

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

LIONEL GUSTAFSON, et al.)	
Plaintiffs,)	
v.)	CIVIL ACTION NO:
)	05-cv-00352-CG-L
ADRIAN JOHNS, et al.)	
Defendants,)	

DEFENDANT-INTERVENORS BARRON AND SANDERS
ANSWER TO THE AMENDED COMPLAINT

Defendant- Intervenors, Lowell Barron and Hank Sanders, through undersigned counsel, respond as follows to the Amended Complaint for Declaratory, Injunctive and Other Relief dated June 27, 2005. The following numbered paragraphs refer to the correspondingly numbered paragraphs in the Complaint.

NATURE OF THE CASE

1. Defendant-Intervenors admit that the plaintiffs seek to challenge the state legislative redistricting plans under Article IV. §2 and the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983. Defendant-Intervenors deny that there are any properly stated claims and deny that Plaintiffs are entitled to any relief.

2. Defendant-Intervenor admits that the Plaintiffs seek declaratory, injunctive, and monetary relief described but deny that they are entitled to any relief.

STATEMENT OF JURISDICTION

3. Defendant-Intervenors admit that Plaintiffs assert claims under the stated sections of the

United States Constitution and the United States Code but deny that the claims are meritorious and that Plaintiffs are entitled to the relief requested.

4. Admitted that this Court has jurisdiction of the allegations in the complaint under 28 U.S.C. §§ 1331 and 1343, but the other statutes cited do not provide jurisdiction of actions in federal district court.

5. Admitted that venue in this Court is provided by 28 U.S.C. § 1391(b).

6. Defendant-Intervenors contend that this cause may be disposed of by a single judge. Contemporaneous motions are being filed in support of this contention.

7. Defendant-Intervenors are without knowledge of these matters.

PARTIES

8. Defendant-Intervenors admit that Alabama House District 95 had a population deviation of 4.788% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

9. Defendant-Intervenors admit that Alabama House District 95 had a population deviation of 4.788% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

10. Defendant-Intervenors admit that Alabama Senate District 22 had a population deviation of 4.127% according the 2000 Census as relied upon in Act 2001-727 redistricting the Alabama Senate. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

11. Defendant-Intervenors admit that Alabama Senate District 7 had a population deviation of 4.409% according the 2000 Census as relied upon in Act 2001-727 redistricting the Alabama Senate. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

12. Defendant-Intervenors admit that Alabama Senate District 8 had a population deviation of 4.913% according the 2000 Census as relied upon in Act 2001-727 redistricting the Alabama Senate. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

13. Defendant-Intervenors admit that Alabama Senate District 16 and Alabama House District 47 had population deviations of 4.010% and 4.904% respectively according the 2000 Census as relied upon in Acts 2001-727 and 2001-729 redistricting the Alabama Legislature. Defendant-Intervenors are without sufficient information to admit or deny what if any current

population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

14 Defendant-Intervenors admit that Alabama House District 24 had a population deviation of 4.425% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

15. Defendant-Intervenors admit that Alabama House District 41 had a population deviation of 4.836% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

16. Defendant-Intervenors admit that Alabama Senate District 2 had a population deviation of 4.625% according the 2000 Census as relied upon in Act 2001-727 redistricting the Alabama Senate. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

17. Defendant-Intervenors admit that Alabama House District 18 had a population deviation

of 4.496% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

18. Defendant-Intervenors admit that Alabama House District 15 had a population deviation of 4.644% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

19. Defendant-Intervenors admit that Alabama Senate District 14 and Alabama House District 49 had population deviations of 4.604% and 4.292% respectively according the 2000 Census as relied upon in Acts 2001-727 and 2001-729 redistricting the Alabama Legislature. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

20. Defendant-Intervenors admit that Alabama House District 51 had a population deviation of 4.467% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in

this paragraph are denied.

21. Defendant-Intervenors admit that Alabama House District 43 had a population deviation of 4.944% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

22. Defendant-Intervenors admit that Alabama House District 46 had a population deviation of 4.753% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

23. Defendant-Intervenors admit that Alabama House District 1 had a population deviation of 4.562% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

24. Defendant-Intervenors admit that Alabama House District 27 had a population deviation of 4.352% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or

deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

25. Defendant-Intervenors admit that Alabama House District 79 had a population deviation of 4.385% according the 2000 Census as relied upon in Act 2001-729 redistricting the Alabama House of Representatives. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

26. Defendant-Intervenors admit that Alabama Senate District 3 had a population deviation of 4.887% according the 2000 Census as relied upon in Act 2001-727 redistricting the Alabama Senate. Defendant-Intervenors are without sufficient information to admit or deny what if any current population deviation exists in that legislative district, the party affiliation, residence, gender, or registered voter status of the plaintiff. In all other respects the allegations in this paragraph are denied.

27. Through 93. Defendant-Intervenors believe the Complaint correctly identifies the Probate Judges of all of the Alabama counties and acknowledge they are the official charged with administering elections in their respective counties.

94. Admitted.

95. Denied.

BACKGROUND FACTS

96. Admitted as to the Equal Protection Clause of the Fourteenth Amendment, otherwise

denied.

97. Admitted.

98. Denied. Defendant-Intervenors contend that most of Alabama's large cities increased in population. The allegation is too general to respond to further.

99. The first sentence is too general to respond to and is therefore denied except to admit that some counties, including those listed, showed population increases. The second sentence is too vague and is therefore denied.

100. Defendant-Intervenors believe that it is correct that some counties which are described by some people as being in the "black belt" had a decrease in population. They further believe that the term "black belt" has a variety of meanings and definitions and since none is supplied in this Complaint the allegation is too general to respond to and is therefore denied.

