

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

LIONEL GUSTAFSON et al.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	CIVIL ACTION NO.
	)	1:05-cv-00352-CG-L
ADRIAN JOHNS, et al.,	)	
	)	
Defendants,	)	
	)	
SETH HAMMETT, LOWELL BARRON	)	
and HANK SANDERS,	)	
	)	
Defendants-Intervenors.	)	

**ANSWER OF DEFENDANT-INTERVENOR SETH HAMMETT**

Defendant-intervenor Seth Hammett, through undersigned counsel,  
responds as follows to the amended complaint for declaratory, injunctive, and  
other relief filed June 27, 2005, by plaintiffs Lionel Gustafson et al.(Doc. 9):

**ANSWER**

The following numbered paragraphs refer to the correspondingly numbered

paragraphs in the complaint:

1. Denied that the amended complaint states any claim upon which relief may be granted.

2. Denied that the amended complaint states any claim upon which relief may be granted and denied that plaintiffs are entitled to any of the relief they seek.

3. Denied that the amended complaint states claims upon which relief can be granted under Article IV, § 2 of the Constitution or the First and Fourteenth Amendments. The statutes cited in this paragraph do not provide independent causes of action.

4. Admitted that this Court has jurisdiction of the allegations in the amended 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. Denied that a three-judge court is required in this action, because plaintiffs' claims are barred by the doctrines of claim and issue preclusion and by laches, and the amended complaint does not state a substantial claim for relief.

7. No response is required to this allegation.

8-26. Defendant-intervenor Hammett is without sufficient information to admit or deny the party preference, residence and registered voter status of the

plaintiffs. Denied that the voting strength of any plaintiff is debased or diluted by the current statutory redistricting plans for the Alabama House and Senate.

27-93. Admitted that these persons named as defendants are Judges of Probate for their respective counties.

94. Admitted that Nancy Worley is Secretary of State for Alabama.

95. Denied.

96. Denied that the constitutional mandate of one person, one vote is guaranteed by Article IV, § 2, of the Constitution, whether reference is made either to the Privileges and Immunities Clause, the Interstate Rendition Clause or to the Fugitive Slave Clause. Otherwise, the allegations of this paragraph are admitted.

97. Admitted.

98. Denied.

99. The population changes between the 1990 and 2000 censuses for the listed counties are admitted. The conclusory allegations are denied.

100. Admitted that seven of the twelve counties that lost population between 1990 and 2000 are usually considered to be located in the central and west Black Belt. The conclusory allegations of this paragraph are denied.

101. Admitted that the relatively declining population of the Black Belt

counties during the twentieth century is general knowledge.

102. Admitted.

103. Admitted that the Alabama Senate districts were redrawn statutorily by Act No. 2001-727 and that the House districts were redrawn statutorily by Act No. 2001-729. To the extent that Exhibits A and B duplicate the maps available on the Legislature's web site at [http://www.legislature.state.al.us/senate/senatemaps2001/senate\\_districts\\_2001.pdf](http://www.legislature.state.al.us/senate/senatemaps2001/senate_districts_2001.pdf) and [http://www.legislature.state.al.us/house/housemaps2001/house\\_districts\\_2001.pdf](http://www.legislature.state.al.us/house/housemaps2001/house_districts_2001.pdf), and that the attached tables duplicate the corresponding population data on file in the Legislative Reapportionment Office, the other allegations of this paragraph are admitted.

104. Denied.

105. Denied.

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.

108. Admitted.

109. Admitted.

110. Denied that the alternative plans alleged were available to the Alabama Legislature during the 2001 redistricting process or that such alleged plans have ever been produced.

111. Admitted “that Acts 2001-727 and 2001-729 were the product of the Democratic Legislators’ partisan political objective to design Senate and House plans that would preserve their respective Democratic majorities.” *Montiel v. Davis*, 215 F.Supp.2d 1279, 1283 (S.D. Ala. 2002) (3-judge court) (footnote omitted). Otherwise, the allegations of this paragraph are denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

122. Defendant-intervenor Hammett incorporates by reference herein his responses to the allegations in paragraphs 1-121 above.

123. Admitted that this paragraph accurately quotes the Privileges and Immunities Clause of Article IV, § 2, of the Constitution of the United States. Denied that the Privileges and Immunities Clause or other provisions of the United States Constitution provide citizens the right to vote.

124. Admitted that this paragraph accurately quotes part of the Privileges and Immunities Clause and all of the Due Process and Equal Protection Clauses of § 1 of the Fourteenth Amendment.

125. Denied that this paragraph correctly states the equal population requirements of the Fourteenth Amendment governing the enactment of laws adopting state legislative districts.

126. Denied that this paragraph accurately punctuates 42 U.S.C. § 1983 or that all portions of the quoted excerpt are relevant to this action.

127. Defendant-intervenor Hammett is without sufficient information to admit or deny whether the plaintiffs are citizens of the United States. All other allegations of this paragraph are admitted.

128. Defendant-intervenor Hammett is without sufficient information to admit or deny the allegations of this paragraph.

129. Denied.

130. Denied.

131. Denied.

132. Defendant-intervenor Hammett incorporates by reference herein his responses to the allegations in paragraphs 1-131 above.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

141. Defendant-intervenor Hammett incorporates by reference herein his responses to the allegations in paragraphs 1-140 above.

142. Admitted that the First Amendment provides the rights of freedom of speech and of political association. All other allegations in this paragraph are

denied.

143. Denied.

144. Denied.

Prayer for relief, paragraphs A-J. Admitted that this Court has jurisdiction of the subject matter of this action. Denied that plaintiffs are entitled to any of the relief they seek.

### **AFFIRMATIVE DEFENSES**

1. The amended complaint fails to state a claim upon which relief may be granted.
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 political organization called 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 of the amended 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 amended 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 amended 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 an attack on the democratic and voting rights of black citizens, and the relief sought by the amended 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 plaintiffs' 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-intervenor prays that judgment be entered in favor of defendants and defendant-intervenor and that this action be dismissed.

Respectfully submitted this 30<sup>th</sup> day of September, 2005,

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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 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:

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Respectfully submitted,

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