

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

GEORGIA STATE CONFERENCE OF THE NAACP;
FAYETTE COUNTY BRANCH NAACP; HENRY
ADAMS; TERENCE CLARK; ALICE JONES; JOHN
E. JONES; DAN LOWRY; ALI ABDUR-RAHMAN;
AISHA ABDUR-RAHMAN; LELIA RICHARDSON;
EMORY WILKERSON; ELVERTA WILLIAMS; and
BONNIE LEE WRIGHT,

Plaintiffs,

v.

FAYETTE COUNTY BOARD OF
COMMISSIONERS; HERB FRADY,
CHAIRPERSON, in his official capacity; ROBERT
HORGAN, VICE-CHAIRPERSON, in his official
capacity; LEE HEARN, COMMISSIONER, in his
official capacity; STEVE BROWN,
COMMISSIONER, in his official capacity; and
ALLEN MCCARTY, COMMISSIONER in his official
capacity; FAYETTE COUNTY BOARD OF
EDUCATION; BOB TODD, BOARD MEMBER, in
his official capacity; MARION KEY, BOARD
MEMBER, in her official capacity; JANET SMOLA,
BOARD MEMBER, in her official capacity; TERRI
SMITH, BOARD MEMBER, in her official capacity;
and SAM TOLBERT, BOARD MEMBER, in his
official capacity; FAYETTE COUNTY BOARD OF
ELECTIONS AND VOTER REGISTRATION; TOM
SAWYER, DEPARTMENT HEAD, in his official
capacity,

Defendants.

CIVIL ACTION NO.
3:11-CV-00123-TCB

ANSWER AND DEFENSES TO PLAINTIFFS' COMPLAINT OF DEFENDANTS FAYETTE COUNTY BOARD OF COMMISSIONERS; HERB FRADY, ROBERT HORGAN, LEE HEARN, STEVE BROWN AND ALLEN MCCARTY, IN THEIR OFFICIAL CAPACITIES; FAYETTE COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION; AND TOM SAWYER, IN HIS OFFICIAL CAPACITY

COME NOW Defendants Fayette County Board of Commissioners; Herb Frady, Robert Horgan, Lee Hearn, Steve Brown and Allen McCarty, in their official capacities; Fayette County Board of Elections and Voter Registration; and Tom Sawyer, in his official capacity (collectively "County Defendants") and for their Answer and Defenses to Plaintiffs' Complaint ("Complaint"), show this Court as follows:

FIRST DEFENSE

Plaintiffs' Complaint requests to state a claim on which relief may be granted and should therefore be dismissed.

SECOND DEFENSE

Plaintiffs' Complaint requests relief that will result in a violation of the U.S. Constitution.

THIRD DEFENSE

For their Third Defense, Defendants respond to the individually numbered paragraphs of Plaintiff's Complaint as follows:

County Defendants deny the allegations set forth in the unnumbered Introduction of Plaintiffs' Complaint.

1.

County Defendants admit that Paragraph 1 of Plaintiffs' Complaint describes the statutory basis asserted by Plaintiffs for this action but further respond that the statute speaks for itself.

2.

County Defendants deny the allegations of Paragraph 2 of Plaintiffs' Complaint.

3.

County Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding the basis for Plaintiffs' challenge and therefore can neither admit nor deny the same. County Defendants deny that the at-large method of electing members to the Fayette County Board of Commissioners and Board of Education "dilutes Black voting strength in violation of Section 2, 42 U.S.C. § 1973(b)."

4.

County Defendants admit that this Court has jurisdiction pursuant to 28 U.S.C. § 1343(a) and 28 U.S.C. § 1331 but denies that the Court has jurisdiction of this action pursuant to 42 U.S.C. § 1973j(f).

5.

County Defendants admit the allegations set forth in Paragraph 5 of Plaintiffs' Complaint.

6.

County Defendants admit the allegations set forth in Paragraph 6 of Plaintiffs' Complaint as to all Defendants except Sam Tolbert. County Defendants deny that the Court has personal jurisdiction over Mr. Tolbert, who is deceased.

