pringle (“the Chairs”) and respond as follows to the numbered paragraphs in Plaintiffs’ complaint, and denies each allegation that is not expressly admitted:

1. Admitted that Alabama’s elected officials have made important changes over the past fifty years. Otherwise denied.
2. Denied.

3. Admitted that it is sometimes permissible under current case law to consider race in drawing district lines when necessary to comply with Section 2 of the Voting Rights Act. Otherwise denied.

4. Denied.

5. Denied.

6. The Chairs do not contest this Court's jurisdiction.

7. Admitted that this Court has such authority generally. Denied that Plaintiffs are entitled to such relief.

8. The Chairs do not contest this Court's personal jurisdiction over them.

9. Admitted.

10. The Chairs waive any objection to venue in this District for purposes of challenges to Alabama's 2021 State House and Senate districts.

11. The Chairs lack sufficient information to admit or deny allegations concerning Plaintiff's residence and voter registration status. Otherwise denied.

12. The Chairs lack sufficient information to admit or deny allegations concerning Plaintiff's residence and voter registration status. Otherwise denied.

13. The Chairs lack sufficient information to admit or deny allegations concerning Plaintiff's residence and voter registration status. Otherwise denied.

14. The Chairs lack sufficient information to admit or deny allegations concerning Plaintiff's residence and voter registration status. Otherwise denied.

15. Admitted that GBM describes itself as such. Otherwise, the Chairs lack sufficient information to admit or deny the allegations.

16. The Chairs lack sufficient information to admit or deny the allegation about communications with “members.” Admitted that “GBM actively opposes state laws, policies, and practices that” it contends “result in the exclusion of vulnerable groups or individuals from the democratic process.” Denied that the 2021 House or Senate Plans exclude anyone from the democratic process. Otherwise admitted that GBM describes itself as such.

17. Admitted that GBM calls its donors “members.” The Chairs reserve the right to contest whether GBM has members for purposes of standing. Denied that GBM’s “members” live in unconstitutionally racially gerrymandered districts. The Chairs lack sufficient information to admit or deny the other allegations.

18. Admitted that the Alabama NAACP is the State conference of the National Association for the Advancement of Colored People, Inc. Admitted that the Alabama NAACP is the oldest civil rights organization in Alabama and describes itself as one of the most significant in Alabama. The Chairs lack sufficient information to admit or deny the allegations that the Alabama NAACP works to ensure the political, education, social, economic equality of Black Americans and all other Americans and that the two central goals of the Alabama NAACP are to eliminate racial discrimination in the democratic process and to enforce federal laws

and constitutional provisions securing voting rights. Admitted that the Alabama NAACP works to advance its vision of political, educational, social, and economic equality of Black Americans and all other Americans and that Alabama NAACP regularly engages in efforts to register and educate voters and encourage Black people to engage in the political process by turning out to vote on Election Day. Admitted that the Alabama NAACP has participated in lawsuits regarding voting.

19. Denied that the Alabama NAACP has members who live in unconstitutionally racially gerrymandered districts. The Chairs lack sufficient information to admit or deny the other allegations.

20. Admitted.

21. Admitted.

22. Denied that the Chairs prepared or developed redistricting plans or will prepare or develop redistricting plans if this Court orders the State to redraw the 2021 Senate and House Plans. Otherwise admitted.

23. The first sentence is admitted. The second sentence requires no response.

24. Admitted that six decades ago the Alabama Legislature had failed to redistrict itself and the Supreme Court in *Reynolds v. Sims* declared that Alabama's legislative maps violated the one-person, one-vote requirement.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Denied that many of the unconstitutional districts had Black population shares far higher than necessary. Otherwise admitted.

30. Denied that the remedial plans were used in 2020. Otherwise admitted.

31. Admitted.

32. The constitutional provisions and court decisions speak for themselves, and no response is required to allegations of law. To the extent a response is required, the Chairs admit that the Alabama Constitution requires districts that are contiguous but denies that any “whole-county proviso” continues to apply.

33. Admitted that county delegations have historically played a prominent role in the passage of local laws. Otherwise denied.

34. Admitted.

35. Admitted that plaintiffs have quoted portions of the Guidelines. Otherwise admitted.

36. Admitted.

37. Admitted that Plaintiffs have summarized or paraphrased portions of the Redistricting Guidelines and that the Redistricting Guidelines at (i) require compliance with eight listed criteria. Paragraph 37(e) is denied; the relevant portion

of the Redistricting Guidelines provides that “[e]very part of every district shall be contiguous with every other part of the district.” Further denied that the mere order in which the Redistricting Guidelines present certain redistricting principles indicates a preference for one or some over others.

