

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

KHADIDAH STONE, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs</i> ,	)	
	)	
v.	)	Case No. 2:21-cv-1531-AMM
	)	
WES ALLEN, <i>et al.</i> ,	)	
	)	
<i>Defendants</i> .	)	

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

Defendant Wes Allen, Alabama Secretary of State (“State Defendant”), for his Answer to Plaintiffs’ Fourth Amended Complaint (doc. 126), states as follows:

**Answer to Numbered Paragraphs**

1. Admitted that Alabama’s elected officials have made important changes over the past fifty years and that a three-judge court preliminarily enjoined Alabama’s 2023 congressional plan. Otherwise denied.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

7. State Defendant does not contest that this Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1357 because the matters in controversy arise under federal law. Otherwise denied.

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

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

10. Admitted that this case should proceed before a single-judge district court. Denied that Plaintiffs have a private cause of action under the Voting Rights Act or 42 U.S.C. § 1983.

11. State Defendant does not contest this Court's personal jurisdiction over him.

12. State Defendant does not contest venue in this District for purposes of challenges to Alabama's 2021 State Senate districts.

13. Admitted that Plaintiff Khadidah Stone is black and that she is a registered voter in Montgomery in Senate District 26. Otherwise denied.

14. Admitted that Plaintiff Milligan is black and that he lives in Montgomery in Senate District 26. Otherwise denied.

15. Admitted that GBM describes itself as such. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

16. State Defendant lacks sufficient information to admit or deny the allegation about communications with “members” and thus denies. Admitted that “GBM actively opposes state laws, policies, and practices that” it contends “result in the exclusion of vulnerable groups or individuals from the democratic process.” Denied that the 2021 Senate Plan excludes anyone from the democratic process. Otherwise admitted that GMB describes itself as such.

17. Admitted that GBM calls its donors “members.” State Defendant lacks sufficient information to admit or deny allegations concerning GBM’s “members” residence and voter registration status and thus denies. State Defendant reserves the right to contest whether GBM has members for purposes of standing. Denied that GBM’s “members” are denied the opportunity to elect candidates of their choice and live in packed and/or cracked districts. State Defendant lacks sufficient information to admit or deny the other allegations and thus denies.

18. Admitted that the Alabama NAACP is the Alabama conference of the National Association for the Advancement of Colored People, Inc. Admitted that the Alabama NAACP is the oldest civil rights organization in Alabama and describes itself as one of the most significant in Alabama. State Defendant lacks sufficient information to admit or deny the allegations that the Alabama NAACP works to ensure the political, educational, social, economic equality of black Americans and all other Americans and that the two central goals of the Alabama NAACP are to

eliminate racial discrimination in the democratic process and to enforce federal laws and constitutional provisions securing voting rights and thus denies. Admitted that the Alabama NAACP works to advance its vision of political, educational, social, and economic equality of black Americans and all other Americans and that Alabama NAACP regularly engages in efforts to register and educate voters and encourage black people to engage in the political process by turning out to vote on Election Day. Admitted that the Alabama NAACP has participated in lawsuits regarding voting.

19. Admitted that Alabama NAACP is a membership organization. Denied that the Alabama NAACP has members whose voting strength is diluted in violation of the VRA or who lack the opportunity to elect candidates of their choice. State Defendant lacks sufficient information to admit or deny the other allegations and thus denies.

20. Admitted.

21. Admitted.

22. Senator Steve Livingston is no longer a defendant to this action, having been dismissed by this Court on the basis of legislative immunity. Admitted that Defendant Rep. Pringle is sued in his official capacity. Denied that the Alabama Permanent Legislative Committee on Reapportionment “was responsible for the” challenged map, in that the Legislature as a whole passed and the Governor signed

the act that led to the challenged map. Admitted that Rep. Pringle worked on the House redistricting plan and presided over meetings of the Committee as to the House plan, but denied that Rep. Pringle prepared and developed a redistricting plan for the Senate, or that he presided over meetings of the Committee as to the Senate plan. Admitted the third sentence of this paragraph. Denied that Rep. Pringle “led the drawing of the challenged districts” and denied that he had substantive involvement in the drawing of the challenged districts, which are Senate districts. State Defendant lacks sufficient information to admit or deny that Sen. Livingston or Rep. Pringle will likely lead efforts to re-draw the districts if the Court orders the State to do so. For the last sentence of the paragraph, admitted that one of Sen. Livingston’s and Rep. Pringle’s counsel previously stated that Rep. Pringle waived legislative immunity, but otherwise denied.