7.

County Defendants admit the allegations of Paragraph 7 of Plaintiffs' Complaint.

8.

County Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the Plaintiffs' recitation of the Georgia State Conference of the NAACP's founding, status, mission and activities in the first three sentences of Paragraph 8 and therefore can neither admit nor deny the same.

Furthermore, County Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the Plaintiffs' statements regarding the membership status of the Plaintiffs and "other Black registered voters" and therefore can neither admit nor deny the same. County Defendants deny that there is "a single-member district containing a majority Black voting age population, and [that Black registered voters'] voting strength is diluted by Section 2 violations" alleged in Plaintiffs' complaint. County Defendants deny that "Plaintiff Georgia NAACP is a proper party to vindicate the violation of its members rights" and all remaining allegations of Paragraph 8 of Plaintiffs' Complaint.

9.

County Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of Plaintiffs' recitation of the Fayette County Branch NAACP's founding, status, mission and activities in the first three sentences of Paragraph 9 and therefore can neither admit nor deny the same. Furthermore, County Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of Plaintiffs' statements regarding the membership status of the Plaintiffs and "other Black registered voters" and therefore can neither admit nor deny the same. County Defendants deny that there is "a single-member district containing a majority Black voting age population, and

[that Black registered voters'] voting strength is diluted by Section 2 violations" alleged in Plaintiffs' complaint. County Defendants deny that "Fayette County Branch NAACP is a proper party to vindicate the violation of its members rights" and all remaining allegations of Paragraph 9 of Plaintiffs' Complaint.

10.

County Defendants admit that Mr. Adams is a registered voter in Fayette County. County Defendants admit that Mr. Adams expressed support for district voting at a county commission meeting. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding when Mr. Adams moved to Fayette County, whether he registered to vote shortly after moving there and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 10 of Plaintiffs' Complaint.

11.

County Defendants admit that Mr. Clark is a registered voter in Fayette County. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding when Mr. Clark moved to Fayette County and whether he registered to vote shortly after moving there and

therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 11 of Plaintiffs' Complaint.

12.

County Defendants admit that Ms. Jones is a registered voter in Fayette County. County Defendants admit that Ms. Jones expressed support for district voting at a county commission meeting. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding Ms. Jones' and her husband's history with the Fayette County Branch NAACP and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 12 of Plaintiffs' Complaint.

13.

County Defendants admit that Mr. Jones is a registered voter in Fayette County. County Defendants admit that Mr. Jones expressed support for district voting at a county commission meeting. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding (a) Mr. Jones' and his wife's history and positions with the Fayette County Branch NAACP and (b) Mr. Jones' actions on behalf of the Fayette County Branch NAACP and therefore can neither admit nor deny the same. County

Defendants deny the remaining allegations set forth in Paragraph 13 of Plaintiffs' Complaint.

14.

County Defendants admit that Mr. Lowry is a registered voter in Fayette County. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding (1) when Mr. Lowry moved to Fayette County and whether he registered to vote shortly after moving there and (b) Mr. Lowry's public pleas for district voting and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 14 of Plaintiffs' Complaint.

15.

County Defendants admit that Mr. Abdur-Rahman is a registered voter in Fayette County. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding when Mr. Abdur-Rahman moved to Fayette County and whether he registered to vote shortly after moving there and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 15 of Plaintiffs' Complaint.

16.

County Defendants admit that Ms. Abdur-Rahman is a registered voter in Fayette County. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding when Ms. Abdur-Rahman moved to Fayette County and whether she registered to vote shortly after moving there and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 16 of Plaintiffs' Complaint.

17.

County Defendants admit that Ms. Richardson is a registered voter in Fayette County. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding when Ms. Richardson moved to Fayette County and whether she registered to vote shortly after moving there and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 17 of Plaintiffs' Complaint.

18.

County Defendants admit that Mr. Wilkerson is a registered voter in Fayette County and was an unsuccessful candidate for election to the Board of

Commissioners in 2006. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding when Mr. Wilkerson moved to Fayette County and whether he registered to vote shortly after moving there and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 18 of Plaintiffs' Complaint.

