EXHIBIT A

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

RECEIVED ON
JAN 0 5 2002
BY MARK G. MONTIEL, P.C.

GONZALO FITCH MONTIEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 01-0447-BH-S
	)	
DON DAVIS, et al.,	)	(Three-Judge Court)
	)	
Defendants.	)	

ANSWER OF SECRETARY OF STATE BENNETT AND PROBATE JUDGES DAVIS, JOHNS, ARMSTRONG, PRESNELL, BIGGS, AGERTON, BOOKER, NIELSEN, COOK, ALLISON, HORSLEY, McCOLLUM, AVERY, ISAAC, PRICE, ARMISTEAD, POW, BOLIN, ENGLISH, HOWARD, MENEFEE, WILLIAMSON, ROBERTSON, AND TURNER TO THIRD AMENDED COMPLAINT[1]

James Bennett, in his official capacity as Secretary of State of Alabama, Don Davis, in his official capacity as Probate Judge of Mobile County, Adrian Johns, in his official capacity as Probate Judge of Baldwin County, John Armstrong, in his official capacity as Probate Judge of Washington County, Mary Presnell, in her official capacity as Probate Judge of Clarke County, Otha Lee Biggs, in his official capacity as Probate Judge of Monroe County, Rachel Agerton, in her official capacity as Probate Judge of Escambia County, Rogene Booker, in his official capacity as Probate Judge of Conecuh County, Cindy D. Nielsen, in her official capacity as Probate Judge of Marengo County, Donald R. Cook, in his official capacity as Probate Judge of Perry County, Rick Allison, in his official capacity as Probate Judge of Walker County, Cassandra Horsley, in her official capacity as Probate Judge of Winston County, W. Hardy McCollum, in his official capacity as Probate Judge of Tuscaloosa County, Leland Avery, in his

[1] By separate motion, Steve Windom, who is also named as a defendant in his official capacity as Lieutenant Governor of Alabama, moves to dismiss the claims against him on the ground that he is not a proper party defendant.

official capacity as Probate Judge of Hale County, Earleen Isaac, in her official capacity as Probate Judge of Greene County, Willie Pearl Price, in her official capacity as Probate Judge of Sumter County, Michael Armistead, in his official capacity as Probate Judge of Choctaw County, Jerry Pow, in his official capacity as Probate Judge of Bibb County, Mike Bolin, in his official capacity as Probate Judge of Jefferson County, Bill English, in his official capacity as Probate Judge of Lee County, Albert Howard, in his official capacity as Probate Judge of Russell County, Alfonza Menefee, in his official capacity as Probate Judge of Macon County, Johnny H. Williamson, in his official capacity as Probate Judge of Bullock County, Nancy O. Robertson, in her official capacity as Probate Judge of Barbour County, and Lamar Turner, in his official capacity as Probate Judge of Henry County, defendants in this action (the "State Election Officials" unless otherwise stated), answer the Third Amended Complaint of Plaintiff Gonzalo Montiel ("Montiel"), as follows:[2]

I. AMENDED DESCRIPTION OF THE NATURE OF ACTION[3]

1. Paragraph 1 is a description of the claims made and requires no response. If a response is required, the State Election Officials deny that Montiel is entitled to relief.

II. JURISDICTION AND VENUE

2. Paragraph 2 is a jurisdictional allegation to which no response is required.

3. The State Election Officials admit that venue is proper in this division of this district.

[2] The State Election Officials note that Montiel realleges and incorporates by reference the allegations in his original and First Amended Complaints. The State Election Officials will not respond to such reallegations and incorporations by reference because this Third Amended Complaint is, and should be, a free-standing document. (*See* Doc. No. 61, Dec. 17, 2001).

[3] For ease of reference, the State Election Officials reiterate Montiel's headings. No response to these headings is required, however, so none will be made.

III. THREE-JUDGE COURT

4. The State Election Officials agree that the claims made in this action should be heard by a three-judge federal district court convened pursuant to 28 U.S.C. § 2284. They note further that such a three-judge court has been convened.

IV. ORIGINAL PARTY PLAINTIFF

5. The State Election Officials admit that Montiel is an adult citizen and registered voter who resides in State Senate District 34 and House District 101, as those districts are drawn under Alabama Acts No. 2001-727 and No. 2001-729, respectively, both of which were duly enacted, signed, and precleared. The State Election Officials deny the remaining allegations of paragraph 5.

V. ADDITIONAL PARTY PLAINTIFFS

6. The State Election Officials lack knowledge sufficient to admit or deny the allegations of paragraph 6 and deny them on that basis.

7. The State Election Officials lack knowledge sufficient to admit or deny the allegations of paragraph 7 and deny them on that basis.

8. The State Election Officials lack knowledge sufficient to admit or deny the allegations of paragraph 8 and deny them on that basis.

9. The State Election Officials lack knowledge sufficient to admit or deny the allegations of paragraph 9 and deny them on that basis.

10. The State Election Officials lack knowledge sufficient to admit or deny the allegations of paragraph 10 and deny them on that basis.

VI. ORIGINAL PARTY DEFENDANTS

11. The allegations of paragraph 11 are directed solely at Probate Judge Davis in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 11, Probate Judge Davis admits that he is the Probate Judge of Mobile County and that he is acting under color of state law and denies the remaining allegations.

12. The allegations of paragraph 12 are directed solely at Probate Judge Johns in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 12, Probate Judge Johns admits that he is Probate Judge of Baldwin County and that he is acting under color of state law and denies the remaining allegations.

13. The allegations of paragraph 13 are directed solely at Probate Judge Armstrong in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 13, Probate Judge Armstrong admits that he is Probate Judge of Washington County and that he is acting under color of state law and denies the remaining allegations.

14. The allegations of paragraph 14 are directed solely at Probate Judge Presnell in her official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 14, Probate Judge Presnell admits that she is Probate Judge of Clarke County and that she is acting under color of state law and denies the remaining allegations.

15. The allegations of paragraph 15 are directed solely at Probate Judge Biggs in his official capacity, so no response from any other State Election Official is required. With respect

to the allegations of paragraph 15, Probate Judge Biggs admits that he is Probate Judge of Monroe County and that he is acting under color of state law and denies the remaining allegations.

16. The allegations of paragraph 16 are directed solely at Probate Judge Agerton in her official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 16, Probate Judge Agerton admits that she is Probate Judge of Escambia County and that she is acting under color of state law and denies the remaining allegations.

VII. ADDITIONAL PARTY DEFENDANTS

17. The allegations of paragraph 17 are directed solely at Probate Judge Booker in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 17, Probate Judge Booker admits that he is Probate Judge of Conecuh County and that he is acting under color of state law and denies the remaining allegations.

18. The allegations of paragraph 18 are directed solely at Probate Judge Nielsen in her official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 18, Probate Judge Nielsen admits that she is Probate Judge of Marengo County and that she is acting under color of state law and denies the remaining allegations.

19. The allegations of paragraph 19 are directed solely at Probate Judge Cook in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 19, Probate Judge Cook admits that he is Probate Judge of Perry County and that he is acting under color of state law and denies the remaining allegations.

20. The allegations of paragraph 20 are directed solely at Probate Judge Allison in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 20, Probate Judge Allison admits that he is Probate Judge of Walker County and that he is acting under color of state law and denies the remaining allegations.

21. The allegations of paragraph 21 are directed solely at Probate Judge Horsley in her official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 21, Probate Judge Horsley admits that she is Probate Judge of Winston County and that she is acting under color of state law and denies the remaining allegations.

