

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

|                               |   |                                     |
|-------------------------------|---|-------------------------------------|
| ALABAMA LEGISLATIVE           | ) |                                     |
| BLACK CAUCUS, et al.,         | ) |                                     |
|                               | ) |                                     |
| Plaintiffs,                   | ) |                                     |
|                               | ) |                                     |
| v.                            | ) | Civil Action No. 2:12-cv-691-WKW-WC |
|                               | ) | (Three-judge court)                 |
| THE STATE OF ALABAMA, et al., | ) |                                     |
|                               | ) |                                     |
| Defendants.                   | ) |                                     |

**ANSWER**

The State of Alabama and Beth Chapman, in her official capacity as Secretary of State of Alabama, defendants in this action (the “State Defendants”), answer the Complaint as follows:

**SPECIFIC RESPONSES**

1. Paragraph 1 requires no response. To the extent a response is required, the State Defendants deny the allegations of paragraph 1.
2. The State Defendants deny the allegations of paragraph 2.
3. The State Defendants deny the allegations of paragraph 3.
4. The State Defendants deny the allegations of paragraph 4.

5. On information and belief, the State Defendants admit the allegations of paragraph 5.

6. With respect to the allegations of paragraph 6, the State Defendants admit that Mr. Singleton is an African-American resident of Hale County and that he represents Senate District 24 in the Alabama Legislature. The State Defendants deny the remaining allegations in paragraph 6.

7. On information and belief, the State Defendants admit the allegations of paragraph 7.

8. On information and belief, the State Defendants admit the allegations in the first sentence of paragraph 8. The State Defendants deny the remaining allegations of paragraph 8.

9. On information and belief, the State Defendants admit the allegations in the first sentence of paragraph 9. The State Defendants deny the remaining allegations of paragraph 9.

10. On information and belief, the State Defendants admit the allegations in the first sentence of paragraph 10. The State Defendants deny the remaining allegations of paragraph 10.

11. On information and belief, the State Defendants admit the allegations in the first sentence of paragraph 11. The State Defendants deny the remaining allegations of paragraph 11.

12. On information and belief, the State Defendants admit the allegations in the first sentence of paragraph 12. The State Defendants deny the remaining allegations of paragraph 12.

13. With respect to the allegations of paragraph 13, the State Defendants admit that the State of Alabama is sued in its own name and deny the remaining allegations of paragraph 13.

14. The State Defendants admit the allegations of paragraph 14.

15. Paragraph 15 requires no response because the parties cannot create federal jurisdiction by consent. To the extent a response is required, the State Defendants deny that this Court has subject-matter jurisdiction as to the State of Alabama, which is sued in its own name, and deny that this Court has subject-matter jurisdiction to any extent to which the Plaintiffs seek to have this Court instruct, order, or enjoin the State Defendants on how to conform their conduct to state law.

16. With respect to the allegations of paragraph 16, the State Defendants admit that a three-judge court has been properly convened to hear this case.

17. The State Defendants admit the allegations of paragraph 17.

18. The State Defendants deny the allegations of paragraph 18.

19. The State Defendants admit the allegations of paragraph 19.

20. With respect to the allegations of paragraph 20, the State Defendants admit that, in the 2010 statewide elections, the Republicans won a filibuster-proof majority in both houses of the Alabama Legislature. The State Defendants further admit that the Permanent Joint Legislative Committee on Reapportionment, which was appointed consistently with the applicable statute, promulgated Guidelines for Congressional, Legislative, and State Board of Education Redistricting and that the Legislature adopted the redistricting plans set forth in Acts Nos. 2012-602 and 2012-603. The State Defendants deny the remaining allegations of paragraph 20.

21. With respect to the allegations of paragraph 21, the State Defendants admit that, in pertinent part, the Guidelines state:

The goal of redistricting is equality of population of congressional, legislative, and State Board of Education districts as defined below.

## **1. Congressional Districts**

The Apportionment Clause of Article I, Section 2, of the United States Constitution requires that the population of a state's congressional districts in a state be "as nearly equal in population as practicable." Accordingly, Congressional redistricting plans must be as mathematically equal in population as is possible.