38. Admitted that Plaintiffs have summarized or paraphrased portions of the Redistricting Guidelines. Denied that the mere order in which the Redistricting Guidelines present certain redistricting principles indicates a preference for one or some over others.

39. Admitted.

40. Admitted that Plaintiffs’ have accurately recounted the results of the 2020 Census listed in this paragraph. The Committee Chairs lack sufficient information to admit or deny the other allegations.

41. Denied. Averred that some preliminary work in redistricting began before the census data were received, however it was not until the week of August 23 that 2020 Census data were in usable form in the Reapportionment Committee’s redistricting system.

42. Admitted.

43. Admitted the Guidelines provide that “[a]ll meetings ... will be open to the public,” and that “[a]ll interested persons are encourages to appear before the Reapportionment Committee and to give their comments and input regarding

legislative redistricting,” and that “[r]easonable opportunity will be given for such persons, consistent with the criteria herein established, to present plans or amendments [to] redistricting plans to the Reapportionment Committee, if desired, unless such plans or amendments fail to meet the minimal criteria herein established.” Otherwise denied.

44. Admitted that between September 1, 2021 and September 15, 2021 the Legislature held 28 public meetings across the State. Admitted that the meetings started between 9 A.M. and 4 P.M., with the exception of a meeting at the Statehouse, which began at 6 P.M. Averred that these meetings were virtually accessible and that persons routinely participated in the hearings virtually. Averred that the public hearings occurred after the Census Bureau released the results of the 2020 Census (thereby making clear what the ideal size of a district is and which districts must gain population and which must lose population) and before any proposed maps were drawn.

45. Admitted that the public hearings allowed the public to have input in the redistricting process, for instance by offering suggestions for how the lines should be drawn. Further admitted that an article on al.com reports: “‘There won’t be any surprises for the candidates or for the voters,’ McClendon said. ‘There will be some changes, obviously, there will have to be as people shift around. But they’ll be recognizable.’” Otherwise denied.

46. Admitted that the Alabama NAACP and GBM sent a letter describing their views of the State's obligations under the law. Otherwise denied.

47. Admitted.

48. Denied that the Reapportionment Committee's first meeting was in October 2021. Admitted that the proposed maps were officially released to the public at the Reapportionment Committee meeting on October 26, 2021. Admitted that Rep. England published the proposed maps on Twitter on day before. Admitted that the Chairs of the Reapportionment Committee and/or the Committee's map drawer met with each incumbent legislator or her or his staff who wanted to meet with them. Averred that, in addition to drawing the Alabama Senate and Alabama House plans, plans for Alabama's Congressional delegation and the State Board of Education all had to be drawn during the same period – after the release of the 2020 Census data and in time to meet various statutory requirements.

49. Admitted, that Mr. Walker has represented the Reapportionment Committee for at least 25 years. Averred that the *Alabama Legislative Black Caucus* decision speaks for itself. Denied that there is any requirement to perform a “racially polarized voting analysis” on each district. Otherwise, the Committee Chairs lack sufficient information to admit or deny the allegations.

50. Admitted and averred that voting on the motion was also along party lines.

51. Admitted. except denied that the lack of a racial polarization study for Congressional District 7 is illustrative or relevant to this proceeding.

52. Admitted.

53. Admitted that Rep. England said the quoted statements. Otherwise denied.

54. Admitted that the plans were passed out of committee and that votes were along racial and party lines.

55. Admitted.

56. Admitted.

57. Admitted.

58. Admitted that the Senate map had an overall population deviation under plus or minus 5%. Admitted that the Senate map contains nineteen split counties. Otherwise, the Committee Chairs sufficient information to admit or deny the allegations.

59. Admitted.

60. The Committee Chairs lack sufficient information to admit or deny the allegations.

61. Admitted.

62. Denied.

63. Admitted that the quoted statements were said. Otherwise denied.

64. Admitted.

65. Denied that no racial polarization analyses were conducted. Admitted that the quoted statements were said. Otherwise admitted.

66. Denied that no racial polarization analyses were conducted. Otherwise admitted.

67. Admitted that the full Senate considered the State Senate map on November 1. Admitted that Sen. McClendon spoke about the need to pass the maps. Otherwise denied.

68. Admitted.

69. Admitted.

70. Admitted.

71. Admitted that the quoted statements were said. Otherwise denied.

72. Admitted.

73. Admitted.

74. The Committee Chairs lack sufficient information to admit or deny these allegations.

75. Admitted that 27 of 28 hearings were held between 9:00 o'clock a.m. and 4 o'clock p.m., and that hearings were closed if there was no one in actual or virtual attendance or if there was no pending question. Denied that such criticisms are valid.