22. The allegations of paragraph 22 are directed solely at Probate Judge McCollum in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 22, Probate Judge McCollum admits that he is Probate Judge of Tuscaloosa County and that he is acting under color of state law and denies the remaining allegations.

23. The allegations of paragraph 23 are directed solely at Probate Judge Avery in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 23, Probate Judge Avery admits that he is Probate Judge of Hale County and that he is acting under color of state law and denies the remaining allegations.

24. The allegations of paragraph 24 are directed solely at Probate Judge Isaac in her official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 24, Probate Judge Isaac admits that she is Probate Judge of

Greene County and that she is acting under color of state law and denies the remaining allegations.

25. The allegations of paragraph 25 are directed solely at Probate Judge Rice in her official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 25, Probate Judge Rice admits that she is Probate Judge of Sumter County and that she is acting under color of state law and denies the remaining allegations.

26. The allegations of paragraph 26 are directed solely at Probate Judge Armistead in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 26, Probate Judge Armistead admits that he is Probate Judge of Choctaw County and that he is acting under color of state law and denies the remaining allegations.

27. The allegations of paragraph 27 are directed solely at Probate Judge Pow in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 27, Probate Judge Pow admits that he is Probate Judge of Bibb County and that he is acting under color of state law and denies the remaining allegations.

28. The allegations of paragraph 28 are directed solely at Probate Judge Bolin in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 28, Probate Judge Bolin admits that he is Probate Judge of Jefferson County and that he is acting under color of state law and denies the remaining allegations.

29. The allegations of paragraph 29 are directed solely at Probate Judge English in his official capacity, so no response from any other State Election Official is required. With respect

to the allegations of paragraph 29, Probate Judge English admits that he is Probate Judge of Lee County and that he is acting under color of state law and denies the remaining allegations.

30. The allegations of paragraph 30 are directed solely at Probate Judge Howard in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 30, Probate Judge Howard admits that he is Probate Judge of Russell County and that he is acting under color of state law and denies the remaining allegations.

31. The allegations of paragraph 31 are directed solely at Probate Judge Menefee in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 31, Probate Judge Menefee admits that he is Probate Judge of Macon County and that he is acting under color of state law and denies the remaining allegations.

32. The allegations of paragraph 32 are directed solely at Probate Judge Williamson in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 32, Probate Judge Williamson admits that he is Probate Judge of Bullock County and that he is acting under color of state law and denies the remaining allegations.

33. The allegations of paragraph 33 are directed solely at Probate Judge Robertson in her official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 33, Probate Judge Robertson admits that she is Probate Judge of Barbour County and that she is acting under color of state law and denies the remaining allegations.

34. The allegations of paragraph 34 are directed solely at Probate Judge Turner in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 34, Probate Judge Turner admits that he is Probate Judge of Henry County and that he is acting under color of state law and denies the remaining allegations.

35. The allegations of paragraph 35 are directed solely at Secretary of State Bennett in his official capacity, so no response from any other State Election Official is required. Secretary of State Bennett admits the allegations of paragraph 35.

36. The allegations of paragraph 36 are directed solely at Lieutenant Governor Windom in his official capacity, so no response from any other State Election Official is required. With respect to the allegations of paragraph 36, Lieutenant Governor Windom admits that he is Lieutenant Governor of Alabama, that he is the State's highest legislative official, that he is ex officio president of the State Senate, and that he is acting under color of state law. Lieutenant Governor Windom denies that he is a proper party defendant.

VIII. CLASS ACTION ALLEGATIONS

37. The State Election Officials deny the allegations of paragraph 37.

38. The State Election Officials deny the allegations of paragraph 38.

39. The State Election Officials deny the allegations of paragraph 39.

IX. STATEMENT OF FACTS

40. The State Election Officials admit the allegations of paragraph 40.

41. The State Election Officials admit the allegations of paragraph 41.

42. The State Election Officials admit the allegations of paragraph 42.

43. The State election Officials admit the allegations of paragraph 43. The State Election Officials state further that all of those challenges, including those made by Montiel and Plaintiffs John and Camilla Rice, failed.

44. With respect to the allegations of paragraph 44, the State Election Officials admit that the legislative elections in 1994 and 1998 were conducted using the district lines that were established in the *Sinkfield v. Camp* consent judgment and that the 2000 Census discloses that the population has shifted since the 1990 Census was taken. The State Election Officials deny the remaining allegations of paragraph 44.

45. With respect to the allegations of paragraph 45, the State Election Officials admit that Acts 2001-727 and 2001-729, which were the product of a special legislative session that began on June 25, 2001, were duly enacted, signed, and precleared. The State Election Officials deny the remaining allegations of paragraph 45.

46. The State Election Officials admit that, according to the 2000 Census, the total population of the State of Alabama was 4,447,100.

47. With respect to the allegations of paragraph 47, the State Election Officials admit that, according to the 2000 Census, if absolute population equality for Alabama's legislative districts were required, the total population of an ideal Alabama State Senate district would be 127,060 people, but deny any allegation, express or implied, that absolute population equality is required.

48. With respect to the allegations of paragraph 48, the State Election Officials admit that: according to the 2000 Census: Senate District 8 is the most populous Senate district, has a total population of 133,302, and that it exceeds the population of an ideal Senate district by 4.913%; that Senate District 6 is the least populous Senate district, has a total population of

120,942, which is below the population of an ideal Senate district by 4.815%; and that the absolute overall range between the most populous Senate district and the least populous is 12,360 people, and the relative overall range is 9.73%. The State Election Officials deny the remaining allegations of paragraph 48.

49. With respect to the allegations of paragraph 49, the State Election Officials admit that, according to the 2000 Census, the total population of SD 34 is 129,570 and that Plaintiff Gonzalo Montiel lives in SD 34. The State Election Officials deny the remaining allegations of paragraph 49. The State Election Officials state further that, because of any analysis of over- and under-population is properly done with reference to the population of an ideal district, the numbers cited by Plaintiffs Lang and Camilla Rice are meaningless.

50. With respect to the allegations of paragraph 50, the State Election Officials admit that, according to the 2000 Census, the total population of SD 22 is 132,304 and deny the remaining allegations. The State Election Officials state further that, because of any analysis of over- and under-population is properly done with reference to the population of an ideal district, the numbers cited by Plaintiffs Lang and Camilla Rice are meaningless.

51. With respect to the allegations of paragraph 51, the State Election Officials admit that, according to the 2000 Census, the total population of SD 5 is 132,211, and deny the remaining allegations. The State Election Officials state further that, because of any analysis of over- and under-population is properly done with reference to the population of an ideal district, the numbers cited by Plaintiffs Lang and Camilla Rice are meaningless.

52. The State Election Officials deny the allegations of paragraph 52. The State Election Officials state further that, because of any analysis of over- and under-population is properly

done with reference to the population of an ideal district, the numbers cited by Plaintiffs Lang and Camilla Rice are meaningless.

53. With respect to the allegations of paragraph 53, the State Election Officials admit that, according to the 2000 Census, the ideal population of a House district is 42,353 people and deny the remaining allegations. The State Election Officials further deny any allegation, express or implied, that exact population equality is constitutionally or statutorily required for Alabama House districts.