23. The first sentence is admitted. No response is required to the second sentence.

24. The court decisions speak for themselves. Admitted that the Legislature did not reapportion for 50 years, which led to the Supreme Court’s development of the one-person, one-vote principle. Admitted that Plaintiffs accurately quote the holding of the 1965 decision in *Sims v. Baggett*. Averred that the Supreme Court admonishes that “history did not end in 1965” and that the purpose of the Fifteenth Amendment is “not to punish the past.” *Shelby County v. Holder*, 570 U.S. 529, 552-

53 (2013). Also averred that “past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful.” *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980).

25. Admitted that a three-judge court drew new district lines following the 1970 Census. Averred that “past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful.” *Bolden*, 446 U.S. at 74.

26. Admitted that the United States Department of Justice denied preclearance; averred that the letter and decisions speak for themselves. Otherwise admitted.

27. Admitted that challenges to Alabama’s State House and Senate and Districts following the 1990 census resulted in settlements. Otherwise denied.

28. Denied that many of the districts held to be unconstitutional had black population shares far higher than necessary to enable black voters to elect their candidates of choice. Otherwise admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. The constitutional provisions and court decisions speak for themselves. To the extent a response is required, State Defendant admits that the Alabama Constitution requires districts that are contiguous but denies that any “whole-county proviso” continues to apply.

33. Admitted.

34. Admitted that Plaintiffs have quoted portions of the Redistricting Guidelines. Otherwise denied.

35. Admitted.

36. Admitted that Plaintiffs have summarized or paraphrased portions of the Redistricting Guidelines and that the Redistricting Guidelines at “i” require compliance with eight listed criteria. Paragraph 36(d) is denied; the relevant portion of the Redistricting Guidelines provide that “[e]very part of every district shall be contiguous with every other part of the district.” Further denied that the mere order in which the Redistricting Guidelines present certain redistricting principles indicates a preference for one or some over others.

37. Admitted that Plaintiffs have summarized or paraphrased portions of the Redistricting Guidelines. Admitted that the Court in *Allen* held that “core retention” is not a defense to a Section 2 claim. Denied that the mere order in which the Redistricting Guidelines present certain redistricting principles indicates a preference for one or some over others.

38. Admitted.

39. Admitted that Plaintiffs have accurately recounted the results of the 2020 Census listed in this paragraph. State Defendant lacks sufficient information to admit or deny the other allegations and thus denies.

40. Averred that preliminary work on redistricting began before Census data were released. Admitted that after the Census data were released, Sen. Livingston worked with Senators to develop new Senate districts, and that Rep. Pringle worked with House members to develop new House districts.

41. Admitted.

42. Admitted that the Redistricting Guidelines provide that “[a]ll meetings ... will be open to the public,” that “[a]ll interested persons are encouraged to appear before the Reapportionment Committee and to give their comments and input regarding legislative redistricting, and that “[r]easonable opportunity will be given to such persons, consistent with the criteria herein established, to present plans or amendments [sic] redistricting plans to the Reapportionment Committee, if desired, unless such plans or amendments fail to meet the minimal criteria herein established.” Otherwise denied.

43. Admitted that between September 1, 2021, and September 16, 2021, the Legislature held twenty-eight public meetings across the State. Admitted that the meetings started between 9 A.M. and 4 P.M., with the exception of a meeting at the



Statehouse, which began at 6 P.M. Averred that some or all of these meetings were virtually accessible. Averred that the public meetings occurred after the Census Bureau released the results of the 2020 Census (thereby making clear the ideal district population and which districts needed to gain or lose population) and before any proposed maps were drawn.

44. Admitted that the public hearings allowed the public to have input in the redistricting process, for instance by offering suggestions for how the lines should be drawn. Further admitted that an article on al.com reports: “‘There won’t be any surprises for the candidates or for the voters,’ McClendon said. ‘There will be some changes, obviously, there will have to be as people shift around. But they’ll be recognizable.’” Otherwise denied.

45. Admitted that the Alabama NAACP and GBM sent a letter describing their views of the State’s legal obligations. Otherwise denied.

46. Admitted.

47. Denied that the Reapportionment Committee’s first public meeting of the cycle was in October 2021. Admitted that the proposed maps were officially released at the Reapportionment Committee meeting on October 26, 2021. Admitted that Rep. England published the proposed maps on Twitter one day prior. Admitted that the Chairs of the Reapportionment Committee and/or the Committee’s map-drawer met with each incumbent legislator or his or her staff who wanted to meet

with them. Averred that, in addition to drawing the Alabama Senate and Alabama House plans, plans for Alabama's Congressional delegation and the State Board of Education all had to be drawn during the same time period—after the release of Census data and in time to meet various statutory deadlines.