76. Admitted.

77. Admitted that the full Senate considered the State House map the next day. Admitted that the quoted statements were said. Otherwise denied.

78. Admitted.

79. Admitted.

80. Admitted.

81. Admitted.

82. This conclusory paragraph is denied.

83. Admitted that Senate District 7 lies within Madison County. Otherwise denied.

84. Denied.

85. Denied.

86. This conclusory paragraph is denied.

87. This conclusory paragraph is denied.

88. Admitted that Senate District 25 covers parts of Elmore and Montgomery Counties and all of Crenshaw County. Otherwise denied.

89. Denied.

90. Denied.

91. The first sentence is a conclusory allegation, which is denied. With respect to the allegations concerning an “effectiveness analysis” which Plaintiffs have not attached to the complaint or otherwise provided, the Committee Chairs lack

sufficient information to admit or deny the allegations. Averred that “the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not to create such districts for predominantly racial, as opposed to political or traditional, districting motivations.” *Easley v. Cromartie*, 532 U.S. 234, 249 (2001). Otherwise denied.

92. This conclusory paragraph is denied.

93. Admitted that Senate District 33 covers parts of Mobile and Baldwin Counties. Otherwise denied.

94. The first sentence is a conclusory allegation, which is denied. With respect to the allegations concerning an “effectiveness analysis,” which Plaintiffs have not attached to the complaint or otherwise provided, the Committee Chairs lack sufficient information to admit or deny the allegations. Averred that “the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not to create such districts for predominantly racial, as opposed to political or traditional, districting motivations.” *Easley v. Cromartie*, 532 U.S. 234, 249 (2001). Otherwise denied.

95. This conclusory paragraph is denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. The first sentence is a conclusory allegation, which is denied.

Otherwise denied.

101. The first sentence is a conclusory allegation, which is denied.

Otherwise denied.

102. Denied.

103. Denied.

104. The first clause of the first sentence is a conclusory allegation, which is denied. Otherwise denied.

105. This paragraph is conclusory. To the extent that Plaintiffs rely on an “effectiveness analysis,” which Plaintiffs have not attached to the complaint or otherwise provided, the Committee Chairs lack sufficient information to admit or deny the allegations. Averred that “the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not to create such districts for predominantly racial, as opposed to political or traditional, districting motivations.” *Easley v. Cromartie*, 532 U.S. 234, 249 (2001). Otherwise denied.

106. This conclusory paragraph is denied.

107. Denied.

108. This conclusory paragraph is denied.

109. This conclusory paragraph is denied.

110. The first sentence of this paragraph is a conclusory sentence, which is denied. Otherwise denied.

111. Denied.

112. This paragraph is conclusory. To the extent that Plaintiffs rely on an “effectiveness analysis,” which Plaintiffs have not attached to the complaint or otherwise provided, the Committee Chairs lack sufficient information to admit or deny the allegations. Averred that “the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not to create such districts for predominantly racial, as opposed to political or traditional, districting motivations.” *Easley v. Cromartie*, 532 U.S. 234, 249 (2001). Otherwise denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. This conclusory paragraph is denied.

118. This paragraph is conclusory. To the extent that Plaintiffs rely on an “effectiveness analysis,” which Plaintiffs have not attached to the complaint or otherwise provided, the Committee Chairs lack sufficient information to admit or deny the allegations. Averred that “the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not to create such districts for predominantly racial, as opposed to political or traditional, districting motivations.” *Easley v. Cromartie*, 532 U.S. 234, 249 (2001). Otherwise denied.

119. This conclusory paragraph is denied.

120. Denied.

121. Denied.

122. This conclusory paragraph is denied.

123. This paragraph is conclusory. To the extent that Plaintiffs rely on an “effectiveness analysis,” which Plaintiffs have not attached to the complaint or otherwise provided, the Committee Chairs lack sufficient information to admit or deny the allegations. Averred that “the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not to create such districts for predominantly racial, as opposed to political or traditional, districting motivations.” *Easley v. Cromartie*, 532 U.S. 234, 249 (2001). Otherwise denied.

124. This conclusory paragraph is denied.

125. Admitted that the eight districts listed lie within Jefferson County. The final sentence is conclusory and is thus denied. Otherwise denied.

126. Denied.

127. This conclusory paragraph is denied.

128. This conclusory paragraph is denied.

129. Denied.

130. This paragraph is conclusory. To the extent that Plaintiffs rely on an “effectiveness analysis,” which Plaintiffs have not attached to the complaint or otherwise provided, the Committee Chairs lack sufficient information to admit or deny the allegation. Averred that “the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not to create such districts for predominantly racial, as opposed to political or traditional, districting motivations.” *Easley v. Cromartie*, 532 U.S. 234, 249 (2001). Otherwise denied.

