

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

BOBBY SINGLETON, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Case No. 2:21-cv-1291-AMM
)	
WES ALLEN, <i>et al.</i> ,)	THREE-JUDGE COURT
)	
<i>Defendants.</i>)	

**SECRETARY ALLEN’S ANSWER TO PLAINTIFFS’
SECOND AMENDED COMPLAINT**

Defendant Wes Allen, Alabama Secretary of State (“State Defendant”), for his Answer to Plaintiffs’ Second Amended Complaint (doc. 229), states as follows:

Answer to Numbered Paragraphs

1. Admitted that this Court has preliminarily held that Alabama’s 2023 congressional redistricting plan (“2023 Plan”) likely violates Section 2 of the VRA. Admitted that this Court has enjoined the State from using the 2023 Plan for the 2024 elections. Otherwise denied.
2. Denied.
3. Denied.
4. Admitted that State Defendant disagrees with Plaintiffs’ interpretation of the Voting Rights Act. Otherwise denied.

5. State Defendant does not contest that this Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1357. Denied that Section 2 of the VRA creates a substantive right privately enforceable under § 1983. Denied that Section 2 contains a private cause of action.

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

7. State Defendant does not contest venue in this District for purposes of challenges to the 2023 Plan.

8. Admitted.

9. Admitted that Plaintiffs Rodger Smitherman and Eddie Billingsley are black registered voters residing in CD7. Admitted that Smitherman and Billingsley allege that the 2023 Plan violates the VRA and the Constitution. Otherwise denied.

10. Admitted that Plaintiff Leonette Slay is a white registered voter residing in CD6. Admitted that Slay alleges the 2023 Plan violates the VRA and the Constitution. Otherwise denied.

11. Admitted that Plaintiff Bobby Singleton is a black registered voter residing in CD7. Admitted that Singleton alleges the 2023 Plan violates the VRA and the Constitution. Otherwise denied.

12. Admitted that Plaintiffs Darryl Andrews and Andrew Walker are black registered voters residing in CD2. Admitted that Andrews and Walker allege the 2023 Plan violates the VRA and the Constitution. Otherwise denied.

13. Admitted.

14. Admitted that Senator Livingston and Representative Pringle are co-chairs of the Permanent Legislative Committee on Reapportionment. Admitted that Livingston and Pringle are sued in their official capacities. Admitted the third sentence of this paragraph. Otherwise denied.

15. Denied.

16. The two cited Supreme Court cases speak for themselves. Otherwise denied.

17. Denied.

18. Admitted on information and belief that Alabama's Congressional Districts were made up of whole counties until the 1960s. State Defendant lacks sufficient information to admit or deny the remaining allegations in this paragraph and thus denies.

19. The two cited federal decisions speak for themselves. Admitted that the 1964 Plan kept all counties whole. State Defendant lacks sufficient information to admit or deny the remaining allegations in this paragraph and thus denies.

20. The cited decision speaks for itself. Otherwise admitted on information and belief.

21. Admitted.

22. The cited decision speaks for itself. Admitted that seven counties were split in 1992 Congressional plan, and admitted that the plan had one majority-minority district. Otherwise denied.

23. Admitted that the *Wesch v. Hunt* court imposed one of the two proposed plans that “achieve[d] precise population equality among its districts.” *Wesch v. Hunt*, 785 F.Supp. 1491, 1497, 1499 (S.D. Ala. 1992) (three-judge court), *aff’d sub nom. Camp v. Wesch*, 504 U.S. 902 (1992), and *aff’d sub nom. Figures v. Hunt*, 507 U.S. 901 (1993). Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

24. The cited decisions speak for themselves. Admitted that the *Wesch* court used a zero-deviation standard in the 1992 plan. Otherwise denied.

25. Admitted that footnote 9 is an accurate quotation. Denied that the *Wesch* court was guilty of gerrymandering, packing, or other forms of racial discrimination when it adopted a congressional districting plan in 1992, an “agreed-upon plan” in a case where John England, Jr., was among the attorneys and Michael Figures was among the intervening plaintiffs.

