

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

GEORGIA STATE CONFERENCE OF)	
THE NAACP, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	CIVIL ACTION FILE
v.)	
)	NO. 3:11-CV-123-TCB
FAYETTE COUNTY BOARD OF)	
COMMISSIONERS, <i>et al.</i> ,)	
)	
Defendants.)	

**ANSWER TO COMPLAINT ON BEHALF OF DEFENDANTS FAYETTE
COUNTY BOARD OF EDUCATION, BOB TODD, MARION KEY, JANET
SMOLA, TERRI SMITH AND SAM TOLBERT**

COME NOW, Defendants Fayette County Board of Education¹, Bob Todd, Marion Key, Janet Smola, Terri Smith and Sam Tolbert², Defendants in the above-styled action (hereinafter referred to as “Board of Education Defendants”), and respond to Plaintiffs’ Complaint as follows:

¹ The proper name for the entity capable of being sued under Georgia law is the Fayette County School District.

² Defendant Tolbert died on September 22, 2011.

FIRST DEFENSE

Plaintiffs' Complaint against the Board of Education Defendants fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs' Complaint requests relief that will result in a violation of the U.S. Constitution and/or relevant election laws.

THIRD DEFENSE

In responding to the separately numbered paragraphs of Plaintiffs' Complaint, the Board of Education Defendants state:

Plaintiffs' Complaint contains an unnumbered "Introduction" that describes their cause of action, identifies the statute and parties involved, and contains legal conclusions, none of which requires response from Defendants. To the extent that one is required, the Board of Education Defendants deny they violated the statute identified in the "Introduction."

1.

Paragraph 1 of Plaintiffs' Complaint sets out the contentions of Plaintiffs in this action which require no response from Defendants. To the extent that one is required, the Board of Education Defendants deny they violated the statute identified in paragraph 1 of Plaintiffs' Complaint.

2.

Paragraph 2 of Plaintiffs' Complaint is a statement of law which requires no response from Defendants. To the extent that one is required, the Board of Education Defendants deny that paragraph 2 is an accurate statement of law.

3.

Paragraph 3 of Plaintiffs' Complaint sets out the contentions of Plaintiffs in this action which require no response from Defendants. To the extent that one is required, the Board of Education Defendants deny they violated the statute identified in paragraph 3 of Plaintiffs' Complaint or that the Board's method of election "dilutes Black voting strength" in violation of the statute cited.

4.

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

5.

The Board of Education Defendants admit the allegations of paragraph 5 of Plaintiffs' Complaint.

6.

The Board of Education Defendants admit the allegations of paragraph 6 of

Plaintiffs' Complaint as to all Defendants except Sam Tolbert, who is now deceased.

7.

The Board of Education Defendants admit the allegations of paragraph 7 of Plaintiffs' Complaint.

8.

The Board of Education Defendants deny that there is "a single-member district containing a majority Black voting-age population and whose voting strength is diluted by the Section 2 violations" and further deny that Plaintiff Georgia NAACP is a proper party. The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the remaining allegations of paragraph 8 of Plaintiffs' Complaint.

9.

The Board of Education Defendants deny that there is "a single-member district containing a majority Black voting-age population and whose voting strength is diluted by the Section 2 violations" and further deny that Fayette County Branch NAACP is a proper party. The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the remaining allegations of paragraph 9 of Plaintiffs' Complaint.

10.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 10 of Plaintiffs' Complaint.

11.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 11 of Plaintiffs' Complaint.

12.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 12 of Plaintiffs' Complaint.

13.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 13 of Plaintiffs' Complaint.

14.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 14 of Plaintiffs' Complaint.

Complaint.

15.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 15 of Plaintiffs'

Complaint.

16.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 16 of Plaintiffs'

Complaint.

17.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 17 of Plaintiffs'

Complaint.

18.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 18 of Plaintiffs'

Complaint.

19.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 19 of Plaintiffs' Complaint.

20.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 20 of Plaintiffs' Complaint.

21.

The Board of Education Defendants deny that they are "the county officials charged with ensuring Fayette County's compliance with applicable state and federal voting laws, including the Voting Rights Act" but admit the remaining allegations of paragraph 21 of Plaintiffs' Complaint.

22.

The Board of Education Defendants admit the allegations of paragraph 22 of Plaintiffs' Complaint and further state that only the Georgia General Assembly has the authority to adopt single-member districts for Fayette County.

23.

The Board of Education Defendants admit the allegations of paragraph 23 of Plaintiffs' Complaint.

24.

The Board of Education Defendants admit the allegations of paragraph 24 of Plaintiffs' Complaint.

25.

The Board of Education Defendants deny that Sam Tolbert is a member of the Board of Education, as he is now deceased, but admit the remaining allegations of paragraph 25 of Plaintiffs' Complaint.

26.

The Board of Education Defendants admit the allegations of paragraph 26 of Plaintiffs' Complaint.

27.

The Board of Education Defendants admit the allegations of paragraph 27 of Plaintiffs' Complaint.

28.

