

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

COMMON CAUSE FLORIDA, et al.,

Plaintiffs,

v.

Case No.: 4:22-cv-109-AW/MAF

CORD BYRD, in his official capacity as
Florida Secretary of State,

Defendant.

_____ /

ANSWER TO SECOND AMENDED COMPLAINT

Defendant Cord Byrd, in his official capacity as Florida Secretary of State, hereby answers the allegations Plaintiffs' Second Amended Complaint. ECF No. [131]. Any allegation that is not specifically admitted or qualified is denied. As to the numbered paragraphs of the Second Amended Complaint:

INTRODUCTION

1. Admitted that the Florida Legislature adopted and the Governor of Florida approved a Congressional redistricting plan. Otherwise, denied.
2. Denied.

PARTIES

3. Without sufficient knowledge and therefore denied.
4. Without sufficient knowledge and therefore denied.
5. Without sufficient knowledge and therefore denied.
6. Without sufficient knowledge and therefore denied.
7. Admitted.

JURISDICTION AND VENUE

8. Admitted.
9. Admitted.
10. Denied that a three-judge panel “must adjudicate.”

FACTUAL ALLEGATIONS

I.

11. Denied.
12. Denied.
13. Without sufficient knowledge and therefore denied.
14. Without sufficient knowledge and therefore denied.
15. Without sufficient knowledge and therefore denied.
16. Without sufficient knowledge and therefore denied.
17. Denied.
18. Admitted.
19. Denied.

20. The first sentence is denied. The referenced bills and cases speak for themselves.

21. The referenced bills and statutes speak for themselves.

22. Denied.

23. The second sentence is denied. The referenced case speaks for itself.

24. Denied.

II.

25. The first sentence is admitted. Otherwise, denied.

26. Admitted that the Florida Legislature enacted and the Governor signed the referenced bill. Otherwise, denied.

27. The referenced case speaks for itself. Otherwise, denied.

28. The referenced statutes speak for themselves. Otherwise, denied.

29. The referenced case speaks for itself. Otherwise, denied.

30. The referenced case speaks for itself. Otherwise, denied.

31. The referenced case speaks for itself. Otherwise, denied.

32. Denied.

33. Florida law speaks for itself. Otherwise, without sufficient knowledge as to the circumstances surrounding each vacancy over a 21-year period and therefore denied.

34. Denied.

35. The last sentence is admitted. Otherwise, denied.

36. Denied.

37. Denied.

38. Denied.

III.

39. The Census Bureau's figures speak for themselves.

40. The Census Bureau's figures speak for themselves.

41. Admitted.

42. Denied.

IV.

43. The first sentence is denied. Otherwise, admitted.

44. The cited provisions speak for themselves.

45. Admitted.

46. Admitted that the Florida Legislature enacted state legislative maps in 2022. Otherwise, denied.

47. Denied.

48. Admitted that the Florida Senate passed SO35C8060 in January 2022. Otherwise, denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Admitted that the former CD-5 ran “for about 200 miles along the northern border of the Florida panhandle.” Otherwise, denied.

54. The cited cases speak for themselves. Otherwise, denied.

55. Admitted that the Governor sought an advisory opinion from the Florida Supreme Court. The request speaks for itself. Otherwise, denied.

56. Denied.

57. Admitted that the Florida Supreme Court declined to issue an advisory opinion. Otherwise, denied.

58. Admitted that the Executive Office of the Governor submitted map P000C0094. Otherwise, denied.

59. Admitted that Mr. Popper testified on February 16, 2022. The record of the subcommittee speaks for itself. Otherwise, denied.

60. Denied.

61. Admitted.

62. Admitted that the statements were made. Otherwise, denied.

63. Admitted that the Florida House passed the referenced bill. Otherwise, denied.

64. Without sufficient knowledge and therefore denied.

65. Admitted that the Florida Senate passed the referenced bill. Otherwise, denied.

66. The Legislative record speaks for itself. Otherwise, denied.

V.

- 67. Admitted that the Governor vetoed the referenced bill. Otherwise, denied.
- 68. Admitted with the exception of the last sentence, which is denied.
- 69. Denied.
- 70. The Legislative record speaks for itself. Otherwise, denied.
- 71. The referenced memorandum speaks for itself. Otherwise, denied.
- 72. The first sentence is admitted. As to the remainder, without sufficient knowledge and therefore denied.
- 73. The Governor's statements speak for themselves. Otherwise, denied.
- 74. Mr. Kelly's statements speak for themselves. Otherwise, denied.
- 75. The Legislative record speaks for itself. Otherwise, denied.
- 76. Admitted that the Legislature passed the referenced map. Otherwise, denied.

