

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

v.

**GALVESTON COUNTY, TEXAS,
GALVESTON COUNTY
COMMISSIONERS COURT, and
HONORABLE MARK HENRY, in
his official capacity as Galveston
County Judge,
Defendants.**

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Civ. Action No. 3:22-cv-93

Consolidated into

Civil Action No. 3:22-cv-57

**DEFENDANTS’ ANSWER TO THE USA PLAINTIFF’S
FIRST AMENDED COMPLAINT**

Defendants Galveston County, Texas, County Judge Mark Henry, in his official capacity as Galveston County Judge, and the Galveston County Commissioners Court (collectively “Defendants”) file this Answer to the First Amended Complaint (Dkt. 30 in Civ. Action No. 3:22-cv-93 or “Complaint”) filed by the United States of America (“Plaintiff”).¹

1. Defendants need not respond to the Plaintiff’s recitation of its allegations, and deny the truth of those allegations.
2. Denied.
3. Denied.

¹ The paragraphs here are numbered to correspond with the Complaint paragraphs to which they respond.

4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. The written objections referenced in paragraph 8 speak for themselves.

Defendants admit, as stated in *Petteway, et al. v. Galv. Cnty, et al.*, No. 12-40856, 2013 WL 6634558 (5th Cir. Dec. 17, 2013) that:

- Galveston County sought preclearance from the Department of Justice (“DOJ”) for its County Commissioners, Justice of the Peace and Constable redistricting plans in October 2011,
- only after the County sought preclearance, Cause No. 3:11-cv-00511 (“2011 Redistricting Case”) was filed seeking, in part, an injunction to prevent use of unprecleared maps,
- the County assured the DOJ and the court in the 2011 Redistricting Case that it would not implement any unprecleared maps,
- on November 21, 2011, a temporary restraining order was entered in the 2011 Redistricting Case that a majority of a three-judge panel vacated on December 9, 2011,
- the DOJ did not issue an objection to the submitted plan until March 5, 2012 and, afterward, the County promptly entered into discussions with the DOJ and negotiated a new Commissioner Court plan that was precleared and submitted in the 2011 Redistricting Case,
- despite agreement among the parties about the submitted map, the court in the 2011 Redistricting Case permanently enjoined the County from implementing plans for 2012 elections that were not precleared,
- the Fifth Circuit made clear on appeal that the injunction had no effect on the implementation of the electoral map before or after preclearance, that preclearance had always been an express condition of any election and the County always unequivocally committed itself to that condition, and that the plaintiffs were not prevailing parties because their suit did not materially change any conduct of the County and the plaintiffs did not

benefit from the injunction where the County had already voluntarily, on the record, committed to forbear from making any permanent changes without preclearance as was required by law, and

- (as the 2011 Redistrict Case records show), on remand, the district court entered a take-nothing judgment dismissing plaintiffs' case.

Defendants deny the remaining allegations in this paragraph.

9. Defendants need not respond to the Plaintiff's recitation of its claims, and deny any violation of those claims.

10. Defendants deny that any of the Plaintiff's requested relief is appropriate.

I. Response to Jurisdiction and Venue

11. Admitted.

12. Admitted.

II. Response to Parties

13. Defendants need not respond to statements of law, and deny any violation alleged against them.

14. Admitted.

15. Denied in part: Commissioners may not serve their full, four-year terms. If a vacancy occurs the County Judge appoints someone to fill the vacancy until the next scheduled general election, and not all members vote on all matters at all times. Otherwise, admit.

16. Admitted.

III. Response to Allegations

17. The Census data speaks for itself. Otherwise, denied.

18. The referenced data speaks for itself. Otherwise, denied.

19. Exhibit 1 to the Plaintiff's Complaint has markings unrelated to any commissioner precinct lines, Defendants do not maintain the referenced data, and the referenced data speaks for itself. Therefore, denied.

20. Commissioner Dr. Robin Armstrong was elected to Precinct 4 in 2022. Otherwise, admitted.

21. Admitted.

22. Admit that the Commissioners Court is responsible for adopting County Commissioners, Constables, and Justice of the Peace precincts. Otherwise, denied.

23. Paragraph 23 contains legal argument or assertion that does not require a response. To the extent a response is appropriate here Galveston County was previously required to obtain judicial or administrative preclearance under the VRA before implementing a redistricting plan, and that Galveston County complied with such requirements. Otherwise, denied.