26. Denied.

27. Admitted that after the 2000 and 2010 censuses, Alabama was covered by Section 5 of the Voting Rights Act and was therefore required to keep a majority-minority district to avoid retrogression and for preclearance. Otherwise denied.

28. Admitted that Supreme Court precedent permits a State to have minor population deviations in congressional districts if the State can justify each deviation by pointing to an important State interest. Otherwise denied.

29. Admitted.

30. Denied that the *Wesch* court was guilty of a racial gerrymander. Otherwise admitted.

31. Admitted that the Supreme Court held as alleged in a case arising from West Virginia, whose constitution required preserving county boundaries.

32. Admitted that the Supreme Court held minor deviations in congressional districts are permissible if adequately supported by State interests, and admitted that the Court has not set a precise numerical limit on permissible deviations. Otherwise denied.

33. Admitted, although the 1964 plan was declared unconstitutional and the 1965 plan's deviation was approved at a time when map-drawers lacked the tools to draw districts with substantial equality in population.

34. Admitted on information and belief.

35. Admitted on information and belief.

36. Denied that the *Wesch* court was guilty of a racial gerrymander. Otherwise admitted on information and belief.

37. Denied that the *Wesch* court was guilty of a racial gerrymander or that the 2001 congressional map maintained a racial gerrymander. Otherwise admitted on information and belief.

38. Denied that the *Wesch* court was guilty of a racial gerrymander or that the 2001 and 2011 congressional maps maintained a racial gerrymander. Otherwise admitted on information and belief.

39. Denied.

40. Admitted that Plaintiffs initially proposed a plan that had districts with the populations alleged. Otherwise denied.

41. Defendant lacks sufficient information to admit or deny these allegations and thus denies.

42. Admitted that Jefferson County limits the ability to minimize population deviation in a whole county congressional plan. Otherwise denied.

43. Denied.

44. Admitted that the Legislature's Reapportionment Committee held over two dozen public hearings across Alabama (and made some or all of those hearings virtually) and that citizens presented the whole county plan for consideration at public hearings.

45. Admitted that the whole county plan was introduced in the Legislature and that substitutions were introduced with county splits with lower deviations. Otherwise denied.

46. Denied that the *Wesch* court, 2001 plan, 2011 plan, or 2021 plan were guilty of a racial gerrymander. Admitted that the Legislature rejected Plaintiffs' unconstitutional whole county plan and passed its own plan instead. Admitted that the plan the State adopted had statistics like, or close to, those alleged. Otherwise denied.

47. Admitted that CD7 in the adopted plan retains all or part of 14 counties contained in the 2011 version of CD7, including Sumter, Greene, Hale, Perry, Marengo, Dallas, Wilcox, and Lowndes.

48. Admitted.

49. Admitted.

50. Admitted.

51. Denied.

52. Admitted that the Reapportionment Committee held a hearing. Admitted that various parties proposed various redistricting plans. Otherwise denied.

53. Admitted that Senators Singleton and Smitherman had preferred plans, and admitted that they made those preferences known. Admitted that objections were made to those plans. Otherwise denied.

54. Admitted that the 2023 Plan was enacted. Otherwise denied.

55. Admitted that Jefferson County is split in the 2023 Plan. Second sentence admitted on information and belief. Otherwise denied.

56. Admitted that Alabama law states that the 2023 Plan gives effect to traditional redistricting principles.

57. The statute speaks for itself. Denied the second sentence of this paragraph. Admitted that if Section 2 requires the Legislature to adopt a redistricting plan akin to those preferred by Plaintiffs, then Section 2 is unconstitutional.

58. Denied.

59. Admitted that the Singleton plan is less compact than the 2023 Plan. Admitted that the Singleton plan splits six counties. Otherwise denied.

60. The Singleton plan speaks for itself. Denied that it respects communities of interests better than the 2023 Plan. Admitted that the 2023 Plan places the Black Belt into two districts, the minimum possible.