48. Denied that there is any requirement to perform a “racially polarized voting analysis” on each district. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

49. Admitted and averred that voting on the motion was also along party lines.

50. Denied that the lack of a racial polarization study for Congressional District 7 is illustrative or relevant to these proceedings. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

51. State Defendant lacks sufficient information to admit or deny the other allegations and thus denies.

52. Admitted that the plans were passed out of committee and that votes were along racial lines. Averred that the votes were also along party lines.

53. Admitted.

54. Admitted.

55. Admitted.

56. Admitted that each Senate district's population deviation was no more than plus or minus 5% from ideal. Admitted that the Senate map contains nineteen split counties. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

57. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

58. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

59. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

60. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

61. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

62. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

63. Denied that no racial polarization analyses were conducted. Otherwise admitted.

64. Admitted that the full Senate considered the State Senate map on November 1. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

65. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

66. Admitted.

67. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

68. Admitted.

69. Admitted.

70. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

71. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

72. Admitted that the State Government Committee gave the Senate bill a favorable report. Otherwise denied.

73. Admitted that the full Senate considered the House map the next day. Otherwise, State Defendant lacks sufficient information to admit or deny the other allegations and thus denies.

74. State Defendant lacks sufficient information to admit or deny the other allegations and thus denies.

75. Admitted.

76. Admitted that the House of Representatives approved the State Senate Map. Otherwise denied.

77. Admitted.

78. The court decisions speak for themselves, and no response is required to allegations of law.

79. Denied.

80. Admitted that Senate District 25 covers parts of Elmore and Montgomery counties and all of Crenshaw County. State Defendant lacks sufficient information to admit or deny the allegations about the district's BVAP and thus denies. Otherwise denied.

81. Admitted that District 26 includes much of the City of Montgomery. State Defendant lacks sufficient information to admit or deny the allegation about the district's BVAP and thus denies. Otherwise denied.

82. Denied.

83. Denied.

84. Admitted that Senate District 7 lies within Madison County. Otherwise denied.

85. Denied.

86. Denied.

87. Denied.

88. Admitted that this paragraph describes Plaintiffs' preferred plan. Denied that the plan is lawful and otherwise denied.

89. Admitted that this paragraph describes Plaintiffs' preferred plan. Denied that the plan is lawful and otherwise denied.

90. Admitted that this paragraph describes Plaintiffs' preferred plan. Denied that the plan is lawful and otherwise denied.

91. Admitted that this paragraph describes Plaintiffs' preferred plan. Denied that the plan is lawful and otherwise denied.

92. Admitted that this paragraph describes Plaintiffs' preferred plan. Denied that the plan is lawful and otherwise denied.

93. State Defendant lacks sufficient information to admit or deny the allegations about black citizen-voting age population and thus denies.

94. Admitted that Plaintiffs have quoted a statement from *United States v. Marengo County Commission*. Otherwise denied.

95. The decisions speak for themselves and are mischaracterized by the Plaintiffs. State Defendant denies that racial bias is the cause of the political choices of voters. Otherwise denied.

96. Denied that some white voters voting for Republicans is evidence of ongoing racial discrimination or racism. Otherwise denied.

97. Admitted that Will Barfoot won election in 2018. Otherwise denied. Further denied that Section 2 establishes any right to proportional representation; instead, Section 2 provides “[t]hat nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” 52 U.S.C. § 10301(b). Further denied that racial bias is the cause of the political choices of voters.

98. Averred that only one election has been held using the 2021 Plan’s lines for current Senate District 25. In that election, incumbent Will Barfoot beat Louie Woolbright (Libertarian). Otherwise denied.

99. Admitted that Gregory Cook won election to the Alabama Supreme Court in 2022 and that Sam Givhan won election to the Alabama Senate in 2018. Otherwise denied. Further denied that Section 2 establishes any right to proportional representation; instead, Section 2 provides “[t]hat nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” 52 U.S.C. § 10301(b).

100. Denied that the majority of Alabama voters are making their choices at the polls based on racial bias. Denied that black voters only support black candidates

or that every election shows racial polarization. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations.

101. Admitted that courts have identified at least nine Senate Factors. Denied that the Senate Factors have any force of law or are probative.

102. The decision speaks for itself, and no response is required to allegations of law. Denied that the State Defendant cannot prevail under the totality of the circumstances test even if the *Gingles* factors are established.