54. With respect to the allegations of paragraph 54, the State Election Officials admit that: according to the 2000 Census: the total population of House District 43 is 44,447, HD 43 is the most populous House district, and the total population HD 43 is 2,094 people more than that of an ideal House district or 4.944%; HD 59 is the least populous House district with 40,241 people and is less than the ideal district by 2,112 people or 4.987%; and the absolute overall range between the most and least populous House districts is 4,206 people, and the relative overall range is 9.93%. The State Election Officials deny the remaining allegations of paragraph 54.

55. With respect to the allegations of paragraph 55, the State Election Officials admit that Plaintiff Montiel lives in HD 101 and that, according to the 2000 Census, the population of HD 101 is 40,864. The State Election Officials deny the remaining allegations of paragraph 55 and state further that those who live in districts that have fewer people than the ideal district, like Montiel and HD 101, lack standing to complain about population deviations.

56. With respect to the allegations of paragraph 56, the State Election Officials admit that, according to the 2000 Census, the total population of HD 15 was 44,320 and deny the remaining allegations.

57. With respect to the allegations of paragraph 57, the State Election Officials admit that, according to the 2000 Census, the total population of HD 79 was 44,210 and deny the remaining allegations.

58. The State Election Officials deny the allegations of paragraph 58. The State Election Officials state further that, because any analysis of over- and underpopulation is properly done with reference to the population of an ideal district. the numbers cited by Plaintiffs Day, Lang, and Camilla Rice are meaningless. Indeed, because those Plaintiffs live in districts that have fewer people than the ideal House district, they lack standing to complain about population deviations.

59. The State Election Officials deny the allegations of paragraph 59 because they are moot. The point is whether new redistricting plans were duly enacted, signed, and precleared, which they were, not when the legislature acted.

60. With respect to the allegations of paragraph 60, the State Election Officials admit that the Permanent Legislative Committee on Reapportionment established Guidelines for Reapportionment and Redistricting and that Plaintiffs have correctly quoted a portion of those Guidelines. The State Election Officials deny the remaining allegations of paragraph 60. The State Election Officials state further that the quoted portions of the Guidelines should be considered in context and that the original portions quoted do not appear in bold print.

61. With respect to the allegations of paragraph 61, the State Election Officials admit that the Governor called the Legislature into a special session that began on June 25, 2001; that, during that special session, the Legislature enacted new redistricting plans for the State Senate and the State House of Representatives in Act No. 2001-727 and No. 2001-729, respectively;

that Governor Siegelman signed those acts into law on July 3, 2001; and that both Acts have been precleared. The State Election Officials deny the remaining allegations of paragraph 61.

62. With respect to the allegations of paragraph 62, the State Election Officials admit that: there are 8 black-majority Senate districts, 6 of which have fewer people than the ideal Senate district; there are 27 white-majority Senate districts of which 11 have fewer people than the ideal House district; the three black-majority Senate districts contained in Jefferson County have fewer people than the ideal House district; the five white-majority Senate districts that include portions of Jefferson County have more people than the ideal Senate district; SD 28 is black-majority and have fewer people than the ideal Senate district; SD 27 is white-majority and has more people than the ideal Senate district; SD 23 and 24 are black-majority and has fewer people than the ideal Senate district; and SD 22 is white-majority and has more people than the ideal Senate district. The State Election Officials deny the remaining allegations of paragraph 62.

63. With respect to the allegations of paragraph 63, the State Election Officials admit that: there are 27 black-majority House districts and 78 white-majority House districts; eight of the nine black-majority House districts in Jefferson County have fewer people than the ideal House district; portions of House District 83 lie in Lee County; HD 83 has a total population of 40,270, has fewer people than the ideal House district, and has a black-majority; HD 79 lies in Lee County, has a total population of 44,210, has more people than the ideal House district, and has a white majority; and the cities of Auburn and Opelika are split. The State Election Officials deny the remaining allegations of paragraph 63.

64. The State Election Officials deny the allegations of paragraph 64.

65. The State Election Officials deny the allegations of paragraph 65.

66. The State Election Officials deny the allegations of paragraph 66.

67. The State Election Officials deny the allegations of paragraph 67.

68. The State Election Officials deny the allegations of paragraph 68.

69. The State Election Officials deny the allegations of paragraph 69.

70. With respect to the allegations of paragraph 70, the State Election Officials admit that the Permanent Legislative Committee on Reapportionment conducted hearings throughout the State for the purpose of obtaining public input regarding its desires with respect to redistricting and deny the remaining allegations.

71. The State Election Officials agree that this case presents a justiciable controversy.

X. COUNT ONE

72. The State Election Officials incorporate by reference their responses to paragraphs 1 through 71.

73. The State Election Officials deny the allegations of paragraph 73.

74. The State Election Officials deny the allegations of paragraph 74.

COUNT TWO

EQUAL PROTECTION

75. The State Election Officials incorporate by reference their responses to paragraphs 1 through 74.

76. With respect to the allegations of paragraph 76, the State Election Officials admit that, according to the 2000 Census: SD 34 has a total population of 129,570; SD 22 has a total population of 132,304; SD 5 has a total population of 132,211; the total population of SD 34 is 87.888% white; the total population of SD 22 is 65.86% white; the total population of SD 5 is

91.852% white; and SD 34, 22, and 5 have more people than the ideal population of a State Senate district. The State Election Officials deny the remaining allegations of paragraph 76.

77. With respect to the allegations of paragraph 77, the State Election Officials admit that: 16 of 27 white majority Senate districts have more people than the ideal Senate district, 2 of 8 black majority Senate districts have more people than the ideal Senate district, 11 of 27 white majority Senate districts have fewer people than the ideal Senate district, and 6 of 8 black majority Senate districts have fewer people than the ideal Senate district. The State Election Officials deny the remaining allegations of paragraph 77.

78. With respect to the allegations of paragraph 78, the State Election Officials admit that, according to the 2000 Census: HD 101 has a total population of 40,864; HD 15 has a total population of 44,320; HD 79 has a total population of 44,210; the total population of HD 101 is 77.342% white; the total population of HD 15 is 92.615% white; the total population of HD 79 is 84.705% white; and HD 15 and 79 have more people, and HD 101 has fewer people than an ideal House district. The State Election Officials deny the remaining allegations of paragraph 78.

79. With respect to the allegations of paragraph 79, the State Election Officials admit that there are 78 white majority House districts and 27 black majority House districts and deny the remaining allegations.

80. The State Election Officials deny the allegations of paragraph 80.

81. The State Election Officials deny the allegations of paragraph 81.

COUNT THREE

SECTION 2 OF THE VOTING RIGHTS ACT

82. The State Election Officials reallege and incorporate by reference their responses to paragraphs 1 through 81.

83. The State Election Officials deny the allegations of paragraph 83.

84. The State Election Officials deny the allegations of paragraph 84.

COUNT FOUR

EQUAL PROTECTION

Racial gerrymandering claim involving House District 68, as established by Act 2001-729

85. The State Election Officials reallege and incorporate by reference their responses to paragraphs 1 through 84.

86. With respect to the allegations of paragraph 86, the State Election Officials admit that: portions of Choctaw, Clarke, Marengo, Monroe, and Conecuh Counties are included in House District 68; the total population of the portions of Choctaw County that are included in HD 68 is 5,601, of whom 4,296 are black; the total population of the remaining portions of Choctaw County that are included in HD 65 is 10,321, of whom 2,770 are black; the total population of the portions of Clarke County that are included in HD 68 is 15,994, of whom 8,951 are black; the total population of the remaining portions of Clarke County that are included in HD 65 is 11,873, of whom 3,114 are black; the total population of the portions of Monroe County that are included in HD 68 is 10,400, of whom 7,125 are black; the total population of the remaining portions of Monroe County that are included in HD 64 is 13,924, of whom 2,694 are black; the total population of the portions of Conecuh County that are included in HD 64 is 2,911, of whom 755 are black; and the total population of the portions of Conecuh County that

are included in HD 90 is 5,561, of whom 1,915 are black. The State Election Officials deny the remaining allegations of paragraph 86.

