

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

CITY OF HAMMOND,)
THOMAS MCDERMOTT, in his official)
and personal capacities, and)
EDUARDO FONTANEZ,)
)
)
Plaintiffs,)

v.)
STATE OF INDIANA, INDIANA)
SECRETARY OF STATE)
DIEGO MORALES, in his official)
capacity, and THE LAKE COUNTY)
BOARD OF ELECTIONS,)
)
)
Defendants.)

Case No. 2:21-cv-00160-PPS-JEM

**STATE DEFENDANTS’ REPLY TO
PLAINTIFFS’ STATEMENT OF ADDITIONAL MATERIAL FACTS**

Defendants, State of Indiana and the Indiana Secretary of State Diego Morales, in his official capacity (hereinafter, “State Defendants”), by counsel, pursuant to N.D. Ind. L.R. 56-1(c)(2), respectfully submit their Reply to Plaintiffs’ Statement of Additional Material Facts.

**Plaintiffs’ Statement of Additional Material Facts
and State Defendants’ Response**

1. Thomas McDermott is a registered voter in Lake County. (Dkt. 84-2 at 1.)

Response #1: For the purposes of summary judgment, State Defendants do not dispute this fact.

2. Eduardo Fontanez is Hispanic, a member of a minority group. (Dkt. 84-3 at 1.)

Response #2: For the purposes of summary judgment, State Defendants do not dispute this fact.

3. Lonnie Randolph is black, a member of a minority group. (Dkt. 84-1 at 1.)

Response #3: For the purposes of summary judgment, State Defendants do not dispute this fact.

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. (Dkt. 84-2 at 1; Dkt. 84-2 at 1; Dkt. 84-1 at 1.)

Response #4: For the purposes of summary judgment, State Defendants do not dispute this fact.

5. Fontanez, Randolph, and McDermott now only enjoy the lesser voting right of voting whether to retain Superior Court judges appointed by the Governor. (Dkt. 84-2 at 1; Dkt. 84-3 at 1; Dkt. 84-1 at 1.)

Response #5: State Defendants state that Fontanez, Randolph, and McDermott, as registered voters and residents of Lake county, enjoy the Lake County Superior Court judicial voting rights as described by Indiana Code chapter 33-33-45 *et seq.* State Defendants dispute these rights are in any way “lesser.”

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. (Dkt. 84-2 at 1-2; Dkt. 84-3 at 1-2; Dkt. 84-1 at 2.)

Response #6: State Defendants dispute that Lake County superior court judge

elections available to Fontanez, Randolph, and McDermott, are other than full and open.

7. Moving to another county would be an extreme burden and expense for Fontanez, Randolph, and McDermott. (Dkt. 84-2 at 2; Dkt. 84-3 at 2; Dkt. 84-1 at 2.)

Response #7: State Defendants dispute the characterization of their burden and expense as being “extreme.”

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). (Dkt. 84-10 at 15.)

Response #8: For the purposes of summary judgment, State Defendants do not dispute this fact.

9. 89,806 black residents eighteen years of age or older reside in Lake County, Indiana. (*Id.* at 14.)

Response #9: For the purposes of summary judgment, State Defendants do not dispute this fact.

10. 25,176 black residents eighteen years of age or older reside in St. Joseph County, Indiana. (*Id.* at 20.)

Response #10: For the purposes of summary judgment, State Defendants do not

dispute this fact.

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* ¶¶ 8-10.)

Response #11: For the purposes of summary judgment, State Defendants do not dispute this fact.

12. Indiana's total population of black residents eighteen years of age or older is 467,861. (Dkt. 84-10 at 3.)

Response #12: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #13: For the purposes of summary judgment, State Defendants do not dispute this fact.

14. Indiana's total population of white residents eighteen years of age or older is 4,137,310. (Dkt. 84-10 at 3.)

Response #14: For the purposes of summary judgment, State Defendants do not dispute this fact.

15. Indiana's total population of residents eighteen years of age or older is

5,192,579. (*Id.*)

Response #15: For the purposes of summary judgment, State Defendants do not dispute this fact.

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

Response #16: For the purposes of summary judgment, State Defendants do not dispute this fact.

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

Response #17: For the purposes of summary judgment, State Defendants do not dispute this fact.

18. Lake County has a total population of residents eighteen years of age or older of 380,651. (Dkt. 84-10 at 14.)

Response #18: For the purposes of summary judgment, State Defendants do not dispute this fact.

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

Response #19: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #20: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #21: For the purposes of summary judgment, State Defendants do not dispute this fact.

22. Marion County has a total population of residents eighteen years of age or older of 742,442. (Dkt. 84-10 at 15.)

Response #22: For the purposes of summary judgment, State Defendants do not dispute this fact.

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

Response #23: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #24: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #25: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #26: For the purposes of summary judgment, State Defendants do not dispute this fact.

27. St. Joseph County has a total population of white residents eighteen years of age or older of 157,821. (Dkt. 84-10 at 20.)

Response #27: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #28: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #29: For the purposes of summary judgment, State Defendants do not dispute this fact.

30. Allen County has a total population of residents eighteen years of age or older of 287,203. (Dkt. 84-10 at 3.)

Response #30: For the purposes of summary judgment, State Defendants do not dispute this fact.

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

Response #31: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #32: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #33: For the purposes of summary judgment, State Defendants do not dispute this fact.

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).

Response #34: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #35: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #36: For the purposes of summary judgment, State Defendants do not dispute this fact.

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.)

Response #37: For the purposes of summary judgment, State Defendants do not dispute this fact.

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. (Dkt. 84-10 at 3, 10, 14, 15.)

Response #38: For the purposes of summary judgment, State Defendants do not dispute this fact.

Respectfully submitted,

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