Paragraph 28 of Plaintiffs' Complaint is a statement of law, which requires no response from Defendants. To the extent that one is required, the Board of

Education Defendants deny they violated the statute identified in paragraph 28 of Plaintiffs' Complaint.

29.

Paragraph 29 of Plaintiffs' Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, the Board of Education Defendants deny the existence of minority vote dilution.

30.

The Board of Education Defendants deny the allegations of paragraph 30 of Plaintiffs' Complaint.

31.

The Board of Education Defendants admit the allegations of paragraph 31 of Plaintiffs' Complaint.

32.

The Board of Education Defendants admit the allegations of paragraph 32 of Plaintiffs' Complaint.

33.

The Board of Education Defendants admit the allegations of paragraph 33 of Plaintiffs' Complaint.

34.

The Board of Education Defendants admit the allegations of paragraph 34 of Plaintiffs' Complaint.

35.

The Board of Education Defendants admit the allegations of paragraph 35 of Plaintiffs' Complaint.

36.

The Board of Education Defendants admit the allegations of paragraph 36 of Plaintiffs' Complaint.

37.

The Board of Education Defendants deny that "the method for electing the Board of Education is largely analogous to the method for electing the Board of Commissioners" and admit the remaining allegations of paragraph 37 of Plaintiffs' Complaint.

38.

The Board of Education Defendants admit the allegations of paragraph 38 of Plaintiffs' Complaint.

39.

The Board of Education Defendants admit the allegations of paragraph 39 of

Plaintiffs' Complaint as to all named Board Members except Sam Tolbert, who is now deceased.

40.

The Board of Education Defendants admit the description of the "stated vision" but deny the remaining allegations of paragraph 40 of Plaintiffs' Complaint.

41.

Paragraph 41 of Plaintiffs' Complaint calls for a legal conclusion to which no response is required. To the extent a response is required, Board of Education Defendants deny that the allegation is a fully accurate statement of the law.

42.

The Board of Education Defendants deny the allegations of paragraph 42 of Plaintiffs' Complaint.

43.

The Board of Education Defendants deny that there is a "clear pattern of racially polarized voting" and are without sufficient knowledge and information either to admit or deny the remaining allegations of paragraph 43 of Plaintiffs' Complaint.

44.

The Board of Education Defendants admit that Ms. Burgess lost the election to a white candidate but are without sufficient knowledge and information either to admit or deny the remaining allegations of paragraph 44 of Plaintiffs' Complaint.

45.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 45 of Plaintiffs' Complaint.

46.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 46 of Plaintiffs' Complaint.

47.

The Board of Education Defendants deny the allegations of paragraph 47 of Plaintiffs' Complaint.

48.

The Board of Education Defendants admit that no African-American candidate has been elected to either boards, but deny the remaining allegations of paragraph 48 of Plaintiffs' Complaint.

49.

The Board of Education Defendants admit that Judge Floyd was appointed in 2002, reelected and died and that since 2010 the County has not had any African-American elected officers. The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the remaining allegations of paragraph 49 of Plaintiffs' Complaint.

50.

The Board of Education Defendants deny the allegations of paragraph 50 of Plaintiffs' Complaint.

51.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 51 of Plaintiffs' Complaint.

52.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 52 of Plaintiffs' Complaint.

53.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 53 of Plaintiffs' Complaint.

54.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 54 of Plaintiffs' Complaint.

55.

The Board of Education Defendants are without sufficient knowledge and information either to admit or deny the allegations of paragraph 55 of Plaintiffs' Complaint.

56.

The Board of Education Defendants deny the allegations of paragraph 56 of Plaintiffs' Complaint.

57.

The Board of Education Defendants admit that county elections include numbered posts, residency requirements, staggered terms, and a majority vote

requirement but deny the remaining allegations of paragraph 57 of Plaintiffs' Complaint.

58.

The Board of Education Defendants deny the allegations of paragraph 58 of Plaintiffs' Complaint.

59.

The Board of Education Defendants incorporate their responses to paragraphs 1 through 58 above in response to the allegations of paragraph 59 of Plaintiffs' Complaint.

60.

The Board of Education Defendants deny the allegations of paragraph 60 of Plaintiffs' Complaint.

61.

The Board of Education Defendants deny the allegations of paragraph 61 of Plaintiffs' Complaint.

GENERAL DENIAL

All allegations of Plaintiffs' Complaint, which have not been admitted, denied or otherwise responded to above, are hereby denied.

Based on the foregoing, the Board of Education Defendants state that Plaintiffs are not entitled to any of the relief prayed for in their Complaint;

WHEREFORE, having fully answered, the Board of Education Defendants pray for judgment in their favor and against Plaintiffs, to be discharged without costs and to be awarded such costs, attorney's fees and relief as this Court may deem equitable and proper.

This 9th day of December, 2011.

HARBEN, HARTLEY & HAWKINS, LLP

s/Phillip L. Hartley

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2011, I electronically filed the *Answer to Complaint on Behalf of Defendants Fayette County Board of Education, Bob Todd, Marion Key, Janet Smola, Terri Smith and Sam Tolbert* with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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