

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF INDIANA**  
**HAMMOND DIVISION**

|                           |   |                                |
|---------------------------|---|--------------------------------|
| CITY OF HAMMOND, et al.,  | ) |                                |
|                           | ) |                                |
| Plaintiffs,               | ) | CASE NO. 2:21-cv-00160-PPS-JEM |
|                           | ) |                                |
| vs.                       | ) |                                |
|                           | ) |                                |
| STATE OF INDIANA, INDIANA | ) |                                |
| SECRETARY OF STATE        | ) |                                |
| DIEGO MORALES, in his     | ) |                                |
| official capacity, and    | ) |                                |
| THE LAKE COUNTY           | ) |                                |
| BOARD OF ELECTIONS,       | ) |                                |
|                           | ) |                                |
| Defendants.               | ) |                                |

**DEFENDANT’S, LAKE COUNTY BOARD OF ELECTIONS AND REGISTRATION,**  
**RESPONSE TO PLAINTIFFS’ STATEMENT OF MATERIAL FACTS**

Defendant, Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration (“Election Board”), by counsel, Michael E. Tolbert, of Tolbert & Tolbert, under Local Rule 56-1(b)(2), respectfully submits their Response to Plaintiffs’ Statement of Material Facts as follows:

**I. Corresponding Numbered Responses**

1. McDermott is the Mayor of Hammond, resides in Lake County, Indiana, and is a registered voter in Lake County. (McDermott Aff. ¶¶ 2-4.)

**ANSWER 1: The Election Board does not dispute this fact, but asserts this fact has not been expressly pled against the Election Board. [See attached as Exhibit 1 Election Board’s Answer to Plaintiff’s Second Amended Complaint DKT 62, ¶ 5.]**

2. Fontanez is Hispanic, a member of a minority group, and is a registered voter in Lake County, Indiana. (Fontanez Aff. ¶¶ 2-4.)

**ANSWER 2: The Election Board is without sufficient knowledge to admit or dispute the ethnicity or voting history of Fontanez, but states this fact has not been expressly pled against the Election Board. *Id.* at ¶ 7.**

3. Randolph is an Indiana Senator from Lake County, Indiana, is black, a member of a minority group, resides in Lake County, and is a registered voter in Lake County. (Randolph Aff. ¶¶ 2-5.)

**ANSWER 3: The Election Board does not dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at ¶ 6.**

4. Fontanez, Randolph, and McDermott previously had the right to vote for Lake County Superior Court judges of the county division, and they voted in those elections. (McDermott Aff. ¶ 5; Fontanez Aff. ¶ 5; Randolph Aff. ¶ 6.)

**ANSWER 4: The Election Board is without sufficient knowledge to admit or dispute the voting history of the parties and asserts this fact has not been expressly pled against the Election Board. *Id.* at ¶ 10.**

5. Fontanez, Randolph, and McDermott now only enjoy the lesser voting right of voting whether to retain Superior Court judges appointed by the Governor. (McDermott Aff. ¶ 7; Fontanez Aff. ¶ 6; Randolph Aff. ¶ 7.)

**ANSWER 5: The Election Board is without sufficient knowledge to admit or dispute the voting history of the parties, but asserts this fact has not been expressly pled against the Election Board. *Id.* at ¶ 10.**

6. To vote in a full and open election for Superior Court judges, Fontanez, Randolph, and McDermott would have to move to another county that enjoys full voting rights and register to vote. (McDermott Aff. ¶ 9; Fontanez Aff. ¶ 9; Randolph Aff. ¶ 10.)

**ANSWER 6: The Election Board is without sufficient knowledge to admit or dispute the voting history of the parties, but asserts this fact has not been expressly pled against the Election Board. *Id.* at ¶ 10.**

7. Moving to another county would be an extreme burden and expense for Fontanez, Randolph, and McDermott. (McDermott Aff. ¶ 10; Fontanez Aff. ¶ 10; Randolph Aff. ¶ 11.)

**ANSWER 7: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.***

8. According to 2020 Census data, 193,504 black residents eighteen years of age or older reside in Marion County, Indiana. 2020 Census Data, Race for the Population 18 Years and Over, available at [https://data.census.gov/table?g=0400000US18,18\\$0500000&y=2020&d=DEC+Redistricting+Data+\(PL+94-171\)&tid=DECENNIALPL2020.P3](https://data.census.gov/table?g=0400000US18,18$0500000&y=2020&d=DEC+Redistricting+Data+(PL+94-171)&tid=DECENNIALPL2020.P3). Also attached as Exhibit 10.