87. With respect to the allegations of paragraph 87, the State Election Officials admit that House district lines split the cities of Grove Hill, Jackson, Evergreen, and Monroeville and deny the remaining allegations.

88. With respect to the allegations of paragraph 88, the State Election Officials admit that the district lines of HD 68 split precinct boundaries in one or more precincts in Choctaw, Clarke, Marengo, Monroe, and Conecuh Counties and deny the remaining allegations.

89. The State Election Officials deny the allegations of paragraph 89.

90. The State Election Officials deny the allegations of paragraph 90.

91. The State Election Officials deny the allegations of paragraph 91.

COUNT FIVE

EQUAL PROTECTION

Racial gerrymandering claim involving State Senate District 24, as established by Act 2001-729

92. The State Election Officials reallege and incorporate by reference their responses to paragraphs 1 through 91.

93. With respect to the allegations of paragraph 93, the State Election Officials admit that SD 24 includes portions of Bibb, Choctaw, Hale, Marengo, Perry, and Tuscaloosa Counties and all of Greene and Sumter Counties; the portions of Choctaw (which are the northern portions of the county), Hale (which are in the northern part of the county), and Tuscaloosa Counties that are included in SD 24 are majority black; the portions of Choctaw County (which are the southern portions of the county) included in SD 22 are majority white; and the portions of Hale

and Tuscaloosa Counties included in SD 21 are majority white. The State Election Officials deny the remaining allegations of paragraph 93.

94. With respect to the allegations of paragraph 94, the State Election Officials admit that the portions of the cities of Tuscaloosa and Brent that are included in SD 24 are majority black; the portions of the city of Tuscaloosa that are included in SD 21 are majority white; and the portions of the cities of Brent and Centreville that are included in SD 14 are majority white. The State Election Officials deny the remaining allegations of paragraph 94 and state further that the portions of the city of Centreville that are included in SD 24 are majority white.

95. With respect to the allegations of paragraph 95, the State Election Officials admit that the district lines of SD 24 split precinct boundaries in one or more precincts in Bibb, Perry, and Tuscaloosa Counties and deny the remaining allegations.

96. The State Election Officials deny the allegations of paragraph 96.

97. The State Election Officials deny the allegations of paragraph 97.

98. The State Election Officials deny the allegations of paragraph 98.

COUNT SIX

EQUAL PROTECTION

Racial gerrymandering claim involving House District 70, as established by Act 2001-729

99. The State Election Officials reallege and incorporate by reference their responses to paragraphs 1 through 98.

100. With respect to the allegations of paragraph 100, the State Election Officials admit that HD 78 includes portions of Tuscaloosa County and the City of Tuscaloosa, is majority black, and that its boundary lines split voting precincts and deny the remaining allegations.

101. The State Election Officials deny the allegations of paragraph 101.

102. The State Election Officials deny the allegations of paragraph 102.

103. The State Election Officials deny the allegations of paragraph 103.

COUNT SEVEN

EQUAL PROTECTION

Racial gerrymandering claim involving State Senate District 28, as established by Act 2001-729

104. The State Election Officials reallege and incorporate by reference their responses to paragraphs 1 through 103.

105. With respect to the allegations of paragraph 105, the State Election Officials admit that: SD 28 includes all of Barbour, Bullock, Henry, and Macon Counties and portions of Lee and Russell Counties; the portions of Russell County in SD 27 are majority white and the portions of Russell County in SD 28 are majority black; SD 27 is majority white; the total population of the portions of Lee County that are included in SD 28 is 26,296, of whom 10,864 are black; the total population of the portions of Lee County that are included in SD 27 is 57,872, of whom 11,523 are black; the total population of the portions of Russell County that are included in SD 28 is 19,450, of whom 12,768 are black; and the total population of the portions of Russell County that are included in SD 27 is 30,306, of whom 7,757 are black. The State Election Officials deny the remaining allegations of paragraph 105.

106. With respect to the allegations of paragraph 106, the State Election Officials admit that the boundary lines of SD 28 split the cities of Auburn, Opelika, and Phenix City and deny the remaining allegations.

107. With respect to the allegations of paragraph 107, the State Election Officials admit that the boundary lines of SD 28 split voting precincts in Lee and Russell Counties.

108. The State Election Officials deny the allegations of paragraph 108.

109. The State Election Officials deny the allegations of paragraph 109.

110. The State Election Officials deny the allegations of paragraph 110.

COUNT EIGHT

EQUAL PROTECTION

Racial gerrymandering claim involving State House District 83, as established by Act 2001-729

111. The State Election Officials reallege and incorporate by reference their responses to paragraphs 1 through 110.

112. With respect to the allegations of paragraph 112, the State Election Officials admit that HD 79 and 80 are majority white and HD 83 is majority black and that HD 83 includes portions of Lee and Russell Counties. The State Election Officials deny the remaining allegations of paragraph 112.

113. With respect to the allegations of paragraph 113, the State Election Officials admit that the boundary lines of HD 83 split the cities of Phenix City, Opelika, and Auburn and denies the remaining allegations.

114. With respect to the allegations of paragraph 114, the State Election Officials admit that the boundary lines of HD 83 split voting precincts in Lee and Russell Counties and deny the remaining allegations.

115. The State Election Officials deny the allegations of paragraph 115.

116. The State Election Officials deny the allegations of paragraph 116.

117. The State Election Officials deny the allegations of paragraph 117.

XI. RELIEF REQUESTED

The State Election Officials deny that the Plaintiffs are entitled to the relief requested.

GENERAL DEFENSES

FIRST DEFENSE

Plaintiffs John Lang and Camilla Rice lack standing to complain about the alleged overpopulation of certain Senate districts because they live in Senate districts that are underpopulated by reference to the ideal population of a Senate district.

SECOND DEFENSE

Plaintiffs Gonzalo Montiel, Sheldon Day. John Lang, and Camilla Rice lack standing to complain about the alleged overpopulation of certain House districts because they live in House districts that are underpopulated by reference to the ideal population of a House district.

THIRD DEFENSE

The State is not required to justify any and all population deviations from the ideal population because the maximum overall deviation in the redistricting plans for the State Senate and House of Representatives is less that 10%. *Brown v. Thomson*, 462 U.S. 835 (1983); *White v. Regester*, 422 U.S. 935 (1975).

FOURTH DEFENSE

Assuming for the sake of argument, but without admitting, that the State must explain any and all deviations from the ideal district population, Plaintiffs cannot carry their burden to show that the minor population deviations in the plan result solely from the promotion of an unconstitutional or irrational state policy. *Marylanders for Fair Representation v. Schaefer*, 849 F. Supp. 1022, 1032 and n. 9 (D. Md. 1994)(three-judge court).

FIFTH DEFENSE

Race did not predominate over other traditional districting criteria in the drawing of House District 68.

SIXTH DEFENSE

Race did not predominate over other traditional districting criteria in the drawing of Senate District 24.

SEVENTH DEFENSE

Race did not predominate over other traditional districting criteria in the drawing of House District 70.

EIGHTH DEFENSE

Race did not predominate over other traditional districting criteria in the drawing of Senate District 28.