61. The Singleton plan speaks for itself. Otherwise denied.

62. The Singleton plan speaks for itself. Otherwise denied.

63. The Singleton Plan and the 2023 Plan speak for themselves.

64. Admitted that Jefferson County is not listed in Act 2023-563 as a community of interest. Otherwise denied.

65. Denied.

66. State Defendant denies the first sentence. With respect to sub-paragraphs (a) through (g), State Defendant neither denies nor defends past discrimination in Alabama. Admitted that Republicans gained majorities in the House and Senate in 2010. Otherwise denied.

COUNT I

67. Denied.

68. Denied.

69. The Supreme Court decisions speak for themselves. The paragraph states only legal rules to which no response is required.

70. The Supreme Court decisions speak for themselves. The paragraph states only legal rules to which no response is required.

71. Denied that the *Wesch* court discriminated against black Alabamians and that subsequent Legislatures perpetuated racially gerrymandered district lines. Otherwise denied.

72. Denied.

73. The Supreme Court decision speak for themselves. The paragraph states only legal rules to which no response is required.

74. Defendant lacks sufficient information to admit or deny these allegations.

COUNT II

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

COUNT III

80. Denied.

81. Denied.

82. Denied.

83. 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' Second Amended 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 no lawful remedy.

3. Plaintiffs have no legal entitlement to a whole county plan or to influence districts.

4. Plaintiffs' proposed congressional districts violate the one-person, one-vote rule.

5. Plaintiffs' proposed congressional districts are inconsistent with every traditional districting criteria, except for observing county boundaries, which has no priority over other traditional districting criteria.

6. Plaintiffs' proposed congressional districts fail to properly defer to the Legislature's primary role in the redistricting process.

7. The requested relief would involve an unconstitutional racial gerrymander because they request a map in which racial considerations predominate over traditional redistricting criteria.

8. To the extent Plaintiffs seek relief before the 2024 elections, it would be inequitable to afford them relief so soon before the elections.

9. Plaintiffs seek inappropriate relief, including relief Defendant cannot lawfully provide.

10. The Legislature is not guilty of racial gerrymandering or intentional discrimination.

11. Declining to adopt a plan that is unconstitutional, is a racial gerrymander, ignores traditional districting criteria, and/or is against the public interest is not racial discrimination.

12. Plaintiffs' allegations fail to disentangle race and politics to prove that the Legislature was motivated by race as opposed to partisanship.

13. Section 2, properly construed, does not support a claim for vote dilution based on a challenge to a districting plan.

14. To the extent Section 2 requires Alabama to draw districts with consideration of race, Section 2 is unconstitutional.

15. To the extent Section 2 requires Alabama to draw districts that violate traditional districting criteria, Section 2 is unconstitutional.

16. To the extent Section 2 permits a finding of liability without proof of intentional discrimination, Section 2 is unconstitutional.

17. Alabama neither "cracked" nor "packed" minority voters in its congressional districts.

18. If Section 2 permits the relief Plaintiffs request, or recognizes the claim Plaintiffs assert, Section 2 is not proportional or congruent.

19. Section 2 does not provide a private right of action.

20. Section 2 does not create a substantive right that can be remedied through an action under § 1983.

21. Plaintiffs fail to satisfy the *Gingles* requirements.
22. The totality of the circumstances does not support a claim for vote dilution.
23. Any alleged vote dilution is not on account of race or color.
24. To the extent Section 2 requires a court to assume that polarized voting is evidence of racial bias, Section 2 is unconstitutional.
25. To the extent Section 2 requires a court to assume that a white voter's support of Republican candidates is evidence of racial bias, Section 2 is unconstitutional.
26. To the extent Section 2 requires a court to assume that the State has not acted in good faith when drawing its congressional maps, Section 2 is unconstitutional.
27. To the extent Section 2 requires a court to presume that the State has acted in a way that is uniquely discriminatory compared to other States, Section 2 violates the equal sovereignty principle and so is unconstitutional.

Done this 25th day of July, 2024.

Steve Marshall
Attorney General

s/ Edmund G. LaCour Jr.
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Counsel for Secretary of State Allen

CERTIFICATE OF SERVICE

I certify that on July 25, 2024, 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/ Edmund G. LaCour Jr.
Counsel for Secretary Allen