19.

County Defendants admit that Ms. Williams is a registered voter in Fayette County. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding when Ms. Williams moved to Fayette County and whether she registered to vote shortly after moving there and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 19 of Plaintiffs' Complaint.

20.

County Defendants admit that Ms. Wright is a registered voter in Fayette County. County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding when Ms. Wright moved to Fayette County and whether she registered to vote shortly after moving there

and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 20 of Plaintiffs' Complaint.

21.

County Defendants admit the allegations set forth in Paragraph 21 of Plaintiffs' Complaint.

22.

County Defendants admit the allegations set forth in Paragraph 22 of Plaintiffs' Complaint, but further state that only the General Assembly has the authority to adopt single-member districts for Fayette County.

23.

County Defendants admit the allegations set forth in Paragraph 23 of Plaintiffs' Complaint.

24.

County Defendants admit the allegations set forth in Paragraph 24 of Plaintiffs' Complaint.

25.

County Defendants deny that Sam Tolbert is a member of the Board of Education as he is deceased. County Defendants admit the remaining allegations set forth in Paragraph 25 of Plaintiffs' Complaint.

26.

County Defendants admit the allegations set forth in Paragraph 26 of Plaintiffs' Complaint.

27.

County Defendants admit the allegations set forth in Paragraph 27 of Plaintiffs' Complaint.

28.

The allegations of Paragraph 28 are not factual allegations but statements of law and/or conclusions of law to which no response is required. County Defendants further state that the statute speaks for itself.

29.

County Defendants admit that Section 2 prohibits vote dilution and that Plaintiffs have challenged the entirety of Fayette County. County Defendants deny the remaining allegations set forth in Paragraph 29 of Plaintiffs' Complaint.

30.

County Defendants deny the allegations set forth in Paragraph 30 of Plaintiffs' Complaint.

31.

County Defendants admit the allegations set forth in Paragraph 31 of Plaintiffs' Complaint.

32.

County Defendants admit the allegations set forth in Paragraph 32 of Plaintiffs' Complaint.

33.

County Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the statements regarding the demographic makeup of the Fayette County School District and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations set forth in Paragraph 33 of Plaintiffs' Complaint.

34.

County Defendants admit the allegations set forth in Paragraph 34.

35.

County Defendants admit the allegations set forth in Paragraph 35 of Plaintiffs' Complaint.

36.

County Defendants admit the allegations set forth in Paragraph 36 of Plaintiffs' Complaint.

37.

County Defendants admit the allegations set forth in Paragraph 37 of Plaintiffs' Complaint.

38.

County Defendants admit the allegations set forth in Paragraph 38 of Plaintiffs' Complaint.

39.

County Defendants deny that Sam Tolbert represents the District 5 as he is deceased. County Defendants admit the remaining allegations set forth in Paragraph 39 of Plaintiffs' Complaint.

40.

County Defendants admit that the quoted statement in Paragraph 40 appears on the Fayette County Board of Education's website, but deny the remaining allegations set forth in Paragraph 40 of Plaintiffs' Complaint.

41.

County Defendants deny the allegations set forth in Paragraph 41 of Plaintiffs' Complaint.

42.

County Defendants deny the allegations set forth in Paragraph 42 of Plaintiffs' Complaint.

43.

County Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 43 of Plaintiffs' Complaint and therefore can neither admit nor deny the same.

44.

County Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 44 of Plaintiffs' Complaint as stated and therefore can neither admit nor deny the same.

45.

County Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 45 of Plaintiffs' Complaint as stated and therefore can neither admit nor deny the same..

46.

County Defendants deny the allegations of Paragraph 46 of Plaintiffs' Complaint as stated.

47.

County Defendants deny the allegations set forth in Paragraph 47 of Plaintiffs' Complaint.

48.

