

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**NICOLE WINSTEAD, STEPHEN PETTUS,
ARETHA WARD, LETA ANTHONY, &
R.S. McCULLOUGH**

PLAINTIFFS

vs.

Case No. 4:07-CV-000682 WRW

**MARK STODOLA, in His Individual and Official Capacity,
TOM CARPENTER, in His Individual and Official Capacity,
CITY OF LITTLE ROCK,
STACY HURST, in Her Individual and Official Capacity,
BRAD CAZORT, in His Individual and Official Capacity,
MICHAEL KECK, in His Individual and Official Capacity,
DORIS WRIGHT, in Her Individual and Official Capacity,
DEAN KUMPURIS, in His Individual and Official Capacity,
KENT WALKER, in His Individual and Official Capacity,
MARTHA McCASKILL, in Her Individual and Official Capacity,
OZELL SNIDER, in His Individual and Official Capacity,
SUSAN INMAN, in Her Individual and Official Capacity,
MIKE BEEBE, in His Individual and Official Capacity, and
The STATE OF ARKANSAS**

DEFENDANTS

**MOTION TO DISMISS
BY SEPARATE STATE DEFENDANTS**

Separate State Defendants the State of Arkansas, Governor Mike Beebe in his Official Capacity, and in his Individual Capacity, by and through their counsel, Attorney General Dustin McDaniel and Assistant Attorney General Scott P. Richardson, for their Motion to Dismiss state as follows:

1. Plaintiffs Nicole Winstead, Stephen Pettus, Aretha Ward, Leta Anthony, and R.S. McCullough, purport to bring this action against various officials of the City of Little Rock, Arkansas, Pulaski County, Arkansas, the Governor of Arkansas, and the State of Arkansas. Plaintiffs make vague allegations that the expansion of the powers of the Mayor of the City of

Little Rock, as approved by the voters of the City of Little Rock at an election held on August 14, 2007, violates Plaintiffs' rights under 42 U.S.C. § 1983, the Voting Rights Act (42 U.S.C. § 1973), and the First, Fourth, Fifth, Fourteenth, and Fifteenth Amendments of the United States Constitution.

2. Plaintiffs' claims should be dismissed in their entirety for the following reasons:

- A. Sovereign Immunity – Plaintiffs' § 1983 claims against the State of Arkansas and the Office of the Governor of Arkansas are barred by the Eleventh Amendment.
- B. Qualified Immunity – Plaintiffs' claims, if any, against Governor Mike Beebe in his individual capacity are barred by qualified immunity.
- C. Fourteenth Amendment Vagueness – Plaintiffs fail to assert facts demonstrating that the Acts referred to in their complaint are unconstitutionally vague. Plaintiffs do not have standing to assert this claim.
- D. Section 1983 Claims – Plaintiffs have failed to plead specific facts alleging that Governor Beebe or any of the State Defendants violated any of the Plaintiffs' federal rights.
- E. Standing – Plaintiffs have failed to allege that they have standing to pursue their claims.
- F. Voting Rights Act (VRA) Claims – (a) The Governor is not a proper party under the VRA; (b) the VRA does not provide the relief that Plaintiffs seek (reapportioning the power granted to the Mayor by the

electors); and (c) Plaintiffs have not pleaded facts that would satisfy the three *Gingles* preconditions to a claim under § 2 of the VRA.

G. Fourteenth and Fifteenth Amendment Claims—Plaintiffs fail to assert facts that create the inference of discriminatory intent on the part of the State or its officials in enacting or maintaining the existing electoral system.

3. Separate State Defendants agree with and join in the Motions to Dismiss of the Separate City and County Defendants.

4. Attached as Exhibit A is Act 629 of 2007 and as Exhibit B is Act 729 of 2007, the two Acts of the Arkansas General Assembly that Plaintiffs refer to in their Complaint.

WHEREFORE, for the foregoing reasons and the reasons stated in the Brief in Support of Separate Defendants' Motion to Dismiss, the Separate State Defendants respectfully request that their Motion to Dismiss be granted and that Plaintiffs' Complaint be dismissed with prejudice.

Respectfully submitted,

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ATTORNEYS FOR SEPARATE
DEFENDANTS THE STATE OF

ARKANSAS, GOVENOR MIKE BEBEE,
IN HIS OFFICIAL CAPACITY AND IN
HIS INDIVIDUAL CAPACITY

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following:

Mr. Thomas M. Carpenter
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I hereby certificate that on August 29, 2007, I mailed the document by United States Postal Service to the following non CM/ECF participants:

Mr. R.S. McCullough
P.O. Box 56530
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/s/ Scott P. Richardson
SCOTT P. RICHARDSON