

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

JAMES THOMAS, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 JOHN H. MERRILL, in his official)
 capacity as Alabama Secretary of State,)
 et al.,)
)
 Defendants.)

Case No. 2:21-cv-1531-AMM

THREE-JUDGE COURT

SECRETARY OF STATE’S ANSWER TO PLAINTIFFS’ COMPLAINT

State Defendant John Merrill, Alabama Secretary of State, for his Answer to Plaintiffs’ Complaint (doc. 1), states as follows:

Answer to Numbered Paragraphs

- 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. State Defendant does not contest this Court's jurisdiction.

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

8. State Defendant does not contest this Court's personal jurisdiction over him.

9. Admitted.

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

11. State Defendant lacks sufficient information to admit or deny allegations concerning Plaintiff's residence and voter registration status and thus denies. Otherwise denied.

12. State Defendant lacks sufficient information to admit or deny allegations concerning Plaintiff's residence and voter registration status and thus denies. Otherwise denied.

13. State Defendant lacks sufficient information to admit or deny allegations concerning Plaintiff's residence and voter registration status and thus denies. Otherwise denied.

14. State Defendant lacks sufficient information to admit or deny allegations concerning Plaintiff's residence and voter registration status and thus denies. Otherwise denied.

15. Admitted that GBM describes itself as such. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

16. State Defendant lacks sufficient information to admit or deny the allegation about communications with “members” and thus denies. 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.” State Defendant reserves the right to contest whether GBM has members for purposes of standing. Denied that GBM’s “members” live in unconstitutionally racially gerrymandered districts. State Defendant lacks sufficient information to admit or deny the other allegations and thus denies.

18. Admitted that the Alabama NAACP is the Alabama 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. State Defendant lacks 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 and thus denies. 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. State Defendant lacks sufficient information to admit or deny the other allegations and thus denies.

20. Admitted.

21. Admitted.

22. Denied that Defendants Sen. McClendon or Rep. Pringle 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. No response is required to the second sentence.

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

25. Admitted.

26. Admitted that the United States Department of Justice denied preclearance; averred that the letter speaks for itself. Otherwise 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, State Defendant admits 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 Redistricting Guidelines. Otherwise denied.

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. State Defendant lacks sufficient information to admit or deny the other allegations and thus denies.

41. Denied. Averred that some preliminary work on redistricting began before the census data was released.

42. Admitted.

43. Admitted that the Redistricting Guidelines provide that “[a]ll meetings . . . will be open to the public,” that “[a]ll interested persons are encouraged to appear before the Reapportionment Committee and to give their comments and input regarding legislative redistricting, and that “[r]easonable opportunity will be given to such persons, consistent with the criteria herein established, to present plans or amendments [sic] 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 16, 2021 the Legislature held twenty-eight 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 some or all of these meetings were virtually accessible. Averred that the public meetings occurred after the Census Bureau released the results of the 2020 Census (thereby making clear the ideal district population and which districts needed gain or 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 legal obligations. Otherwise denied.

47. Admitted.

48. Denied that the Reapportionment Committee’s first public meeting of the cycle was in October 2021. Admitted that the proposed maps were officially released at the Reapportionment Committee meeting on October 26, 2021. Admitted that Rep. England published the proposed maps on Twitter one day prior. Admitted that the Chairs of the Reapportionment Committee and/or the Committee’s map-drawer met with each incumbent legislator or his or her 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 time period—after the release of Census data and in time to meet various statutory deadlines.

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, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

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

51. Denied that the lack of a racial polarization study for Congressional District 7 is illustrative or relevant to these proceedings. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

52. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

53. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

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

55. Admitted.

56. Admitted.

57. Admitted.

58. Admitted that each Senate district’s population deviation was no more than plus or minus 5% from ideal. Admitted that the Senate map contains nineteen split counties. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

59. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

60. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

61. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

62. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

63. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

64. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

65. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

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. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

68. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

69. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

70. Admitted.

71. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

72. Admitted.

73. Admitted.

74. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

75. State Defendant lacks sufficient information to admit or deny the allegations and thus denies. Denied that any such criticisms are valid.

76. Admitted.

77. Admitted that the full Senate considered the House Map the next day. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

78. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

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. State Defendant lacks sufficient information to add or deny the allegation about the district's BVAP and thus denies.

Otherwise denied.

89. State Defendant lacks sufficient information to add or deny the allegation about the district's BVAP and thus denies. Otherwise 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 State Defendant lacks sufficient information to admit or deny the allegations and thus denies. 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 State Defendant lacks sufficient information to admit or deny the allegations and thus denies. 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 Defendant lacks sufficient information to admit or deny the allegations and thus denies. 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). State Defendant lacks sufficient information to add or deny the allegation about the district’s BVAP and thus denies. Otherwise denied.

106. This conclusory paragraph is denied.

107. State Defendant lacks sufficient information to add or deny the allegation about the districts' BVAP percentages and thus denies. Otherwise denied.

108. State Defendant lacks sufficient information to add or deny the allegations and thus denies. Otherwise denied.

109. This conclusory paragraph is denied.

110. The first clause of the first sentence is a conclusory allegation, 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 Defendant lacks sufficient information to admit or deny the allegations and thus denies. 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. State Defendant lacks sufficient information to add or deny the allegation about the district's BVAP and thus denies. Otherwise, this conclusory paragraph is denied.

114. State Defendant lacks sufficient information to add or deny the allegation about the district's BVAP and thus denies. Otherwise denied.

115. State Defendant lacks sufficient information to add or deny the allegation about the district's BVAP and thus denies. Otherwise 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 Defendant lacks sufficient information to admit or deny the allegations and thus denies. 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. State Defendant lacks sufficient information to add or deny the allegation about the districts' BVAP percentages and thus denies. Otherwise 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 Defendant lacks sufficient information to admit or deny the allegations and thus denies. 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. State Defendant lacks sufficient information to add or deny the allegation about the districts' BVAP percentages and thus denies. 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 Defendant lacks sufficient information to admit or deny the allegations and thus denies. 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. State Defendant lacks sufficient information to add or deny the allegation about the districts’ BVAP percentages and thus denies. 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 Defendant lacks sufficient information to admit or deny the allegations and thus denies. 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.” *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 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, State Defendant adopts and incorporates 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 Cnty. Sheriff's Off.*, 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, State Defendant adopts and incorporates the foregoing responses if fully set forth herein.

145. Admitted.

146. Denied.

147. Denied.

148. Denied.

PRAYER FOR RELIEF: State Defendant denies that Plaintiffs are entitled to any relief.

General Denial

State Defendant denies 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 complaint.
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 Secretary of State'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 that 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).

Done this 21st of January, 2022.

Respectfully submitted,

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Counsel for Secretary of State Merrill

CERTIFICATE OF SERVICE

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

/s/ Benjamin M. Seiss
Counsel for Secretary of State Merrill