NINTH DEFENSE

Race did not predominate over other traditional districting criteria in the drawing of House District 83.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent to the judges of the Court as listed below, and served upon the following, by first-class United States mail, postage prepaid, as indicated below, on this the 4th day of January, 2002.

The Honorable William Brevard Hand
Senior United States District Judge
United States District Court
for the Southern District of Alabama
113 St. Joseph Street
Mobile, AL 36602

The Honorable Susan H. Black
United States Circuit Judge
United States Court of Appeals
for the Eleventh Circuit
311 West Monroe Street, Room 444
Jacksonville, FL 32202

The Honorable Inge P. Johnson
United States District Judge
United States District Court
for the Northern District of Alabama
361 U.S. Courthouse
1729 5th Avenue North
Birmingham, AL 35203

Mark G. Montiel, Esq.
Mark G. Montiel, P.C.
6752 Taylor Circle
Montgomery. AL 36117

Larry T. Menefee, Esq.
407 S. McDonough
Montgomery, AL 36604

James U. Blacksher, Esq.
710 Title Building
300 North 21st Street
Birmingham, AL 35203

John J. Park, Jr.
OF COUNSEL

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

RECEIVED ON
JAN 0 5 2002
BY MARK G. MONTIEL, P.C.

GONZALO FITCH MONTIEL,

Plaintiffs,

V.

DON DAVIS, et al.,

Defendants,

DON SIEGELMAN, in his official capacity as Governor, KEN GUIN, individually and in his official capacity as House Majority Leader of the Alabama Legislature, and ANDREW HAYDEN, individually and in his official capacity as Chair of the Alabama Legislative Black Caucus,

Defendants-Intervenors.

CIVIL ACTION NO.
01-0447-BH-S

ANSWER OF DEFENDANTS-INTERVENORS GUIN AND HAYDEN TO THIRD AMENDED COMPLAINT OF PLAINTIFF MONTIEL AND ADDED PLAINTIFFS SHELDON DAY, et al.

Defendants-intervenors Ken Guin and Andrew Hayden, through undersigned counsel, respond as follows to the third amended complaint for declaratory, injunctive, and other relief regarding redistricting of state legislative districts in the State of Alabama, filed on or about December 20, 2001, by plaintiff Gonzalo Montiel:

ANSWER TO THE THIRD AMENDED COMPLAINT

The following numbered paragraphs refer to the correspondingly numbered paragraphs in

the third amended complaint:

1. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. Guin and Hayden admit that the Alabama Legislature enacted Acts 2001-727 and 2001-729 to redraw House and Senate districts with 2000 census data. All other allegations in this paragraph are denied.

2. Admitted that 28 U.S.C. §§ 1331 and 1343 provide this Court with subject matter jurisdiction in this action. All other allegations in this paragraph are denied.

3. Admitted.

4. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. Admitted that a three-judge court is required.

5. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. Guin and Hayden are without sufficient information to admit or deny the residence of plaintiff Montiel. The remaining allegations are denied.

6. Guin and Hayden are without sufficient information to admit or deny the residence of additional plaintiff Day. The remaining allegations are denied.

7. Guin and Hayden are without sufficient information to admit or deny the residence of additional plaintiff Lang. The remaining allegations are denied.

8. Guin and Hayden are without sufficient information to admit or deny the residence of additional plaintiff Rice. The remaining allegations are denied.

9. Guin and Hayden are without sufficient information to admit or deny the residence of additional plaintiff Humphryes. Admitted that Mr. Humphryes is a member of the Alabama House of Representatives. The remaining allegations are denied.

10. Guin and Hayden are without sufficient information to admit or deny the residence of additional plaintiff Rice. The remaining allegations are denied.

11. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. Admitted that defendant Davis is Probate Judge of Mobile County. The remaining allegations are denied.

12. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. Admitted that defendant Johns is Probate Judge of Baldwin County. The remaining allegations are denied.

13. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. Admitted that defendant Armstrong is Probate Judge of Washington County. The remaining allegations are denied.

14. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. Admitted that defendant Presnell is

Probate Judge of Clarke County. The remaining allegations are denied.

15. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. Admitted that defendant Biggs is Probate Judge of Monroe County. The remaining allegations are denied.

16. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. Admitted that defendant Agerton is Probate Judge of Escambia County. The remaining allegations are denied.

17. Admitted that defendant Booker is Probate Judge of Conecuh County. The remaining allegations are denied.

18. Admitted that defendant Nielsen is Probate Judge of Marengo County. The remaining allegations are denied.

19. Admitted that defendant Cook is Probate Judge of Perry County. The remaining allegations are denied.

20. Admitted that defendant Allison is Probate Judge of Walker County. The remaining allegations are denied.

21. Admitted that defendant Horsley is Probate Judge of Winston County. The remaining allegations are denied.

22. Admitted that defendant McCollum is Probate Judge of Tuscaloosa County. The remaining allegations are denied.

23. Admitted that defendant Avery is Probate Judge of Hale County. The remaining

allegations are denied.

24. Admitted that defendant Isaac is Probate Judge of Greene County. The remaining allegations are denied.

25. Admitted that defendant Rice is Probate Judge of Sumter County. The remaining allegations are denied.

26. Admitted that defendant Armistead is Probate Judge of Choctaw County. The remaining allegations are denied.

27. Admitted that defendant Pow is Probate Judge of Bibb County. The remaining allegations are denied.

28. Admitted that defendant Bolin is Probate Judge of Jefferson County. The remaining allegations are denied.

29. Admitted that defendant English is Probate Judge of Lee County. The remaining allegations are denied.

30. Admitted that defendant Howell is Probate Judge of Russell County. The remaining allegations are denied.

31. Admitted that defendant Menefee is Probate Judge of Macon County. The remaining allegations are denied.

32. Admitted that defendant Williamson is Probate Judge of Bullock County. The remaining allegations are denied.

33. Admitted that defendant Robertson is Probate Judge of Barbour County. The remaining allegations are denied.

34. Admitted that defendant Turner is Probate Judge of Henry County. The remaining

allegations are denied.

35. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are admitted.

36. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are admitted.

37. Denied.

38. Denied.

39. Denied.

40. Defendants-Intervenors admit that Alabama is a covered jurisdiction under § 4 of the Voting Rights Act of 1965, 42 U.S.C. § 1973b, and that it is subject to the preclearance requirements of § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

41. Admitted.

42. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations in this paragraph are argumentative recitations of irrelevant facts and require no response.

43. Defendants-Intervenors admit that the redistricting plans for the Alabama Senate and House of Representatives were adopted by consent decree in *Sinkfield v. Camp,* CA No. 93-689-

PR (Cir. Ct. Montgomery County, May 12, 1993); that the authority of the Montgomery County Circuit Court to adopt these plans judicially was affirmed by the Alabama Supreme Court, *Brooks v. Hobbie*, 631 So.2d 883 (Ala. 1993); and that every constitutional and statutory challenge of these plan in state and federal courts was defeated. *Sinkfield and Rice v. Bennett*, No. CV-93-689 (Cir. Ct. Montgomery County, Nov. 20, 1997), *appeal dismissed as moot, sub nom. Sinkfield v. Rice*, 732 So.2d 993 (Ala. 1998); *Rice v. Smith*, 988 F.Supp. 1437 (M.D. Ala. 1997); *Thompson v. Smith*, 52 F.Supp.2d 1364 (M.D. Ala. 1999); *Kelley v. Bennett*, 96 F.Supp.2d 1301 (M.D. Ala.) (3-judge court), *vacated and remanded with instructions to dismiss the complaint, sub nom. Sinkfield v. Kelley*, 431 U.S. 28 (2000).

