

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JEFFERSON COUNTY COMMISSION;
PATRICIA NOLAND, *as an individual
and behalf of all others similarly situated*,
and DALE MANUEL, *as an individual and
behalf of all others similarly situated*,

Plaintiffs, and

THORNTON COOPER,

Intervening Plaintiff,

v.

Civil Action No. 2:11-CV-989
(KING, BAILEY, BERGER)

NATALIE E. TENNANT, *in her capacity as
the Secretary of State*; EARL RAY TOMBLIN,
*in his capacity as the Chief Executive Officer
of the State of West Virginia*; JEFFREY
KESSLER, *in his capacity as the Acting
President of the Senate of the West Virginia
Legislature*; and RICHARD THOMPSON, *in
his capacity as the Speaker of the House of
Delegates of the West Virginia Legislature*,

Defendants.

DEFENDANTS' RESPONSE TO ORDER ON REMAND

Defendants,¹ Natalie E. Tennant, in her capacity as the Secretary of State West Virginia; Earl Ray Tomblin, in his capacity as the Chief Executive Officer of the State of West Virginia; Jeffrey Kessler, in his capacity as the President of the Senate of the West Virginia Legislature; and Richard Thompson, in his capacity as the Speaker of the House of Delegates of the West Virginia Legislature, by their respective undersigned Counsel, having conferred among themselves and with counsel for the Plaintiffs, hereby respond to the Order on Remand entered on October 5, 2012 [Doc. 83].

First, Defendants point out that jurisdiction in this Court is founded on 28 U.S.C. § 1331 (general federal question) and § 1343 (federal civil rights). Complaint at ¶ 9 [Doc. 1]. On September 25, 2012, the Supreme Court of the United States found that the federal claims of the Plaintiffs' and the Intervening Plaintiff lacked merit. [Doc. 82] The Supreme Court remanded this case for determination of claims raised by the Plaintiffs and the Intervening Plaintiff arising under the West Virginia Constitution. *Id.* at 8. Obviously, these claims do not arise under any federal law. Nor is it appropriate for this Court to exercise supplemental jurisdiction over the state law claim as “(1) the claim raises a novel or complex

¹The Defendants Secretary of State Natalie E. Tennant and Governor Earl Ray Tomblin continue to regard their presence in the instant litigation as that of nominal parties whose roles with respect to the challenged redistricting legislation are purely ministerial. As previously stated, these Defendants take no position on the substantive merits of the claims advanced by the Plaintiffs. These Defendants agree with the suggestion of the other Defendants that if this Court is not inclined to dismiss the remaining state-law-based claims, that the appropriate state-law questions be certified to the West Virginia Supreme Court of Appeals

issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, [and] (3) the district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c). Consequently, this Court should dismiss the remaining claims to allow them to proceed in State Court.

If the Court is not inclined to dismiss the remaining claim, the Defendants agree that, after a brief opportunity for the parties to supplement the record, the Court certify a question to the Supreme Court of Appeals of West Virginia as to whether the provisions of S.B. 1008 meet the requirements of Article I, Section 4 of the Constitution of West Virginia. With respect to timing, the Defendants propose that the parties be given forty-five (45) days to file any additional supplements to the record and thereafter be given fifteen (15) days to reply to the submission of any other party.

**NATALIE E. TENNANT, in her capacity
as the Secretary of State**

By Counsel

/s/ Thomas Rodd

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**RICHARD THOMPSON, in his capacity
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the West Virginia Legislature**

By Counsel

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**EARL RAY TOMBLIN, in his capacity
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CERTIFICATE OF SERVICE

I, Anthony J. Majestro, do hereby certify that on December 3, 2012, I electronically filed the forgoing **DEFENDANTS' RESPONSE TO ORDER ON REMAND** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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