

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

**Treva Thompson,  
Melissa Swetnam,  
Antwoine Giles,  
Anna Reynolds,  
Laura Corley,  
Larry Joe Newby,  
Mario Dion Yow,  
Jennifer Zimmer,  
Timothy Lanier, and  
Pamela King, individually  
and behalf of all other similarly  
situated, and Greater  
Birmingham Ministries,**

**Plaintiffs,**

**v.**

**State of Alabama,  
John H. Merrill, in his official capacity  
as Secretary of State,  
George Noblin, in his official capacity  
as Chairman of the Montgomery  
County Board of Registrars and on  
behalf of a class of all voter registrars  
in Alabama, and  
Clifford Walker, in his official capacity  
as Chairman of the Board of  
Pardons and Paroles,**

**Defendants.**

**Civil Action No.  
2:16-cv-783-WKW-CSC**

**STATE DEFENDANTS' ANSWER TO CLASS-ACTION COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF (doc. 1)**

**PRELIMINARY STATEMENT**

1. Admitted.
2. Denied.
3. As to the first and second sentences, the State Defendants lack sufficient information to admit or deny and therefore deny the same. As to the third sentence, denied.
4. As to the first sentence, *Hunter v. Underwood*, 471 U.S. 222 (1985), speaks for itself. Otherwise denied.
5. Admitted that Alabama's voter registration form requires applicants to declare under penalty of perjury that they have not been convicted of a disqualifying felony. Otherwise denied.
6. Denied.
7. The "result" language is denied. As to the percentages, the State Defendants lack sufficient information to admit or deny and therefore deny the same.
8. As to the first sentence, decisions of the United States Supreme Court speak for themselves. As to the second sentence, denied.
9. The Fourteenth and Fifteenth Amendments to the United States Constitution speak for themselves. Otherwise denied.
10. Denied.

11. Admitted that the Plaintiffs seek the requested relief; denied that they are entitled to it.

### **JURISDICTION AND VENUE**

12. Admitted that this court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343, excepting where jurisdiction fails to exist in any federal court for reasons such as sovereign immunity, mootness, and lack of standing. Denied that 52 U.S.C. § 10308(f) additionally supplies jurisdiction.

13. Admitted that this court has personal jurisdiction over the State of Alabama, Secretary of State Merrill, Chairman Walker, and Chairman Noblin. Admitted that the Secretary of State is elected and that Chairman Noblin is appointed to the Montgomery County Board of Registrars. Denied that Chairman Walker is either an elected official or an appointed member of a Board of Registrars. Admitted these Defendants live and work in Alabama. Otherwise denied.

14. The State Defendants do not contest venue.

15. Admitted.

### **LEGAL FRAMEWORK**

16. Ala. Const. Art. VIII § 177 speaks for itself.

17. The statutes speak for themselves.

18. The statute speaks for itself.

19. The statute speaks for itself.

20. The statute speaks for itself.

21. Denied.

22. The statute speaks for itself. Otherwise denied.

23. Denied.

24. Opinion to Hon. William C. Segrest, Executive Director of the Board of Pardons and Paroles, dated March 18, 2005, A.G. Opinion No. 2005-092 speaks for itself. *Underwood v. Hunter*, 730 F.2d 614, 616 n. 2 (11<sup>th</sup> Cir. 1984), speaks for itself. Otherwise denied.

25. Opinion to Hon. William C. Segrest, Executive Director of the Board of Pardons and Paroles, dated March 18, 2005, A.G. Opinion No. 2005-092 speaks for itself.

26. The first sentence is admitted. The second and third sentences are denied. The remaining sentences are argument to which no response is required. Otherwise denied.

27. The Opinion to Hon. William C. Segrest, Executive Director of the Board of Pardons and Paroles, dated March 18, 2005, A.G. Opinion No. 2005-092 and the statute speak for themselves.

28. Opinion to Hon. William C. Segrest, Executive Director of the Board of Pardons and Paroles, dated March 18, 2005, A.G. Opinion No. 2005-092 speaks for itself.

29. Opinion to Hon. William C. Segrest, Executive Director of the Board of Pardons and Paroles, dated March 18, 2005, A.G. Opinion No. 2005-092 speaks for itself.