131. This conclusory paragraph is denied.

132. Admitted that the six districts exist in whole or in part in Tuscaloosa County and that Districts 63 and 70 exist mostly within the City of Tuscaloosa. Otherwise denied.

133. Denied.

134. Denied.

135. Denied.

136. The first clause of the first sentence is a conclusory allegation, which is thus denied. Otherwise denied.

137. Denied.

138. This paragraph is conclusory. To the extent that Plaintiffs rely on an “effectiveness analysis,” which Plaintiffs have not attached to the complaint or otherwise provided, the Committee Chairs lack sufficient information to admit or deny the allegations. Averred that “the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not to create such districts for predominantly racial, as opposed to political or traditional, districting motivations.” *Easley v. Cromartie*, 532 U.S. 234, 249 (2001). Otherwise denied.

Count I

139. Plaintiffs’ complaint is a disfavored shotgun pleading, which commits the “mortal sin of re-alleging all preceding counts[,]” thereby “causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.” *Weiland v. Palm Beach Do. Sheriff’s Office*, 792 F.3d 1313, 1322 (11th Cir. 2015). In so doing, Plaintiffs incorporate various allegations concerning House Districts into a Count concerning the Senate Districts. Out of an

abundance of caution, the Committee Chairs adopt and incorporate the foregoing responses as if fully set forth herein.

140. Admitted.

141. Denied.

142. Denied.

143. Denied.

Count II

144. Plaintiffs' complaint is a disfavored shotgun pleading, which commits the "mortal sin of re-alleging all preceding counts[,]” thereby “causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.” *Weiland v. Palm Beach Do. Sheriff's Office*, 792 F.3d 1313, 1322 (11th Cir. 2015). In so doing, Plaintiffs incorporate various allegations concerning Senate Districts and Count One into a Count concerning the House Districts. Out of an abundance of caution, the Committee Chairs adopt and incorporate the foregoing responses as if fully set forth Committee Chairs adopt and incorporate the foregoing responses if fully set forth herein.

145. Admitted.

146. Denied.

147. Denied.

148. Denied.

PRAYER FOR RELIEF: The Committee Chairs deny that Plaintiffs are entitled to any relief.

General Denial

The Committee Chairs deny each and every allegation in Plaintiffs' Complaint that is not expressly admitted above.

Additional Defenses

1. Plaintiffs fail to state a claim upon which relief can be granted.
2. Plaintiffs have failed to file 'a short and plain statement of the claim showing that the pleader is entitled to relief.' *See* FED.R.CIV.P. 8(a)(2).
3. Plaintiffs' complaint includes multiple conclusory allegations without supporting factual allegations showing an entitlement to relief.
4. Plaintiffs have filed a disfavored shotgun remedy.
5. Plaintiffs have no lawful remedy.
6. To the extent Plaintiffs seek relief before the 2022 elections, it would be inequitable to afford them relief so soon before the elections.
7. Plaintiffs seek inappropriate relief, including relief that is not within the Committee Chair's authority to accomplish.
8. The Legislature drew districts without consideration of race and is not guilty of racial gerrymandering.
9. Race did not predominate in the drawing of any challenged district.

10. The challenged districts were drawn in compliance with traditional districting criteria.

11. Plaintiffs' complaints about the timing of the redistricting process are attributable to the Census Bureau's considerable delays in delivering districting data as statutorily required as well as the need to draw not only the House and Senate maps but also a Congressional map and a map for the State Board of Education, and to do so as soon as possible given 2022 election deadlines.

12. The relief Plaintiffs request is against the public interest.

13. Alabama neither "cracked" nor "packed" minority voters in its state legislative districts.

14. Plaintiffs do not have a legal injury with respect to any claim related to county-splitting.

15. This Court lacks jurisdiction to require the State to comply with the Alabama Constitution.

16. This Court lacks jurisdiction to require the State to comply with the Redistricting Guidelines.

17. "[T]he Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority. It simply imposes an obligation not to create such districts for

predominantly racial, as opposed to political or traditional, districting motivations.”

Easley v. Cromartie, 532 U.S. 234, 249 (2001).

Respectfully submitted this 21st of January, 2022.

/s/ Dorman Walker
Counsel for Sen. McClendon
and Rep. Pringle

CERTIFICATE OF SERVICE

On January 21, 2022, I electronically filed the foregoing notice with the Clerk of the Court using the CM/ECF system, who will send notice to all counsel of record.

/s/ Dorman Walker
Of Counsel