## **2. Legislative and State Board of Education Districts**

In accordance with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, legislative and State Board of Education districts will be drawn to achieve "substantial equality of population among the various districts."

a. Any redistricting plan considered by the Reapportionment Committee will comply with all relevant case law regarding the one person, one vote principle of the equal protection clause of the 14th Amendment of the United States Constitution, including but not limited to the cases of *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) *aff'd sub nom Cox v. Larios*, 542 U.S. 947 (2004), and *White v. Regester*, 412 U.S. 755 (1973). When presenting plans to the Reapportionment Committee, proponents should justify deviations from the ideal district population either as a result of the limitations of census geography, or as a result of the promotion of a consistently applied rational state policy.

b. In keeping with subpart a, above, a high priority of every legislative and State Board of Education redistricting plan must be minimizing population

deviations among districts. In order to ensure compliance with the most recent case law in this area and to eliminate the possibility of an invidious discriminatory effect caused by population deviations in a final legislative or State Board of Education redistricting plan, in every redistricting plan submitted to the Reapportionment Committee, individual district populations should not exceed a 2% overall range of population deviation. The Reapportionment Committee will not approve a redistricting plan that does not comply with this requirement.

The State Defendants deny the remaining allegations of paragraph 21.

22. The State Defendants deny the allegations of paragraph 22. The State Defendants further deny that this Court has jurisdiction to direct State officials to follow state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 103–23, 124–25 (1984).

23. The State Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 23 and deny them on that basis.

24. The State Defendants deny the allegations of paragraph 24.

25. The State Defendants deny the allegations of paragraph 25.

26. The State Defendants deny the allegations of paragraph 26.

27. The State Defendants deny the allegations of paragraph 27.

28. With respect to the allegations of paragraph 28, the State Defendants admit that, during Reconstruction, the newly-enfranchised African-American voters supported the Republicans and that, in 1874, the Democrats regained control of state government. The State Defendants state further that the circumstances in 2012 are entirely different from those that prevailed in 1874 and before and deny the remaining allegations.

29. With respect to the allegations of paragraph 29, the State Defendants admit that there was a state constitutional convention in 1901 and that, after the convention, the 1901 Alabama Constitution was adopted. The State Defendants state further that the circumstances in 2012 are entirely different from those that prevailed in the 1890s and in 1901, and they deny the remaining allegations.

30. With respect to the allegations of paragraph 30, the State Defendants admit that, in 1944, the United States Supreme Court declared the all-white primary unconstitutional and that, since 1965, the voter registration and participation rates for African-American citizens of voting age in Alabama have increased substantially. The State Defendants state further that the circumstances in 2012 are entirely different from those that prevailed in 1944 and 1965 and deny the remaining allegations.

31. With respect to the allegations of paragraph 31, the State Defendants admit that, in the 2010 elections, the Republicans gained a majority in both houses of the Alabama Legislature for the first time since 1868 and deny the remaining allegations. The State Defendants state further that, in 2010, a Republican was elected Governor of Alabama, and that, since Reconstruction, Republicans were elected Governor in 1986, 1990, 1994, 2002, and 2006.

32. The State Defendants deny the allegations of paragraph 32.

33. The State Defendants deny the allegations of paragraph 33.

34. The State Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 34 and deny them on that basis.

35. The State Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 35 and deny them on that basis.

36. The State Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 36 and deny them on that basis.

37. The State Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 37 and deny them on that basis.

38. The State Defendants admit that “Plaintiffs do not contend that HB 16 and SB 5 are the best House and Senate plans possible.” The State Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 38 and deny them on that basis.

39. Paragraph 39 is argument to which no response is required. To the extent a response is required, the State Defendants agree that, if relief is required, which they do not concede, the Legislature should be offered the first opportunity to draw new plans, and they deny the remaining allegations of paragraph 39.

40. With respect to the allegations of paragraph 40, the State Defendants admit that the Plaintiffs have correctly quoted a portion of *Reynolds v. Sims*, 377 U.S. 533 (1964), and deny the remaining allegations.