30. Opinion to Hon. William C. Segrest, Executive Director of the Board of Pardons and Paroles, dated March 18, 2005, A.G. Opinion No. 2005-092 speaks for itself. Otherwise denied.

31. Denied.

32. Admitted, except that the number of felonies is denied.

33. Admitted. Averred that the AOC position was not to interpret the phrase moral turpitude but list those felonies which had been specifically decided to involve moral turpitude. Further averred that forgery 3<sup>rd</sup> and theft of property 3<sup>rd</sup> were enacted in their current state in 2015.

34. The first and second sentences are admitted. The remaining sentences are argument to which no response is required. Otherwise denied.

35. Admitted that AOC distributed the list to circuit clerks, Judges of Probate, and sheriffs. Otherwise denied.

36. The first and second sentences are denied. The third sentence is admitted.

37. Admitted.

**PARTIES**

**PLAINTIFFS**

**INDIVIDUAL PLAINTIFFS**

38. Admitted that Plaintiff Thompson was convicted of theft of property, 1st degree in 2005. She is 49 years old. Admitted that she is black. Admitted that theft of property, 1st degree is not a crime listed in Ala. Code § 15-22-36.1(g), and thus Plaintiff Thompson is not precluded from receiving a CERV on this basis. Admitted that Plaintiff Thompson was registered to vote before her conviction and that she was thereafter removed from the rolls. As to the remaining allegations, the State Defendants do not have sufficient information to admit or deny and therefore deny the same.

39. Admitted that Plaintiff Thompson completed her probation. As to the remaining allegations, the State Defendants lack sufficient information to admit or deny and therefore deny the same.

40. Admitted that Plaintiff Swetnam was convicted of assault, 1<sup>st</sup> in the name Melissa Price. She is 46 years old. Admitted she is white and resides in Huntsville, in Madison County. Admitted that assault, 1st degree is not a crime listed in Ala. Code § 15-22-36.1(g), and thus Plaintiff Swetnam is not precluded from receiving a CERV on this basis. As to the remaining allegations, denied. Averred that, on information and belief, Swetnam improperly registered to vote in

October 2017 and cast a ballot in the December 2017 Special Election for United States Senate.

41. Admitted that Plaintiff Swetnam served her time and is not on parole or probation. Admitted that Swetnam wanted to vote in the December 2017 Special Election for United States Senate. As to the remaining allegations, the State Defendants lack sufficient information to admit or deny and therefore deny the same.

42. Admitted that Plaintiff Giles was convicted of stalking, 1<sup>st</sup>. Averred that Giles is not disenfranchised under Ala. Code § 17-3-30.1 and is currently registered to vote. Given his lack of standing to proceed, the remaining allegations require no answer.

43. Admitted that Plaintiff Reynolds was convicted of theft of property, 2<sup>nd</sup> and possession of controlled substances. She is 61 years old. Admitted that she is black and lives in Houston County. Admitted that Plaintiff Reynolds voted in the 2008 and 2012 General Elections in Houston County and in intervening elections. As to the remaining allegations, the State Defendants do not have sufficient information to admit or deny and therefore deny the same. Averred that Plaintiff Reynolds received a CERV, is registered to vote, and voted in the December 2017 Special Election for United States Senate.

44. Admitted that Plaintiff Corley was convicted of two counts of possession of a controlled substance. Averred that Corley is not disenfranchised

under Ala. Code § 17-3-30.1. Given her lack of standing to proceed, the remaining allegations require no answer.

45. Admitted that Plaintiff Newby was convicted of two counts of receiving stolen property, 2<sup>nd</sup>, two counts of theft of property, 2<sup>nd</sup>, and possession of controlled substance by fraud, among other things. He is 62 years old. Admitted that he is black. Admitted that receiving stolen property, 2<sup>nd</sup>, theft of property, 2<sup>nd</sup>, and possession of controlled substance by fraud are not crimes listed in Ala. Code § 15-22-36.1(g), and thus Plaintiff Newby is not precluded from receiving a CERV on the basis for these crimes. Admitted that Newby was previously registered to vote and subsequently removed from the rolls. As to the remaining allegations, the State Defendants lack sufficient information to admit or deny and therefore deny the same.