**ANSWER 8: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at ¶ 34.**

9. 89,806 black residents eighteen years of age or older reside in Lake County, Indiana. (*Id.*)

**ANSWER 9: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at ¶ 34.**

10. 25,176 black residents eighteen years of age or older reside in St. Joseph County, Indiana. (*Id.*)

**ANSWER 10: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.***

11. The total number of black residents eighteen years of age or older that reside in Lake, Marion, and St. Joseph Counties is 308,486 (193,504 Marion County black residents eighteen years of age or older + 89,806 Lake County black residents eighteen years of age or older + 25,176 St. Joseph County black residents eighteen years of age or older = 308,486). (*Supra* ¶¶ 810.)

**ANSWER 11: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

12. Indiana's total population of black residents eighteen years of age or older is 467,861. (2020 Census Data, Race for the Population 18 Years and Over.)

**ANSWER 12: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

13. 65.94% of Indiana's black residents eighteen years of age or older live in Lake, Marion, and St. Joseph Counties (308,486/467,861=65.94%). (*Supra* ¶¶ 11-12.)

**ANSWER 13: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

14. Indiana's total population of white residents eighteen years of age or older is 4,137,310. (2020 Census Data, Race for the Population 18 Years and Over.)

**ANSWER 14: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

15. Indiana's total population of residents eighteen years of age or older is 5,192,579. (*Id.*)

**ANSWER 15: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

16. 80% of Indiana's residents eighteen years of age or older are white (4,137,310/5,192,579=.79677). (*Supra* ¶¶ 14-15.)

**ANSWER 16: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

17. 20% of Indiana's residents are minorities. (*Supra* ¶ 16.)

**ANSWER 17: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

18. Lake County has a total population of residents eighteen years of age or older of 380,651. (2020 Census Data, Race for the Population 18 Years and Over.)

**ANSWER 18: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

19. Lake County has a total population of white residents eighteen years of age or older of 222,325. (*Id.*)

**ANSWER 19: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

20. Lake County has a total population of non-white residents eighteen years of age or older of 158,326 (380,651 total Lake County residents -222,325 white Lake County residents = 158,326 non-white Lake County residents). (*Supra* ¶¶ 18-19.)

**ANSWER 20: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

21. 41.59% of Lake County residents over the age of eighteen are minorities (158,326 non-white Lake County population /380,651 total Lake County Population. (*Supra* ¶¶ 18, 20.)

**ANSWER 21: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

22. Marion County has a total population of residents eighteen years of age or older of 742,442. (2020 Census Data, Race for the Population 18 Years and Over.)

**ANSWER 22: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

23. Marion County has a total population of white residents eighteen years of age or older of 423,140. (*Id.*)

**ANSWER 23: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

24. Marion County has a total population of non-white residents eighteen years of age or older of 319,302 (742,442 total Marion County residents -423,140 white Marion County residents = 319,302 non-white Marion County residents). (*Supra* ¶¶ 22-23.)

**ANSWER 24: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

25. 44% of Marion County residents over the age of eighteen are minorities (319,302 non-white Marion County population /724,441 total Marion County Population= .44). (*Supra* ¶¶ 22, 24.)

**ANSWER 25: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

26. St. Joseph County has a total population of residents eighteen years of age or older of 210,201. (2020 Census Data, Race for the Population 18 Years and Over.)

**ANSWER 26: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

27. St. Joseph County has a total population of white residents eighteen years of age or older of 157,821. (*Id.*)

**ANSWER 27: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

28. St. Joseph has a total population of non-white residents eighteen years of age or older of 52,380 (210,201 total St. Joseph County residents -157,821 white St. Joseph County residents = 52,380 non-white St. Joseph County residents). (*Supra* ¶¶ 26-27.)

**ANSWER 28: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

29. 24.9% of St. Joseph County residents over the age of eighteen are minorities (52,380 non-white St. Joseph County population /210,201 total St. Joseph County Population=.249). (*Supra* ¶¶ 26, 28.)

**ANSWER 29: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

30. Allen County has a total population of residents eighteen years of age or older of 287,203. (2020 Census Data, Race for the Population 18 Years and Over.)

**ANSWER 30: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

31. Allen County has a total population of white residents eighteen years of age or older of 216,585. (*Id.*)

**ANSWER 31: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

32. Allen has a total population of non-white residents eighteen years of age or older of 70,618 (287,203 total Allen County residents -216,585 white Allen County residents = 70,618 non-white Allen County residents). (*Supra* ¶¶ 30-31.)

**ANSWER 32: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

33. 24.58% of Allen County residents over the age of eighteen are minorities (70,618 non-white Allen County population /287,203 total Allen County Population= .2458). (*Supra* ¶¶ 30, 32.)