44. Admitted.

45. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are admitted.

46. Admitted.

47. Admitted.

48. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are admitted.

49. Guin and Hayden lack sufficient information to admit or deny the residence of this plaintiff. The remaining allegations are admitted.

50. Guin and Hayden lack sufficient information to admit or deny the residence of this

plaintiff. The remaining allegations are admitted.

51. Guin and Hayden lack sufficient information to admit or deny the residence of this plaintiff. The remaining allegations are admitted.

52. Guin and Hayden lack sufficient information to admit or deny the residence of these plaintiffs. Admitted that plaintiff John Rice is pursuing in state court a claim that the Alabama Constitution requires zero deviation in the Senate plan.

53. Admitted that the ideal population of a House district is 42,353.

54. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are admitted.

55. Guin and Hayden lack sufficient information to admit or deny the residence of this plaintiff. The remaining allegations are admitted.

56. Guin and Hayden lack sufficient information to admit or deny the residence of this plaintiff. The remaining allegations are admitted.

57. Guin and Hayden lack sufficient information to admit or deny the residence of this plaintiff. The remaining allegations are admitted.

58. Guin and Hayden lack sufficient information to admit or deny the residence of this plaintiff.

59. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. No response is required to the first

amendment to the complaint. Admitted that no legislative redistricting plan was adopted in the 2001 Regular Session of the Alabama Legislature. The remaining allegations are denied.

60. Admitted.

61. Admitted that the special session began June 25, 2001, and that Acts 2001-727 and 729 were enacted and signed into law July 3, 2001, and that they received preclearance under § 5 of the Voting Rights Act. All other allegations are denied.

62. The redistricting plan adopted in Act 2001-727 speaks for itself. The argumentative characterizations in these allegations are denied.

63. The redistricting plan adopted in Act 2001-729 speaks for itself. The argumentative characterizations in these allegations are denied.

64. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are denied.

65. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are denied.

66. Denied.

67. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are denied as based on the false predicate that remedial action is required.

68. Denied.

69. The allegation that the Joint Legislative Committee on Reapportionment was required to create a redistricting plan is denied.

70. Denied.

71. Denied.

72. Guin and Hayden adopt their responses to paragraphs 1 through 71 of the third amended complaint.

73. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are denied.

74. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. Elections will not be held under the 1993 plan. The remaining allegations are denied.

75. Guin and Hayden adopt their responses to paragraphs 1 through 74 of the third amended complaint.

76. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations of constitutional violations are denied.

77. Denied.

78. The allegations of constitutional violations are denied.

79. Denied.

80. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are denied.

81. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are denied.

82. Guin and Hayden adopt their responses to paragraphs 1 through 81 of the third amended complaint.

83. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are denied.

84. Defendants-intervenors Guin and Hayden readopt the responses in their intervenors' answer, dated November 6, 2001, to allegations in this paragraph of the original complaint which are realleged by reference in the third amended complaint. The remaining allegations are denied.

85. Guin and Hayden adopt their responses to paragraphs 1 through 84 of the third amended complaint.

86. Guin and Hayden are without sufficient information to admit or deny the residence of this plaintiff. The redistricting plan adopted in Act 2001-729 speaks for itself. The argumentative characterizations in these allegations are denied.

87. The allegation that these municipalities have been split racially is denied.

88. Admitted.

89. Denied.

90. Denied.

91. Denied.

92. Guin and Hayden adopt their responses to paragraphs 1 through 91 of the third amended complaint.

93. Guin and Hayden are without sufficient information to admit or deny the residence of this plaintiff. The remaining allegations are denied.

94. Denied.

95. Admitted.

96. Denied.

97. Denied.

98. Denied.

99. Guin and Hayden adopt their responses to paragraphs 1 through 98 of the third amended complaint.

100. Guin and Hayden are without sufficient information to admit or deny the residence of this plaintiff. The remaining allegations are denied.

101. Denied.

102. Denied.

103. Denied.

104. Guin and Hayden adopt their responses to paragraphs 1 through 103 of the third amended complaint.

105. Guin and Hayden are without sufficient information to admit or deny the residence of this plaintiff. The remaining allegations are denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. Guin and Hayden adopt their responses to paragraphs 1 through 110 of the third amended complaint.

112. Guin and Hayden are without sufficient information to admit or deny the residence of this plaintiff. The remaining allegations are denied.

113. Denied.

114. Admitted.

115. Denied.

116. Denied.

117. Denied.

A-L. Defendants-Intervenors deny that plaintiff is entitled to any of the relief he requests.

AFFIRMATIVE DEFENSES

1. The amended complaint fails to state a claim upon which relief may be granted.

2. Plaintiff's claims in this action are pretexts for the partisan political agenda of certain Republicans. Plaintiffs and their counsel, who is plaintiff Montiel's son, are activists in the Republican Party, and, as stated publicly by the Chairman of the Alabama Republican Party, their purpose in commencing and maintaining this action is not to vindicate individual rights of any

particular citizen but to ask this U.S. District Court to sit as an overseer or supervisor of the legislative process mandated by the Alabama Constitution to redraw the boundaries of Legislative, Congressional and State Board of Education districts. See Attachments A through J to the answer of Guin and Hayden to the original complaint. Democrats hold substantial majorities in both houses of the Alabama Legislature, and the House and Senate plans signed by the Governor on July 3, 2001, were adopted with the support of strongly unified Democratic Caucuses. Throughout the special session, Republican leaders openly announced their intentions to challenge the plans in court, even though, 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.

3. The purely partisan aims of the amended complaint present nonjusticiable political questions, and this action should be dismissed. *Baker v. Carr*, 369 U.S. 186, 226-27 (1962).

4. Plaintiffs' claims, including newly added racial gerrymandering claims, are also pretexts for 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. Defendants-Intervenors allege that 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.

5. Plaintiffs' claims are also pretexts for an attack on the rights of citizens of all races 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, congressional and State Board of Education districts.

WHEREFORE, Defendants-Intervenors pray that judgment be entered in favor of defendants and defendants-intervenors and that this action be dismissed.

Respectfully submitted,

JAMES U. BLACKSHER
710 Title Bldg.
300 North Richard Arrington, Jr., Blvd.
Birmingham, AL 35203-3352
(205) 322-1100
Fax: (205) 322-1125
Bar No: BLA032

Attorney for Ken Guin and Andrew Hayden

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that, prior to or immediately after filing the foregoing with the Court, I mailed or delivered a copy to:

Mark G. Montiel
6752 Taylor Circle
Montgomery, AL 36117

Larry Menefee
407 S. McDonough St.
Montgomery, AL 36104

William Pryor
John J. Park, Jr.
Attorney General's Office
Alabama State House
11 South Union Street
Montgomery, AL 36130-0152

Date: January 4, 2002

Attorney for Ken Guin and Andrew Hayden

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

RECEIVED ON
JAN 0 5 2002
BY MARK G. MONTIEL, P.C.

GONZALO FITCH MONTIEL,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO: 01-447-BH-S
DON DAVIS, et al.	)	Three-Judge Court
Defendants.	)	

ANSWER OF DEFENDANT-INTERVENOR SIEGELMAN TO THE THIRD AMENDED COMPLAINT

Defendant- Intervenor, Don Siegelman, in his official capacity as Governor of the State of Alabama, responds as follows to the Third Amended Complaint for Declaratory, Injunctive and Other Relief Regarding Redistricting of State Legislative Districts in the State of Alabama of Plaintiff Montiel, CA No:01-D-1376-N, dated December 20, 2001. The following numbered paragraphs refer to the correspondingly numbered paragraphs in the amended complaint.

