

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

FILED
U.S. DISTRICT COURT
NEW ALBANY DIVISION

DEC - 4 2007

SOUTHERN DISTRICT OF INDIANA
LAURA A. BRIGGS, CLERK

PETER A. VOGT, ET AL

Plaintiffs

Vs.

THE CITY COUNCIL OF THE
CITY OF NEW ALBANY,
INDIANA, ET AL

Defendants

4:06-CV-0076-JDT-WGH

RESPONSE TO MOTION TO DISMISS

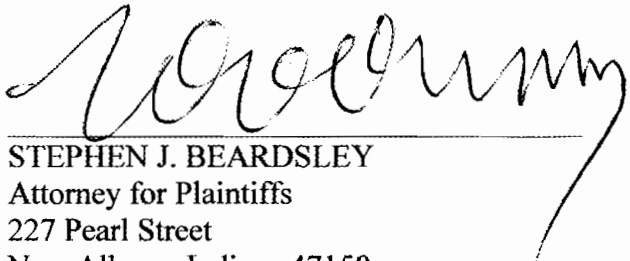
Come now the Plaintiffs, by their counsel, and for their response to the Motion to Dismiss, filed by the Defendants, would show the Court as follows:

1. That at a Pre-Trial Conference held on August 24, 2007, the parties reached an "Agreement in Principal" to resolve this case.
2. That shortly after departing from Federal Court, the "Agreement in Principal" was shredded and fell apart by the action of the Defendants.
3. That the "Agreement in Principal" provided that the Defendant Members of the City Council would not discuss any redistricting proposal amongst themselves but only at public meetings to which the public was lawfully invited and noticed.

4. That several meetings were held by the City Council in passing their ordinance of redistricting and the timing of some of those meetings was scheduled to preclude public attendance and participation.
5. Further that at those meetings the public was allowed comments to members of the City Council but members of the City Council were not permitted to discuss the comments of the public with the members of the public.
6. That at all meetings held pursuant to the ordinance, the members of the City Council did not discuss the ordinance amongst themselves leading Plaintiffs to believe that the Defendants had extra legal discussions amongst themselves with respect to the proposed ordinance.
7. Further that the ordinance passed by the City Council on November 1, 2007, and signed into law by the Honorable James E. Garner, Sr., Mayor of the City of New Albany, Indiana, is defective for the following three reasons:
 - a) The ordinance does not comply with Indiana Code 36-4-6-3 which requires the City Council Districts to “contain, as nearly as is possible, equal population. The ordinance passed by the City Council leaves a discrepancy of Five Hundred Sixty-five (565) voters between the largest City Council District and the smallest City Council District; that this defect is easily remedied by the crossing of precinct boundaries as specifically authorized by I.C. 36-4-6-3(3)(c).

- b) The Defendants did not comply with the provisions of I.C. 36-4-6-3(s) insofar as they fail to give notice to the Clerk of the Circuit Court as required by statute.
- c) That Indiana Code 3-11-1.5-32 prohibits the passing of any ordinance of redistricting for one full calendar year prior to the municipal election and the ordinance passed by the City Council having been passed by the City Council on November 1, 2007, occurred five (5) days before the municipal elections held in the City of New Albany on November 6, 2007, and which ordinance was signed into law by the Mayor on election, to-wit: November 6, 2007. Accordingly said ordinance is void on its face.


FURTHER THE PLAINTIFFS DO NOT SAY.



STEPHEN J. BEARDSLEY
Attorney for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand delivered to Jerry Ulrich,
115 East Spring Street, New Albany, Indiana 47150 this 4 day of December
2007.

A handwritten signature in black ink, appearing to read "Stephen J. Beardsley", written over a horizontal line.

STEPHEN J. BEARDSLEY