VI.

- 77. Denied.
- 78. Denied.
- 79. Denied.

A.

- 80. Denied.
- 81. Denied.

1.

82. Admitted.

83. The referenced case speaks for itself. Otherwise, without sufficient knowledge and therefore denied.

84. The referenced case speaks for itself. Otherwise, denied.

85. The first sentence is denied. The second sentence is admitted.

86. Denied.

87. Without sufficient knowledge and therefore denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

2.

92. Admitted that Val Demings, a Black Democrat, represented CD-10 from 2017 to 2023.

93. Admitted with the exception of the second sentence, which is denied for lack of sufficient knowledge.

94. Denied.

95. The Legislative record speaks for itself. Otherwise, denied.

B.

96. Denied.

97. Without sufficient knowledge and therefore denied.

98. The last sentence is admitted. Otherwise, denied.

99. Denied.

100. Denied.

101. Denied.

C.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

VII.

108. The referenced case speaks for itself.

109. The referenced case speaks for itself.

110. The referenced case speaks for itself.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. The Legislative record speaks for itself. Otherwise, denied.

117. Denied.

118. Denied.

119. The Legislative record speaks for itself. Otherwise, denied.

CLAIMS FOR RELIEF

Count I

120. The Secretary realleges and reincorporates by reference all prior paragraphs of this Answer.

121. Denied.

122. Denied.

123. Denied.

Count II

124. The Secretary realleges and reincorporates by reference all prior paragraphs of this Answer.

125. The referenced case speaks for itself.

126. Denied.

127. Denied.

128. Denied.

PRAYER FOR RELIEF

Having completely and fully answered the Plaintiffs' Second Amended Complaint, the Secretary denies that the Plaintiffs are entitled to relief because the

congressional map at issue complies with the U.S. Constitution and the Florida Constitution.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Second Amended Complaint fails to state a cause of action upon which relief can be granted under the U.S. Constitution's Fourteenth Amendment.

2. Plaintiffs' Second Amended Complaint fails to state a cause of action upon which relief can be granted under the U.S. Constitution's Fifteenth Amendment.

3. Plaintiffs' requested relief is contrary to article I, section 4, clause 1 of the U.S. Constitution, and otherwise contradicts constitutional separation-of-powers and federalism requirements.

4. Some or all of Plaintiffs lack standing to pursue the claims asserted.

5. There is no basis for an award of attorneys' fees or costs to Plaintiffs in this action.

6. Plaintiffs fail to allege any basis upon which injunctive relief would be available from this Court.

7. The Secretary reserves the right to identify additional affirmative defenses.

Dated: February 21, 2023

Respectfully submitted,

Bradley R. McVay (FBN 79034)
Ashley Davis (FBN 48032)
FLORIDA DEPARTMENT OF STATE
R.A. Gray Building
500 S. Bronough Street
Tallahassee, Florida 32399
brad.mcvay@dos.myflorida.com
ashley.davis@dos.myflorida.com
Telephone: (850) 245-6536

/s/ Mohammad O. Jazil
Mohammad O. Jazil (FBN: 72556)
Gary V. Perko (FBN: 855898)
Michael Beato (FBN 1017715)
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIAK
119 South Monroe St., Suite 500
Tallahassee, Florida 32301
mjazil@holtzmanvogel.com
gperko@holtzmanvogel.com
mbeato@holtzmanvogel.com
Telephone: (850) 274-1690

Jason Torchinsky (Va. BN 47481) (D.C.
BN 976033)
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIAK
2300 N Street NW, Suite 643A
Washington, D.C. 20037
jtorchinsky@holtzmanvogel.com
Telephone: (202) 737-8808

Taylor A.R. Meehan (IL BN 6343481)
(Va. BN 97358)
Cameron T. Norris (TN BN 33467) (Va.
BN 91624)*
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard, Suite 700
Arlington, VA 22209

taylor@consovoymccarthy.com
cam@consovoymccarthy.com
Telephone: (703) 243-9423
Counsel for Secretary Byrd

*Admitted *Pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2023, I electronically filed the foregoing with the Clerk of Court by using CM/ECF, which automatically serves all counsel of record for the parties who have appeared.

/s/ Mohammad O. Jazil
Mohammad O. Jazil