41. With respect to the allegations of paragraph 41, the State Defendants admit that the Plaintiffs have correctly quoted a portion of the Guidelines that the Reapportionment Committee adopted and deny the remaining allegations.

42. The allegations of paragraph 42 are legal argument to which no response is required. To the extent a response is required, the State Defendants deny the allegations of paragraph 42.

43. The allegations of paragraph 43 are legal argument to which no response is required. To the extent a response is required, the State Defendants deny the allegations of paragraph 43.

44. The allegations of paragraph 44 are legal argument to which no response is required. To the extent a response is required, the State Defendants deny the allegations of paragraph 44.

45. The allegations of paragraph 45 are legal argument to which no response is required. To the extent a response is required, the State Defendants deny the allegations of paragraph 45.

46. The State Defendants deny the allegations of paragraph 46.

47. With respect to the allegations of paragraph 47, the State Defendants admit that the provisions of Ala. Const. (Recomp.) art. IX, §§ 198, 199, and 200 are correctly set forth and deny the remaining allegations.

48. The allegations of paragraph 48 are legal argument to which no response is required. To the extent a response is required, the State Defendants deny the allegations of paragraph 48.

49. The allegations of paragraph 49 are legal argument to which no response is required. To the extent a response is required, the State Defendants deny the allegations of paragraph 49.

50. The allegations of paragraph 50 are legal argument to which no response is required. To the extent a response is required, the State Defendants deny the allegations of paragraph 50.

51. The State Defendants deny the allegations of paragraph 51.

52. The State Defendants deny the allegations of paragraph 52.

53. The State Defendants deny the allegations of paragraph 53.

54. The State Defendants deny the allegations of paragraph 54.

55. The State Defendants deny the allegations of paragraph 55.

56. The State Defendants deny the allegations of paragraph 56.

57. The State Defendants deny the allegations of paragraph 57.

58. The State Defendants deny the allegations of paragraph 58.

**PRAYER FOR RELIEF**

The State Defendants deny that the Plaintiffs are entitled to any relief.

**GENERAL DEFENSES**

**FIRST DEFENSE**

This Court lacks jurisdiction to direct State officials to follow state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 103–23, 124–25 (1984).

**SECOND DEFENSE**

The use of an overall range of population deviation of less than 2% in the 2012 Alabama House of Representatives and Senate redistricting plans does not violate constitutional one-person, one-vote standards.

**THIRD DEFENSE**

The Reapportionment Committee’s adoption of Guidelines for the redistricting process that, among other things, call for an overall range of population deviation of less than 2% for legislative redistricting plans was neither arbitrary nor impractical.

**FOURTH DEFENSE**

There is no “whole county” provision in the Constitution of Alabama that applies to the Alabama House of Representatives.

FIFTH DEFENSE

The Constitution of Alabama of 1901 assigns to the Legislature the duty of reconciling the portions of Ala. Const. (Recomp.) art. IX, § 200 which call for the districts in the Alabama Senate to be “as nearly equal to each other in the number of inhabitants as may be” and state that “[n]o county shall be divided between districts.”

SIXTH DEFENSE

If reconciling the portions of Ala. Const. (Recomp.) art. IX, § 200 is not left to the Legislature, how to carry out that reconciliation represents an unsettled question of state law as to which *Pullman* abstention, certification to the Alabama Supreme Court, or both, are warranted. *See Rice v. English*, 835 So. 2d 157, 174 (Ala. 2002) (See, J., dissenting).

SEVENTH DEFENSE

The legislative redistricting plans adopted in Acts Nos. 2012-602 and 2012-603 do not violate Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

EIGHTH DEFENSE

The legislative redistricting plans adopted in Acts Nos. 2012-602 and 2012-603 do not violate the First Amendment to the Constitution of the United States.

NINTH DEFENSE

The legislative redistricting plans adopted in Acts Nos. 2012-602 and 2012-603 do not violate the Fourteenth Amendment to the Constitution of the United States.

