

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Rev. Jarmal Jabbar Sanders,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	2:21-cv-00007-MHT-SMD
)	
John H. Merrill, in his official capacity)	
as Alabama Secretary of State, and)	
Kay Ivey, in her official capacity as)	
Governor of the State of Alabama,)	
)	
Defendants.)	

**STATE DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO AMEND COMPLAINT (DOC. 24)**

A *pro se* Plaintiff who asserts that he is a “former President of the United States,” doc. 1 at 1, has now filed a motion to amend his complaint against Alabama Governor Kay Ivey and Alabama Secretary of State John H. Merrill (the State Defendants), doc. 24, and this Court has entered an Order for the State Defendants to show cause why Plaintiff’s motion should not be granted, doc. 25. The State Defendants oppose Plaintiff’s motion based upon futility, as set out below.

Federal Rule of Civil Procedure 15(a)(1) allows one amendment of a complaint “as a matter of course” within 21 days after service of the complaint, Fed. R. Civ. P. 15(a)(1)(A), or 21 days after service of an answer or motion to dismiss under Fed. R. Civ. P. 12(b), (e), or (f) whichever is earlier, Fed. R. Civ. P. 15(a)(1)(b). Defendants filed a Fed. R. Civ. P. 12(b) motion to dismiss with an alternative Fed. R. Civ. P. 12(e) motion for more definite statement, doc. 11, on January 29, 2021. Plaintiff’s proposed amended complaint—offered in March—cannot be timely insofar as filing as “a matter of course.” The Rules allow for subsequent amendments “only with the

opposing party's written consent," which is not present here, "or the court's leave." Fed. R. Civ. P. 15(a)(2). The Rules further provide that leave should be given "freely" "when justice so requires," *id.*; however, importantly, a court's "denial of leave to amend is justified by futility when the complaint as amended is still subject to dismissal," *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004) (citing *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1320 (11th Cir.1999)).

While the proposed amended complaint, doc. 24-1, clarifies the Plaintiff's race and appears to drop certain allegations, doc. 1 at 2, it still falls far short of legal adequacy. For instance, Plaintiff purports to bring a racial discrimination claim but the only facts he alleges are that he is black and he was not on the 2020 Presidential ballot; no facts are alleged tying the latter to the former or even attempting to establish that Plaintiff complied with Alabama's ballot access laws for Presidential candidates. Thus, for the reasons previously set out in the State Defendants' motion to dismiss, doc. 11, and which are incorporated herein by reference, Plaintiff's proposed amended complaint would fail to state a claim upon which relief can be granted and would further fail to establish subject matter jurisdiction. Because the proposed amended complaint would be due to be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), it would be futile to allow the amendment. Accordingly, the amendment should be denied.¹

¹ It is noteworthy that the State Defendants' dispositive motion included an alternative motion for more definite statement that quoted pleading instructions to the Plaintiff from another Judge of this Court, doc. 11 at 9-10, and that Plaintiff more than a month later moved to file his non-compliant proposed amended complaint.

Respectfully submitted,

Steve Marshall
Attorney General

s/ Winfield J. Sinclair
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Counsel for the State Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on March 11, 2021, consistent with Local Rule 5.4, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and that I am serving this day a copy of the foregoing as electronically filed along with the Notice of Electronic Filing on the Plaintiff, by placing the same in the United States Mail, first class, postage prepaid, and addressed as follows:

Rev. Jarmal Jabbar Sanders
225 Alabama Avenue
Selma, Alabama 36701

s/ Winfield J. Sinclair
Counsel for the State Defendants