24. The referenced correspondence speaks for itself. Otherwise, denied.

25. The referenced judgment speaks for itself. Otherwise, denied.

26. The referenced correspondence speaks for itself. Defendants incorporate paragraph 8 here. Otherwise, denied.

27. Defendants incorporate paragraph 26 here. Otherwise, denied.

28. Defendants incorporate paragraph 26 here. Otherwise, denied.

29. Defendants incorporate paragraph 8 here. Otherwise, denied.

30. Defendants incorporate paragraph 8 here. Otherwise, denied.

31. Defendants incorporate paragraph 8 here. Otherwise, denied.

32. Defendants incorporate paragraph 8 here. Otherwise, denied.

33. Defendants incorporate paragraph 8 here. Otherwise, denied.

34. Defendants admit that the number of Justice of the Peace and Constable precincts were reduced and consolidated. Otherwise, denied.

35. Denied.

36. Admit.

37. Admit that Cause No. 3:13-cv-308 (“2013 Redistricting Case”) was filed challenging the reduction of Justice of the Peace and Constable precincts, and that on August 31, 2022, the Court ruled that the County’s redistricting was not motivated by discriminatory intent, and entered a final judgment dismissing the plaintiffs’ claims. Otherwise, denied.

38. Admitted.

Response to “The 2021 Redistricting Process”

39. Denied.

40. Admit that the Commissioners Court approved retaining outside redistricting counsel at an April 5, 2021 meeting and that Commissioner Holmes voted against this. Otherwise, denied.

41. Defendants admit that the Commissioners Court did not hold in-person public meetings relating to redistricting between April 6, 2021 and November 11, 2021, and that the proposed maps were available for viewing and public comment online at the Galveston County website between October 29, 2021 and November 12, 2021. Defendants

admit the final commissioners court plan for the 2021 redistricting cycle was adopted on November 12, 2021. Otherwise denied.

42. Admit that prior redistricting cycles did not have similar delayed releases of Census data and delays. For example, prior to the adoption of the 2011 County Commissioners precinct map, there were five public meetings held at different sites across the County.

43. Defendants admit there were no timelines in meeting minutes or agendas during the 2021 redistricting cycle. Otherwise, denied.

44. Admit as to the 2001 redistricting cycle. Defendants cannot admit or deny with respect to the 1991 cycle and therefore deny same.

45. Denied.

46. Defendants deny that Commissioner Holmes was excluded from the redistricting process. Defendants lack sufficient knowledge regarding the alleged statements, and so deny same.

47. Defendants lack sufficient knowledge about what was thought or believed, but admit that Commissioner Holmes met with redistricting counsel on September 20, 2021 and September 23, 2021. Otherwise, denied.

48. Denied.

49. The Map 1 proposal speaks for itself. Otherwise, denied.

50. The Galveston County Commissioners precinct map that was adopted on or about November 12, 2021 (“2021 Redistricting Plan”) speaks for itself. Otherwise, denied.

51. Denied.

52. Denied.

53. The 2021 Redistricting Plan speaks for itself. Otherwise, denied.

54. Denied.

55. The 2021 Redistricting Plan speaks for itself. Otherwise, denied.

56. Admit that the County posted Map Proposals 1 and 2 on its website for public comment on October 29, 2021. Further admit that, as early as November 3, 2021, the map proposals were interactive and included data overlays of voting precincts and municipal boundaries within the County. Otherwise denied.

57. Denied.

58. Denied.

59. Admit that the County has made proposed redistricting plans available for public review and comment once they are created, and did so in the 2021 redistricting cycle.

60. Admit that prior years' public meetings on redistricting have been held at various times of the day, including the evening.

61. Defendants lack sufficient data to admit or deny the specific locations of all public meetings for all prior redistricting cycles. Defendants admit that, in the 2011 redistricting cycle, there were five public meetings held at different sites across the County, Otherwise, denied.

62. Admitted.

63. Admitted.

64. Denied.

65. Admit that the November 12, 2021 meeting was properly noticed under

Texas law and its timing was due to the time constraints imposed by law and the delayed release of Census data in a usable format.

66. Admit the first clause of the sentence, and Defendants lack sufficient information to admit or deny the second clause, so deny same. Admit that the meeting was available via livestream online and that public comment was available prior to the meeting online.