103. Denied.

104. Admitted that some courts and the DOJ have so determined. Denied that such decisions evidence ongoing voting discrimination. Averred that the 2011 Congressional Plan was precleared by the Department of Justice and that no federal court held the plan unlawful.

105. The court decisions speak for themselves. Admitted that the Legislature did not reapportion for 50 years, which led to the Supreme Court's development of the one-person, one-vote principle. Admitted that Plaintiffs accurately quote the holding of the 1965 decision in *Sims v. Baggett*. Averred that the Supreme Court admonishes that "history did not end in 1965" and that the purpose of the Fifteenth Amendment is "not to punish the past." *Shelby County*, 570 U.S. at 552-53. Also averred that "past discrimination cannot, in the manner of original sin, condemn



governmental action that is not itself unlawful.” *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980).

106. Admitted that a three-judge court drew new district lines following the 1970 Census. Averred that “past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful.” *Bolden*, 446 U.S. at 74. Otherwise denied.

107. Admitted that the U.S. Attorney General denied preclearance and that a three-judge court rejected Alabama’s proposed interim remedial state maps. The court decision and DOJ letter speak for themselves. Averred that “past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful.” *Id.*

108. Admitted that *Brooks v. Hobbie* describes the procedural history of litigation concerning the State Legislature and says that litigation was resolved based on a consent judgment adopting a plan that was precleared by the Department of Justice. Otherwise denied.

109. Admitted that Plaintiffs ultimately prevailed as to one-third of the districts they challenged.

110. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

111. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

112. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

113. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

114. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

115. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

116. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

117. State Defendant lacks sufficient information to admit or deny the allegations.

118. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

119. Admitted that in 1964 and 1965, Dallas County Sheriff Jim Clark, Alabama state troopers, and vigilantes violently assaulted peaceful black protesters in Selma attempting to gain access to the franchise. Otherwise denied.

120. Admitted except that the State Defendant lacks sufficient information to admit or deny the allegations as to registration in Selma in 1965.

121. Admitted that the referenced website includes a list of at least one hundred objections by the Department of Justice to changes adopted by the State or by county officials or by city officials and also by political parties. Averred that the list is known to contain at least one error in that the second to last objection was actually to a State change, not a Mobile change, and the objection was withdrawn following the Supreme Court's decision in Governor Riley's favor in *Riley v. Kennedy*, 553 U.S. 406 (2008). Admitted that at least sixteen of the objections were to redistricting plans adopted by the State or a county or a city; averred that the last such objection to a redistricting plan adopted by the State was in 1992. Denied that the fact of an objection means "a proposed state or local redistricting plan had the purpose or would have had the effect of diminishing the ability of Black voters to elect their candidates of choice."

122. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

123. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination. Averred that many jurisdictions chose to settle litigation rather than devote resources to fighting it; that the Democratic Attorney General offered some State Defendant jurisdictions assistance with settlement but not litigation; that some of the settlements contained changes to the size of challenged bodies—which were not required by Section 2—as subsequently held in *Holder v. Hall*, 512 U.S. 874 (1994); and that Alabama responded by adopting the changes *via* State law rather than moving to have the judgments undone.

124. Admitted that some of Plaintiffs' counsel reached agreements with local officials in the cited cases and that the court in the *Jones* decision held that a violation occurred based on a sparse recitation of facts. The cases speak for themselves. Denied that *Jones* involved a municipal entity.

125. Admitted that such suits have been filed that alleged racial discrimination. The *Hunter* and *Pleasant Grove* decisions speak for themselves.

126. Admitted that two political subdivisions had been bailed into preclearance review under Section 3 of the Voting Rights Act. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations.

127. Admitted that Plaintiffs have quoted a statement from *Singleton v. Miligan*.

128. Admitted that Alabama requires a candidate in a primary election for federal, state, or county office to receive a majority of votes to proceed directly to the General Election. The first sentence is otherwise denied. State Defendant lacks sufficient information to admit or deny the remaining allegations and thus denies.

129. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

130. Denied.

131. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

132. The *Stout* decision speaks for itself. Admitted that some Alabama school districts remain under desegregation orders. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations.

133. Admitted that the Alabama Constitution contained such language. Averred that it contains such language no longer. Denied that the language is evidence of ongoing discrimination or underlying prejudice.

134. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same or that Alabama has a recent history of racial discrimination.

135. Admitted that some Alabama school districts remain under desegregation orders. The cited decisions speak for themselves. Denied that such decisions are evidence of the “vestiges of segregation” that exist in the present.