101. The Alabama Legislature was generally aware of population trends, but Defendant-Intervenors respond that the Complaint too vaguely describes the actual trends and therefore the allegation is denied. The Defendant-Intervenors have no knowledge of Governor Siegelman's knowledge on this allegation.

102. Admitted.

103. Admitted, assuming the Exhibits A and B correctly represent the House and Senate plans on file in the Legislative Reapportionment Office.

104. Denied.

105. Denied. The statement is argumentative.

106. Admitted that Act No. 2002-57 redrew Alabama's seven Congressional districts with zero total population deviation according to 2000 census data. Denied that technology allowed the

drawing of Alabama House and Senate districts with zero population deviations in a manner that comported with the laws and Constitutions of Alabama and the United States.

107. Denied. See, *Montiel v. Davis*, 215 F.Supp.2d 1279 (S.D. Ala., 2002)(3-judge court)

108. Admitted.

109. Admitted.

110. Defendant-Intervenors deny that such plans were available in 2001 or have ever been produced.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

COUNT ONE - EQUAL PROTECTION

122. See our responses to paragraphs 1-121 above.

123. Admitted.

124. Admitted.

125. Denied.

126. Accurate as stated but incomplete.

127. Admitted that Defendants are “person[s]” within the scope of 42 U.S.C. § 1983. Defendant Intervenors have no knowledge as to the citizenship status of the plaintiffs and therefore can neither admit nor deny that allegation. The second and third sentences are admitted.

128. Defendant-intervenors are without sufficient information to admit or deny the allegations of this paragraph.

129. Denied.

130. Denied.

131. Denied.

COUNT TWO -PARTISAN GERRYMANDER

132. See our responses to paragraphs 1-131 above.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

COUNT THREE - FIRST AMENDMENT

141. See our responses to paragraphs 1-140 above.

142. Denied.

143. Denied.

144. Denied.

RELIEF REQUESTED

A-J. Defendant-Intervenors deny that plaintiffs are entitled to any of the relief requested.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted including, but not limited to, those reasons set out in the pending motions to dismiss filed by the state defendants and defendant Hammett .

2. This action is barred by the doctrines of claim and issue preclusion, or res judicata and collateral estoppel.

3. All of plaintiffs' claims in this action either explicitly seek to advance the partisan political agenda of the Republican Party, of certain officials of the Republican Party, and of certain office-holders who were elected as Republicans and their supporters, or they are pretexts for that partisan agenda. The Democratic majorities in both houses of the Alabama Legislature openly pursued their legitimate partisan interests in the political and legislative processes leading to redistricting, but they dealt fairly with the Republican minority. In the end, many Republican legislators thought the plans were fair and voted for them. Resort to the courts for the purpose of advancing purely partisan objectives is an abuse of the judicial process.

4. The purely partisan aims of Count One and of the entire complaint present nonjusticiable political claims, or claims for which there is no manageable judicial standard, and this action should be dismissed.

5. Count Two of the complaint explicitly presents a partisan gerrymandering claim, which is either nonjusticiable or for which there is no manageable judicial standard, and it should be dismissed.

6. Count Three of the complaint explicitly presents a partisan gerrymandering claim, which is either nonjusticiable or for which there is no manageable judicial standard, and it should be dismissed.

7. Plaintiffs' claims are also an attack on the democratic and voting rights of black citizens, and the relief sought by the complaint would violate the rights of black citizens of Alabama under the First, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States and under the Voting Rights Acts of 1957 and 1965, as amended, 42 U.S.C. §§ 1971 et seq. Denying black citizens an equal opportunity to participate in the political processes leading to the restructuring of the democratic branches of government and denying black citizens an equal opportunity to elect candidates of their choice are among plaintiff's ultimate unlawful objectives in this action.

8. Plaintiffs' claims are also an attack on the rights of all citizens in Alabama, under the First and Fourteenth Amendments to the Constitution of the United States, to associate politically and to pursue their legitimate interests on an equal basis through the democratic processes leading to the election of members of the Alabama Legislature and through the constitutionally mandated legislative processes leading to redrawing legislative districts.

9. Plaintiffs claims are barred by laches.

10. Plaintiffs lack clean hands and are not entitled to any of the relief they seek.

WHEREFORE, Defendant-intervenors pray that judgment be entered in favor of defendants

and defendant-intervenors and that this action be dismissed.

Respectfully submitted this 12th day of October, 2005.

/s/ Larry Menefee
LARRY T. MENEFE

LARRY T. MENEFE
407 S. McDonough Street
Montgomery, AL 36104
(334) 265-6002
Fax: (334) 832-9476
Bar No: ASB-0745-F35L
lmenefee@knology.net

ROBERT D. SEGALL (SEG003)
SHANNON L. HOLLIDAY (HOL088)
COPELAND, FRANCO, SCREWS & GILL, P.A.
444 South Perry Street
P. O. Box 347
Montgomery, AL 36101-0347
Phone: 334/834-1180
Fax: 334/834-3172
segall@copelandfranco.com
holliday@copelandfranco.com

Attorneys for Defendant Intervenors Lowell Barron and Hank Sanders.

CERTIFICATE OF SERVICE

I certify that on this 12th day of October, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following attorneys:

Mark Montiel
Email: mgmontielpc@aol.com

Anne Ware Lewis
Email: awl@sblaw.net

Frank B. Strickland
Email: FBS@sblaw.net

John J. Park, Jr.

Charles B. Campbell
Email: jpark@ago.state.al.us
Email: ccampbell@ago.state.al.us

Jeffrey M. Sewell
Email: sewellj@jccal.org

Algert S. Agricola, Jr.
Email: aagricola@slatenlaw.com

James U. Blacksher
Email: jblacksher@ns.sympatico.ca

Edward Still
Email: still@votelaw.com

/s/ Larry Menefee
LARRY T. MENEFEE