67. Admit that on November 1, 2021, the Texas Secretary of State issued an advisory that informed that Galveston County's Commissioner Precinct redistricting maps had to be adopted by November 13, 2021. The advisory speaks for itself. Otherwise, denied.

68. Denied.

69. As a special Commissioners Court meeting and not a regularly scheduled Commissioners Court meeting, the November 12, 2021 meeting was noticed for and occurred in a courtroom at 174 Calder Road in League City. Otherwise, denied.

70. Denied as written.

71. Defendants lack sufficient information to admit or deny, so deny same.

72. Admit.

73. Defendants lack sufficient information to admit or deny, so deny same.

74. Defendants lack sufficient information to admit or deny, so deny same.

Admit that the County Judge and Commissioners heard public comment without microphones, that the County Judge and Commissioners did not have microphones, that the meeting was recorded and livestreamed, and that members of the public could view

proceedings in an overflow room. Admit that there was construction occurring along the north parking entrance and that the south parking entrance was open.

75. Defendants lack sufficient information to admit or deny the number of people in attendance at the November 12, 2021 meeting. There was an overflow room available for attendees. Otherwise, denied.

76. Defendants lack sufficient information to admit or deny, so deny same. Defendants deny any allegation that community members were unable to hear if they were called on to speak and maintain that every individual who requested to speak was able to do so at the meeting.

77. The recording of the meeting speaks for itself. Admit that no one was removed from the meeting at any time. Otherwise, denied.

78. Denied.

79. The recording of the meeting speaks for itself. Otherwise, denied.

80. The recording of the meeting speaks for itself. Commissioner Holmes refers to two maps in the recording that he purportedly brought to the meeting, but he never “offered” the maps for the Commissioners Court’s consideration nor did he provide them to other commissioners before the meeting, ask to include them on the County website or on the November 12, 2021 agenda, or make a motion for those maps to be considered. Otherwise, denied.

81. The recording of the meeting speaks for itself. Otherwise, denied.

82. Admitted.

83. Admit that there was no discussion about specific changes to Precinct 3.

Otherwise, denied.

84. The referenced post and interview speak for themselves. Otherwise, denied.

85. Exhibit 3 to the Plaintiff's Complaint has markings unrelated to any commissioner precinct lines. Defendants can neither admit nor deny the accuracy of the data referenced, which speaks for itself. Therefore, denied.

86. Admit that between 1998 and the adoption of the 2021 Commissioners Precinct map, Galveston County did not have a single Commissioners coastal precinct and Bolivar Peninsula was not in the same Commissioner precinct as the City of Galveston. Otherwise, denied as written.

87. Denied.

88. Denied.

Response to "The 2021 Commissioners Court Plan Will Have a Discriminatory Result"²

89. Denied.

90. Denied.

91. The Census data speaks for itself. Otherwise, denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied. The referenced correspondence speaks for itself. Defendants incorporate paragraphs 8 and 37 here.

² Defendants deny this allegation.

96. Denied.

97. Denied.

98. Denied. This allegation mischaracterizes the event in question by failing to include important details. Defendants lack sufficient knowledge about policies which the City of Galveston Police Department may or may not have adopted

99. Admit that Hurricane Ike was a devastating storm that sent 110 mile-per-hour winds and 12-to-15-foot storm surges across Galveston Island and the Bolivar Peninsula, impacted virtually all residents of Galveston County, caused hundreds of deaths, destroyed and damaged homes, and caused Galveston Island to close to returning residents for over a week. Defendants further admit that residents of damaged public housing structures were displaced by Hurricane Ike. Defendants lack sufficient knowledge to admit or deny the allegations about the number of public housing units referenced. On information and belief, there was a debate in Galveston City over how to rebuild public housing affected by Hurricane Ike. Otherwise, denied.

100. Denied.

101. The referenced data speaks for itself. Otherwise, denied.

102. The referenced data speaks for itself. Otherwise, denied.

103. The referenced data speaks for itself. Otherwise, denied.

104. The referenced data speaks for itself. Otherwise, denied.

105. The referenced data speaks for itself. Otherwise, denied.

106. Defendants lack sufficient information to admit or deny, so deny same.

107. Admit that one political campaign featured a racial appeal and that the

candidate who used it lost her election. Otherwise, denied.