136. The cited decisions speak for themselves. Denied that such decisions are evidence of the “vestiges of segregation” that exist in the present.

137. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

138. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

139. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

140. Denied that racial discrimination currently finds expression in employment opportunities. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

141. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

142. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

143. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

144. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

145. Denied that there is ongoing racial discrimination. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

146. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

147. Denied that racial discrimination currently finds expression in the healthcare system. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations.

148. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

149. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

150. Admitted upon information and belief that an investigation was opened.

151. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

152. Denied. Averred that Plaintiffs have mischaracterized a passage from *Milligan*.

153. Denied.

154. Admitted that Plaintiffs have quoted a passage from *Singleton v. Milligan*. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

155. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

156. Admitted that a federal court so found while finding an absence of vote dilution in Alabama. Otherwise, State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

157. Admitted that Plaintiffs have quoted a passage from *Singleton v. Milligan*. Admitted that said ad aired. Denied that it could be understood as a racial appeal.

158. Denied. Further denied that Section 2 establishes any right to proportional representation; instead, Section 2 provides “[t]hat nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” 52 U.S.C. § 10301(b).



159. Admitted that only one member of Alabama's congressional delegation is black. Otherwise denied.

160. Admitted that Justice Adams, Justice Cook, and Justice England were appointed to the Alabama Supreme Court and that they are black. Further admitted that Justice Adams and Justice Cook subsequently won election to the Alabama Supreme Court. Further admitted that Justice Cook and Justice England, both Democrats, lost as part of a Republican takeover of the court. Both Justices lost to Republicans who were white. Admitted that no current statewide officeholder is black and no current statewide officeholder was elected as a Democrat.

161. State Defendant lacks sufficient information to admit or deny the allegations and thus denies.

162. Admitted.

163. Admitted.

164. Denied. Averred that Plaintiffs have mischaracterized a passage from *Singleton v. Milligan*.

165. State Defendant lacks sufficient information to admit or deny the allegations and thus denies. Denied that only black representatives can respond to the particularized needs of black communities.

166. Denied.

167. Denied.

168. The decision speaks for itself, and no response is required to allegations of law.

169. Admitted that seven State Senators are black. Denied that only seven State Senators are the candidate of choice of black voters. Further denied that Section 2 establishes any right to proportional representation; instead, Section 2 provides “[t]hat nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” 52 U.S.C. § 10301(b).

170. State Defendant adopts and incorporates the foregoing responses as if fully set forth herein.

171. Denied.

172. Denied.

173. Denied.

174. State Defendant neither denies nor defends past discrimination in Alabama. Denied that conditions remain the same, that Alabama has a recent history of racial discrimination, and that the totality of the circumstances analysis supports Plaintiffs. Otherwise denied.

175. Denied.

176. 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' 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. The Senate districts that Plaintiffs propose are inconsistent with traditional districting criteria.
4. The Senate districts that Plaintiffs propose fail to properly defer to the Legislature's primary role in the redistricting process.
5. The Senate districts that Plaintiffs propose are not reasonably constructed.
6. The Senate districts that Plaintiffs propose are impermissibly drawn on the basis of race.
7. The relief sought by Plaintiffs would involve an unconstitutional racial gerrymander because it would require racial considerations to predominate over traditional districting criteria.
8. Plaintiffs seek inappropriate relief.

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

10. To the extent that Section 2 requires Alabama to consider race when drawing districts, Section 2 is unconstitutional.

11. Present-day circumstances do not justify a remedy of drawing districts on the basis of race.

12. To the extent that Section 2 requires Alabama to violate traditional districting criteria when drawing districts, Section 2 is unconstitutional.

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

14. Alabama neither “cracked” nor “packed” minority voters in its Senate districts.

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

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

17. Section 2 does not create new federal rights privately enforceable under 42 U.S.C. § 1983.

18. Plaintiffs fail to satisfy the three *Gingles* preconditions.

19. The totality of the circumstances does not support a claim of vote dilution.

20. Plaintiffs fail to allege that black voters in the Montgomery and Huntsville regions are denied access to the political system.

21. Any alleged vote dilution is not on account of race or color.

22. To the extent that Section 2 requires a court to assume that polarized voting is evidence of racial bias in the community, Section 2 is unconstitutional.

23. To the extent that 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.

Done this 27th of February, 2024.

Steve Marshall

*Attorney General*

/s Edmund G. LaCour Jr.

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## CERTIFICATE OF SERVICE

I certify that on February 27, 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

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