**ANSWER 33: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

34. Indiana's total population of white residents eighteen years of age or older is 4,137,310 (*supra* ¶ 14); Lake County has a total population of white residents eighteen years of age or older of 222,325 (*supra* ¶ 14); Marion County has a total population of white residents eighteen years of age or older of 423,140 (*supra* ¶ 23); St. Joseph County has a total population of white residents eighteen years of age or older of 157,821 (*supra* ¶ 27).

**ANSWER 34: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

35. 803,286 white residents over 18 years of age live in Lake, Marion, and St. Joseph Counties (222,325 white residents 18 years of age or older in Lake County + 423,140 white residents 18 years of age or older in Marion County + 157,821 white residents 18 years of age or older in St. Joseph County = 803,286). (*Supra* ¶ 34.)

**ANSWER 35: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

36. 3,334,024 of Indiana's white residents 18 years of age or older live in Counties other than Lake, Marion, St. Joseph Counties (4,137,310 white residents 18 years of age or older in Indiana – 803,286 white residents 18 years of age or older in Lake, Marion, and St. Joseph Counties = 3,334,024). (*Supra* ¶¶ 14, 34-35.)

**ANSWER 36: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

37. 81% of Indiana's white residents reside in Counties other than Lake, Marion, and St. Joseph Counties (3,334,024 white residents in counties other than Lake, Marion, and St.



Joseph Counties/ 4,137,310 Indiana's total population of white residents 18 years of age or older=.8058). (*Supra* ¶¶ 34, 36.)

**ANSWER 37: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

38. Marion County has a voting age population of 742,442, Lake County has a voting age population of 380,651, Allen County has a voting age population of 287,203, Hamilton County has a voting age population of 253,195, and St. Joseph County has a voting age population of 210,201. (2020 Census Data, Race for the Population 18 Years and Over; *supra* ¶ 8.)

**ANSWER 38: The Election Board is without sufficient knowledge to admit or dispute this fact, but asserts this fact has not been expressly pled against the Election Board. *Id.* at pp. 9-10.**

## **II. Additional Material Facts**

39. On May 7, 2021, Plaintiffs, City of Hammond, Thomas McDermott, and Eduardo Fontanez filed a Complaint for Declaratory Judgment and Injunctive Relief (“Complaint”) against the Lake County Judicial Nominating Commission. [See DKT 1, Complaint for Declaratory Judgment and Injunctive Relief.]

40. This case arises out of Plaintiffs’ claim that minority voters in Lake, Marion, and St. Joseph Counties are negatively impacted under the United States Constitution, Indiana Constitution, and the Voting Rights Act because they do not get to vote for Judges in their respective areas. [See DKT 1, pp 1-2.]

41. On December 7, 2021, Plaintiffs filed an Amended Complaint for Declaratory Judgment and Injunctive Relief (“Amended Complaint”) against the Defendants, Lake County Judicial Nominating Commission, State of Indiana, Secretary of State Holly Sullivan (in her

official capacity), and the Election Board. [See DKT 30, Amended Complaint for Declaratory Judgment and Injunctive Relief].

42. The Amended Complaint merely alleged that the Election Board was a local governmental unit that oversees elections in Lake County Indiana and administers the retention votes for Lake County Superior Court judges and nothing else. [See DKT 30 at p. 3].

43. The Amended Complaint alleged no wrongdoing or specific violation of any law by the Election Board. [See DKT 30 at pp. 6-9].

44. On August 17, 2022, a Second Amended Complaint (“Second Amended Complaint”) was filed. [See attached as Exhibit 2, the Corrected Second Amended Complaint, DKT 58]

45. By this time, Lonnie Randolph was added as a named Plaintiff. *Id.*

46. However, the Second Amended Complaint, again, made no specific or direct allegations against the Election Board nor alleged any wrongdoing by the named Defendant. *Id.*

47. The Plaintiffs’ claims are not directed at the Election Board nor is there any evidence offered by the Plaintiffs demonstrating that the Election Board caused them any injury and/or damage to them. [See attached as Exhibit 3 Affidavit of Lonnie Randolph, and also see attached as Exhibit 4 the Affidavit of Eduardo Fontanez.]

**WHEREFORE**, the Defendant, the Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration, asks that this Court accept this Response to Plaintiffs’ Statement of Material Facts and for all other just relief proper in the premises.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on the 10<sup>th</sup> day of August 2023, service of a true, correct and complete copy of the foregoing pleading and/or paper was made upon all counsel of record via the Court's Pacer system and/or via United States first class mail with the proper postage affixed to:

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