108. Admit that Ms. Johnson was the incumbent and, as she stated in her deposition, believes the ad “suggests that noncitizens are heavily tattooed gang members and it makes it appear that every Hispanic male or somebody with tattoos is a noncitizen” and that she believes “that is despicable and vile and as well as being a lie.” Further admit that Galveston County voters reelected Ms. Johnson. Otherwise denied.

109. Defendants deny the first sentence. Admit that Precinct 3 before 2021 elected Commissioner Stephen Holmes and his predecessor since 1988. Admit that Black and Latino or Hispanic candidates have been elected to Justice of the Peace, Constable, and other County positions such as District Court Judges. Otherwise, denied.

110. Defendants deny the first sentence. Admit that Dr. Robin Armstrong was appointed as Commissioner of Precinct 4 in 2022 following Commissioner Ken Clark’s death, and that Dr. Armstrong was elected to that position in 2022. Otherwise, denied.

Response to “The 2021 Commissioners Court Plan Was Motivated, at Least in Part, by a Discriminatory Purpose”³

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

³ Defendants deny this allegation.

117. Denied.

IV. Response to Cause of Action

118. Defendants incorporate the above paragraphs.

119. This paragraph contains assertions of law that do not require a response.

Defendants deny any alleged violation.

120. This paragraph contains assertions of law that do not require a response.

Defendants deny any alleged violation.

121. Denied.

122. Denied.

123. Denied.

V. Response to Prayer for Relief

1. Defendants deny that Plaintiff is entitled to any relief and oppose the relief prayed for in paragraphs 1 through 6 of the Prayer for Relief in its Complaint.

DEFENSES

1. Nonjusticiable Political Question. The Plaintiff's claims are barred because they raise nonjusticiable political questions. The consideration of party affiliation in redistricting is not actionable before the Court.

2. Plaintiff requests an unconstitutional racial gerrymander. The relief sought by Plaintiff would result in an unconstitutional racial gerrymander and therefore cannot be granted.

3. Not a violation.

- a. The County Commissioners precincts were drawn without consideration of race. Not considering race in a redistricting plan is not a violation of any of the claims herein.
- b. Any alleged vote dilution is not on account of race or color, and is not a violation of any of the claims herein.
- c. Defendants did not “crack” or “pack” voters based on race in the County Commissioner redistricting plan.
- d. Defendants did not intend to discriminate with the adoption of the 2021 Redistricting Plan.

4. Unconstitutional.

- a. The County Commissioners Precincts proposed amount to an unconstitutional racial gerrymander.
- b. The County Commissioners Precincts proposed violate the one-person, one-vote rule.
- c. The County Commissioners Precincts proposed are inconsistent with traditional districting criteria.
- d. To the extent Section 2 is held to require the plan to be redrawn with consideration of race, or without respect to traditional districting criteria, Section 2 is unconstitutional.
- e. To the extent Section 2 is held to permit a finding of liability without proof of intentional discrimination, Section 2 is unconstitutional.
- f. To the extent Section 2 is held to require a court to assume that polarized voting is evidence of racial bias, Section 2 is unconstitutional.
- g. To the extent Section 2 is held to require a court to assume that a white voter’s support of Republican candidates is evidence of racial bias, Section 2 is unconstitutional.
- h. To the extent Section 2 recognizes the claim(s) asserted herein, or permits the relief sought, it is not proportional and congruent under the United States Constitution.

5. Timing. Complaints about the timing of the redistricting process are attributable to the Census Bureau’s considerable delays in delivering districting data as

statutorily required, and those delays required the Galveston County Commissioners Court to move quickly to comply with State law to timely adopt plans for the 2022 election.

6. No Gingles Preconditions. Plaintiff fails to satisfy the *Thornburg v. Gingles*, 478 U.S. 30 (1986) requirements of cohesion, compactness, and majority bloc voting (i. the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district, ii. the minority group is politically cohesive, and iii. the majority votes sufficiently as a bloc so it can usually defeat the minority group's preferred candidate).

PRAYER

Defendants pray that the Court dismiss the Plaintiff's claims in full. Pursuant to 52 U.S.C. § 10310(e), upon prevailing Defendants may recover their reasonable attorney's fee, reasonable expert fees, and other reasonable litigation expenses as part of the costs. Defendants pray the Court award Defendants their reasonable attorney's fees, expert fees, and costs. Defendants pray for all other relief to which they are entitled.

Respectfully Submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on the 21st day of April, 2023, a true and correct copy of the foregoing was served via email upon all counsel of record.

/s/ Angie Olalde