I. Nature of Action

1. Defendant-Intervenor denies plaintiffs' claim that the "... Alabama Legislature has failed...to properly and fairly apportion Alabama's population among legislative districts...". It is admitted that the Alabama Legislature enacted Acts 2001-727 and 2001-729. In all other respects the allegations are denied.

II. Jurisdiction and Venue

2. Defendant-Intervenor admits that this Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) In all other respects the allegations in this paragraph are denied.

3. Defendant-Intervenor denies that venue in this action is proper in the Southern District

of Alabama. Venue of this action lies in the Middle District of Alabama pursuant to 28 U.S.C. § 1404(a) and § 1391(b).

III. Three-Judge Court

4. Defendant-Intervenor admits that a three-judge court is required to adjudicate claims in this action. All other allegations in this paragraph are denied.

IV. Parties

5. Defendant-Intervenor believes that the plaintiff Montiel resides in Mobile County but is without sufficient information to admit or deny other allegations concerning this plaintiff and therefore denies these allegations.

6. through 10. Defendant-Intervenor is without sufficient information to admit or deny the allegations concerning each of these plaintiffs and therefore denies them.

11. through 34. Defendant-Intervenor admits that each of these named defendants is the Probate Judge of the county named, denies that they are necessary defendants and in all other respects denies the allegations of these paragraphs.

35. Defendant-Intervenor admits that Bennett is Secretary of State and is the chief election officer of the state and in all other respects denies the allegations of this paragraph.

36. Defendant-Intervenor admits that Windom is Lieutenant Governor, denies that Windom is an appropriate defendant, and in all other respects denies the allegations of this paragraph.

37. Denied.

38. Denied.

39. Denied.

IX. Statement of Facts

40. Admitted.

41. Admitted.

42. Admitted that the cases cited reflect federal litigation about legislative redistricting. In all other respects the allegations of the paragraph are denied.

43. Admitted that the cases cited reflect federal litigation about legislative redistricting. In all other respects the allegations of the paragraph are denied.

44. Admitted.

45. Admitted that Acts 2001-727 and 2001-729 were passed in the special session, signed by the Governor, submitted for and received preclearance from the Department of Justice. In all other respects the allegations of the paragraph are denied.

46. Admitted.

47. The statement is irrelevant and is therefore denied.

48. Attached hereto as Exhibit A are two pages which Defendant-Intervenor believes correctly describes the demographic characteristics of the Senate as redistricted in Act 2002-727. In all other respects the allegations of the paragraph are denied.

49. Defendant-Intervenor is without knowledge of the residence of the plaintiff. See Exhibit A. In all other respects the allegations of the paragraph are denied.

50. Defendant-Intervenor is without knowledge of the residence of the plaintiff. See Exhibit A. In all other respects the allegations of the paragraph are denied.

51. Defendant-Intervenor is without knowledge of the residence of the plaintiff. See Exhibit A. In all other respects the allegations of the paragraph are denied.

52. Defendant-Intervenor is without knowledge of the residences of the plaintiffs. See

Exhibit A. In all other respects the allegations of the paragraph are denied.

53. The statement is irrelevant and is therefore denied.

54. Attached hereto as Exhibit B are four pages which Defendant-Intervenor believes correctly describes the demographic characteristics of the House as redistricted in Act 2002-729. In all other respects the allegations of the paragraph are denied.

55. Defendant-Intervenor is without knowledge of the residence of the plaintiff. See Exhibit B. In all other respects the allegations of the paragraph are denied.

56. Defendant-Intervenor is without knowledge of the residence of the plaintiff. See Exhibit B. In all other respects the allegations of the paragraph are denied.

57. Defendant-Intervenor is without knowledge of the residence of the plaintiff. See Exhibit B. In all other respects the allegations of the paragraph are denied.

58. Defendant-Intervenor is without knowledge of the residences of the plaintiffs. See Exhibit B. In all other respects the allegations of the paragraph are denied.

59. Defendant-Intervenor admits that the legislature is responsible for redistricting itself, that the regular session of the legislature ended on May 21, 2001 and that no redistricting plan was enacted during that regular session. In all other respects the allegations of the paragraph are denied.

60. Defendant-Intervenor admits that the legislature did timely establish Guidelines for Reapportionment and Redistricting and those are, in part, quoted in the complaint but denies that the emphasized language in the complaint is emphasized in the original. In all other respects the allegations of the paragraph are denied.

61. Admitted that Acts 2001-727 and 2001-729 were passed in the special session, signed by the Governor, submitted for and received preclearance from the Department of Justice. In all

other respects the allegations of the paragraph are denied.

62. Attached hereto as Exhibit A are two pages which Defendant-Intervenor believes correctly describes the demographic characteristics of the Senate as redistricted in Act 2002-727. In all other respects the allegations of the paragraph are denied.

63. Attached hereto as Exhibit B are four pages which Defendant-Intervenor believes correctly describes the demographic characteristics of the House as redistricted in Act 2002-729. In all other respects the allegations of the paragraph are denied.

64. Denied.

65. Defendant-Intervenor admits that placing incumbent office holders in separate districts is one of a large number of valid redistricting criteria that are contained in the case law and in the Guidelines adopted by the Reapportionment committee and conceded to be valid by the plaintiffs in this case. In all other respects the allegations of the paragraph are denied.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Defendant-Intervenor incorporates the responses to paragraphs 1 through 71.

73. Denied.

74. Denied.

75. Defendant-Intervenor incorporates the responses to paragraphs 1 through 74.

76. See Exhibit A hereto. In all other respects the allegations of the paragraph are denied.

77. Defendant-Intervenor acknowledges that Plaintiffs rely upon *Marylanders for Fair Representation v. Schaefer*, 849 F.Supp. 1022 (D. Md. 1994) interpretation of *Reynolds v. Sims*. In all other respects the allegations of the paragraph are denied.

78. See Exhibit B hereto. In all other respects the allegations of the paragraph are denied.

79. Defendant-Intervenor acknowledges that Plaintiffs rely upon *Marylanders for Fair Representation v. Schaefer*, 849 F.Supp. 1022 (D. Md. 1994) interpretation of *Reynolds v. Sims*. In all other respects the allegations of the paragraph are denied.

80. Denied.

81. Denied.

82. Defendant-Intervenor incorporates the responses to paragraphs 1 through 81.

83. Denied.

84. Denied.

85. Defendant-Intervenor incorporates the responses to paragraphs 1 through 84.

86. See Exhibit B hereto. In all other respects the allegations of the paragraph are denied.

87. See Exhibit B hereto. In all other respects the allegations of the paragraph are denied.

88. Defendant-Intervenor is without information and therefore denies these allegations.

89. Defendant-Intervenor admits that traditional and appropriate districting principles include, but are not limited to: compactness, contiguity, respect for political subdivisions or communities of interest. In all other respects the allegations of the paragraph are denied.

90. Denied.

91. Denied.

92. Defendant-Intervenor incorporates the responses to paragraphs 1 through 91.

93. See Exhibit A hereto. In all other respects the allegations of the paragraph are denied.

94. See Exhibit A hereto. In all other respects the allegations of the paragraph are denied.

95. Defendant-Intervenor is without information and therefore denies these allegations.

96. Defendant-Intervenor admits that traditional and appropriate districting principles include, but are not limited to: compactness, contiguity, respect for political subdivisions or communities of interest. In all other respects the allegations of the paragraph are denied.