Based on their knowledge, County Defendants admit the allegation of Paragraph 48 of Plaintiffs' Complaint that no Black candidate has been elected to the Board of Commissioners or Board of Education in Fayette County, but deny the remaining allegations set forth in Paragraph 48 of Plaintiffs' Complaint.

49.

County Defendants admit that Judge Floyd was appointed in 2002, reelected and died and that since 2010 the County has not had any "Black elected officers." County Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the of the remaining allegations set forth in Paragraph 49 of Plaintiffs' Complaint and therefore can neither admit nor deny the same.

50.

County Defendants deny the allegations set forth in Paragraph 50 of Plaintiffs' Complaint.

51.

County Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the particulars of a 2007 presentation by Ms. Jones as set forth in Paragraph 51 of Plaintiffs' Complaint and therefore can neither admit nor deny the same. County Defendants deny the remaining allegations of Paragraph 51 of Plaintiffs' Complaint.

52.

County Defendants admit the allegations set forth in Paragraph 52 of Plaintiffs' Complaint.

53.

County Defendants deny that the 2005 Board "condemned" Rep. Fludd's bill but admits that a special called meeting was held and a resolution adopted opposing the bill.

54.

County Defendants are without knowledge or information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 54 of Plaintiffs' Complaint and therefore can neither admit nor deny the same.

55.

County Defendants admit the allegations set forth in Paragraph 55 of Plaintiffs' Complaint, but further state that Representative Fludd's bill was defeated by the Georgia General Assembly and not by the Board of Commissioners.

56.

County Defendants deny the allegations set forth in Paragraph 56 of Plaintiffs' Complaint.

57.

County Defendants admits that County elections include numbered posts, residency requirements, staggered terms, and a majority vote requirement but denies the remaining allegations set forth in Paragraph 57 of Plaintiffs' Complaint.

58.

County Defendants deny the allegations set forth in Paragraph 58 of Plaintiffs' Complaint.

59.

County Defendants reallege and incorporate their responses to Paragraphs 1-58 above as if set forth fully.

60.

County Defendants deny the allegations set forth in Paragraph 60 of Plaintiffs' Complaint.

61.

County Defendants deny the allegations set forth in Paragraph 61 of Plaintiffs' Complaint.

County Defendants deny the allegations set forth in the Paragraph entitled "Prayer for Relief." County deny that Plaintiffs are entitled to any of the relief sought in that Paragraph or subparagraphs (a), (b), (c), (d), (e), (f), or (g), and deny that Plaintiffs are entitled to any other relief.

County Defendants deny all other allegations of Plaintiffs' Complaint not previously admitted or otherwise responded to.

FOURTH DEFENSE

County Defendants reserve the right to add or amend any additional defenses as they become known during the course of discovery.

WHEREFORE, having answered Plaintiffs' Complaint in its entirety, County Defendants respectfully request that this Court dismiss Plaintiffs' Complaint with prejudice, cast all costs against Plaintiffs, and grant such other and further relief as this Court deems just and necessary.

Respectfully submitted this 11th day of October, 2011.

/s/ Frank B. Strickland
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Attorneys for Defendants Fayette County Board of Commissioners, Herb Frady, Robert Horgan, Lee Hearn, Steve Brown, Allen McCarty, Fayette County Board of Elections and Voter Registration, and Tom Sawyer.

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GEORGIA STATE CONFERENCE
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Plaintiffs,

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FAYETTE COUNTY BOARD OF
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Defendants.

CIVIL ACTION NO. 3:11-CV-
00123-TCB

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the within and foregoing ANSWER AND DEFENSES TO PLAINTIFFS' COMPLAINT OF DEFENDANTS FAYETTE COUNTY BOARD OF COMMISSIONERS; HERB FRADY, ROBERT HORGAN, LEE HEARN, STEVE BROWN AND ALLEN MCCARTY, IN THEIR OFFICIAL CAPACITIES; FAYETTE COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION; AND TOM SAWYER, IN HIS OFFICIAL CAPACITY with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties to this matter via electronic notification.

This 11th day of October, 2011.

/s/ Frank B. Strickland
Frank B. Strickland
Georgia Bar No. 687600