TENTH DEFENSE

The legislative redistricting plans adopted in Acts Nos. 2012-602 and 2012-603 do not violate the Fifteenth Amendment to the Constitution of the United States.

ELEVENTH DEFENSE

The legislative redistricting plans adopted in Acts Nos. 2012-602 and 2012-603 comply with Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and have been precleared.

TWELFTH DEFENSE

Plaintiffs cannot overcome the presumption that the legislative redistricting plans adopted in Acts Nos. 2012-602 and 2012-603 were “the result of an honest and good faith effort to construct districts . . . as nearly of equal population as is

practicable.”” *Daly v. Hunt*, 94 F. 3d 1212, 1220 (4th Cir. 2000) (quoting *Reynolds v. Sims*, 377 U.S. 533,577, 84 S. Ct. 1362, 1390 (1963)).

#### THIRTEENTH DEFENSE

Plaintiffs cannot show that the minor population deviations in the legislative redistricting plans adopted in Acts Nos. 2012-602 and 2012-603 “resulted solely from the promotion of an unconstitutional or irrational state policy.” *Montiel v. Davis*, 215 F. Supp. 2d 1279, 1286 (S.D. Ala. 2002) (three-judge court)

#### FOURTEENTH DEFENSE

Plaintiffs cannot show that any alleged “unconstitutional or irrational state policy is the actual reason” for the minor population deviations in the legislative redistricting plans adopted in Acts Nos. 2012-602 and 2012-603. *Montiel v. Davis*, 215 F. Supp. 2d 1279, 1286 (S.D. Ala. 2002) (three-judge court).

#### FIFTEENTH DEFENSE

Plaintiffs cannot show that the minor population deviations in the legislative redistricting plans adopted in Acts Nos. 2012-602 and 2012-603 were not caused by the promotion of legitimate state policies. *Montiel v. Davis*, 215 F. Supp. 2d 1279, 1286 (S.D. Ala. 2002) (three-judge court).

SIXTEENTH DEFENSE

The creation of additional crossover or influence districts is not a valid remedy.

SEVENTEENTH DEFENSE

Any remedy that would favor the interests of African-American voters by diluting the votes in white majority districts would be as unlawful as a remedy that favored the interests of white voters by diluting the votes in black-majority districts.

EIGHTEENTH DEFENSE

Plaintiffs' claims of vote dilution are not cognizable under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973,

NINETEENTH DEFENSE

If Plaintiffs cannot devise a lawful remedy, they have no claim. *Nipper v. Smith*, 39 F. 3d 1494, 1533 (11th Cir. 1994) (*en banc*).

TWENTIETH DEFENSE

Plaintiffs' claims of partisan gerrymandering are nonjusticiable.

TWENTY-FIRST DEFENSE

Plaintiffs' claims of partisan gerrymandering lack merit.

TWENTY-SECOND DEFENSE

Plaintiffs are not entitled to equitable relief because they have unclean hands.

TWENTY-THIRD DEFENSE

The balance of equities does not favor the Plaintiffs, so equitable relief should not be awarded.

TWENTY-FOURTH DEFENSE

The equitable relief sought by the Plaintiffs would not be in, and would disserve, the public interest.

TWENTY-FIFTH DEFENSE

Plaintiffs' claims against the State of Alabama are barred by the Eleventh Amendment and the State's sovereign immunity from suit.

TWENTY-SIXTH DEFENSE

The State Defendants deny any allegation in the Plaintiffs' Complaint that is not expressly admitted above and demand strict proof thereof.

TWENTY-SEVENTH DEFENSE

Without conceding that the plans are in any way legally flawed, if this Court must draw a remedial plan (after having given the Alabama Legislature an

opportunity to draw new plans), any court remedial plan must: (1) be an interim plan; (2) be carefully tailored to the correction of any legal errors found by the Court; and (3) extend no further than necessary to correct such errors.

TWENTY-EIGHTH DEFENSE

Plaintiffs are not entitled to an attorneys' fee, and the State Defendants reserve the right to contest any amount requested.

Date October 26, 2012

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on October 26, 2012, I electronically filed the foregoing Answer with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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