97. Denied.

98. Denied.

99. Defendant-Intervenor incorporates the responses to paragraphs 1 through 98.

100. Denied.

101. Defendant-Intervenor admits that traditional and appropriate districting principles include, but are not limited to: compactness, contiguity, respect for political subdivisions or communities of interest. In all other respects the allegations of the paragraph are denied.

102. Denied.

103. Denied.

104. Defendant-Intervenor incorporates the responses to paragraphs 1 through 103.

105. Denied.

106. Denied

107. Denied.

108. Defendant-Intervenor admits that traditional and appropriate districting principles

include, but are not limited to: compactness, contiguity, respect for political subdivisions or communities of interest. In all other respects the allegations of the paragraph are denied.

109. Denied.

110. Denied.

111. Defendant-Intervenor incorporates the responses to paragraphs 1 through 110.

112. Denied.

113. Denied.

114. Defendant-Intervenor is without information and therefore denies these allegations.

115. Defendant-Intervenor admits that traditional and appropriate districting principles include, but are not limited to: compactness, contiguity, respect for political subdivisions or communities of interest. In all other respects the allegations of the paragraph are denied.

116. Denied.

117. Denied.

X. Relief Requested

A-L Defendant-Intervenor denies that plaintiff is entitled to any of the relief he requests.

AFFIRMATIVE DEFENSES

1. The amended complaint fails to state a claim upon which relief may be granted.

2. Deference is due the decisions of the elected representatives of the citizens of the State of Alabama and their right to petition their government under the First Amendment of the United States Constitution would be violated if the relief sought by plaintiffs is granted.

3. The rights of the citizens of the State of Alabama as secured by the Fourteenth and Fifteenth Amendments to the United States Constitution and by the Voting Rights Act would be

violated if the relief sought by plaintiffs is granted.

4. The rights of the citizens of the State of Alabama as secured by the Constitution of Alabama to have legislative districts apportioned by the elected members of the state legislature would be violated if the relief sought by plaintiffs is granted.

5. By way of set-off, if any relief is granted plaintiff Montiel, the State of Alabama is entitled to recover costs in the amount of $10,543.83 as taxed by the U.S. District Court for the Middle District of Alabama in Kelley v Bennet CA 97-A-715-E (Order of September 17, 2001) Document No. 393.

Respectfully submitted this 4th day of January, 2002.

LARRY T. MENEFEE
407 S. McDonough Street
Montgomery, AL 36104
(334) 265-6002
Fax: (334) 832-9476
Bar No:MEN002

Attorney for defendant Don Siegelman, in his official capacity as Governor

Certificate of Service

I hereby certify that on this 4th day of January, 2002, I served a copy of the foregoing pleading on the following, by placing a copy of the same in the United States mail, Postage prepaid and addressed as follows:

Mark G. Montiel
6752 Taylor Circle
Montgomery, AL 36117
(334) 396-3331
(334) 396-4465 Fax

JAMES U. BLACKSHER
710 Title Bldg.
300 North 21st Street
Birmingham, AL 35203-3352

John J. Park, Jr.
Charles Campbell
Attorney General's Office
Alabama State House
11 South Union Street
Montgomery, AL 36130-0152

Hon. Senior Judge W. B. Hand
U.S. District Court S.D. Alabama
113 St. Joseph Street
Mobile, Alabama 36602

Hon. Circuit Judge Susan H. Black
11th Circuit Court of Appeals
311 W. Monroe Street, #444
P.O. Box 53135
Jacksonville, Florida 32201

Hon. Judge Inge P. Johnson
U.S. District Court N.D. Alabama
361 U.S. Courthouse
1729 5th Avenue, North
Birmingham, Alabama 35203

Larry T. Menefee (MEN 002)

2001 Senate District Plan

EXHIBIT A

Population Summary Report

DISTRICT	POPULATION	DEVIATION FROM IDEAL	% DEVIATION FROM IDEAL	% White	% Black
1	129,916	2,856	2.25	85.12%	13.04%
2	132,936	5,876	4.62	78.62%	17.14%
3	133,270	6,210	4.89	83.62%	12.23%
4	120,975	-6,085	-4.79	91.63%	4.38%
5	132,211	5,151	4.05	91.85%	6.45%
6	120,942	-6,118	-4.82	90.82%	6.29%
7	132,662	5,602	4.41	62.77%	32.80%
8	133,302	6,242	4.91	91.93%	3.01%
9	133,237	6,177	4.86	93.09%	1.49%
10	122,383	-4,677	-3.68	84.46%	13.21%
11	125,386	-1,674	-1.32	63.50%	34.75%
12	128,590	1,530	1.20	88.35%	9.33%
13	123,328	-3,732	-2.94	77.39%	21.03%
14	132,910	5,850	4.60	88.89%	8.67%
15	127,771	711	0.56	89.67%	8.26%
16	132,155	5,095	4.01	90.56%	4.93%
17	131,440	4,380	3.45	93.33%	4.30%
18	123,786	-3,274	-2.58	29.87%	66.32%
19	121,797	-5,263	-4.14	32.86%	65.89%
20	121,886	-5,174	-4.07	32.82%	65.27%
21	121,552	-5,508	-4.33	72.50%	25.00%
22	132,304	5,244	4.13	65.86%	29.89%
23	120,985	-6,075	-4.78	36.89%	62.03%
24	121,009	-6,051	-4.76	36.60%	62.04%
25	132,011	4,951	3.90	80.38%	16.46%
26	129,339	2,279	1.79	27.03%	71.01%
27	129,653	2,593	2.04	74.36%	22.80%
28	126,913	-147	-0.12	41.89%	56.04%
29	122,176	-4,884	-3.84	82.49%	14.00%
30	124,498	-2,562	-2.02	67.99%	30.00%
31	122,750	-4,310	-3.39	72.63%	24.55%
32	122,031	-5,029	-3.96	91.69%	5.67%
33	127,288	228	0.18	35.96%	62.00%
34	129,570	2,510	1.98	87.89%	8.66%
35	124,138	-2,922	-2.30	63.84%	31.54%

Total Population: 4,447,100
Ideal District Population: 127,060

<u>Summary Statistics</u>

Population Range: 120,942 to 133,302
Ratio Range: 1.10
Absolute Range: -6,118 to 6,242
Absolute Overall Range: 12,360.00
Relative Range: -4.82% to 4.91%
Relative Overall Range: 9.73%
Absolute Mean Deviation: 4,199.14
Relative Mean Deviation: 3.30%
Standard Deviation: 4,645.45

2001 Senate District Plan

Political Subdivisions Split Between Districts

Number of subdivisions not split:

County	37
VTD	1,906

Number of subdivisions split into more than one district:

County	30
VTD	81

County

Cases where a County is split among 2 Districts: 22
Cases where a County is split among 3 Districts: 5
Cases where a County is split among 4 Districts: 1
Cases where a County is split among 5 Districts: 1
Cases where a County is split among 8 Districts: 1
Number of times a County has been split into more than one district: 46
Total of County splits: 76

VTD

Cases where a VTD is split among 2 Districts: 79
Cases where a VTD is split among 3 Districts: 1
Cases where a VTD is split among 4 Districts: 1
Number of times a VTD has been split into more than one district: 84
Total of VTD splits: 165