46. Admitted that Plaintiff Yow was convicted of trafficking cocaine, which is disenfranchising under Ala. Code § 17-3-30.1. Admitted that trafficking cocaine is not a crime listed in Ala. Code § 15-22-36.1(g), and thus Plaintiff Yow is not precluded from receiving a CERV on this basis. He is 39 years old. Admitted that Yow was registered to vote and subsequently removed from the rolls. As to the remaining allegations, the State Defendants lack sufficient information to admit or deny and therefore deny the same.

47. Admitted that Plaintiff Zimmer was convicted of theft of property, 2<sup>nd</sup>, breaking and entering a vehicle, and fraudulent use of a credit card. She is 40 years



old. Admitted that she is white. Admitted that theft of property, 2<sup>nd</sup>, breaking and entering a vehicle, and fraudulent use of a credit card are not crimes listed in Ala. Code § 15-22-36.1(g), and thus Plaintiff Zimmer is not precluded from receiving a CERV on the basis for these crimes. Averred that Zimmer is disenfranchised under Ala. Code § 17-3-30.1. Averred that Plaintiff Zimmer did try to register to vote in Autauga County and Montgomery County, but was denied. The State Defendants lack sufficient information to admit or deny the remaining allegations and therefore deny the same.

48. Admitted that Plaintiff Lanier was convicted of two counts of burglary, 1<sup>st</sup>, two counts of attempted murder, and conspiracy to obtain drugs by fraud. He is 51 years old. Admitted that he is black. Admitted burglary, 1<sup>st</sup>, attempted murder, and conspiracy to obtain drugs by fraud are not crimes listed in Ala. Code § 15-22-36.1(g), and thus Plaintiff Lanier is not precluded from receiving a CERV on the basis for these crimes. Averred that he is disenfranchised under Ala. Code § 17-3-30.1. Denied that Plaintiff Lanier has never applied to register to vote in Alabama. Admitted that he has never voted in Alabama. As to the remaining allegations, the State Defendants lack sufficient information to admit or deny and therefore deny the same.

49. Admitted that Plaintiff King was convicted of murder, which is disenfranchising under Ala. Code § 17-3-30.1 and for which she cannot get a CERV

pursuant to Ala. Code § 15-22-36.1(g). She is 60 years old. Admitted she is black. As to the remaining allegations, the State Defendants lack sufficient information to admit or deny and therefore deny the same.

#### **PLAINTIFF CLASS AND SUBCLASSES**

50. Admitted that the Plaintiffs seek to represent a class defined as set out herein. Denied that a class should be certified.

51. Admitted that the Plaintiffs have identified subclasses. Denied that subclasses should be certified, and further denied that all subclasses have standing.

52. Admitted that the Plaintiffs seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

53. Admitted that some Plaintiffs seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

54. Admitted that some Plaintiffs seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

55. Admitted that some Plaintiffs seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

56. Admitted that some Plaintiffs seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

57. Admitted that some Plaintiffs seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

58. Admitted that some Plaintiffs seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

59. Admitted that some Plaintiffs seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

60. Admitted that some Plaintiffs seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

#### **ORGANIZATIONAL PLAINTIFF**

61. The State Defendants admit that the allegation is consistent with what Greater Birmingham Ministries represents to the public on their website, but lack sufficient information to admit or deny and therefore deny the same.

62. Admitted that Greater Birmingham Ministries has a goal of pursuing social justice in the governance of Alabama and that it engages in efforts that it believes are needed toward that end. Otherwise denied.

63. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

64. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

### **DEFENDANTS**

65. Admitted that Plaintiffs purported to sue the State of Alabama. Denied that Section 2 abrogates Alabama's sovereign immunity. Averred that all claims against the State have been dismissed and the State is due to be dismissed as a party.

66. Admitted that John H. Merrill is the Secretary of State and is sued in his official capacity only. Admitted that the Secretary of State is the chief election official for the State. The statutes on the Secretary of State's rulemaking authority speak for themselves.

67. Admitted that George Noblin is the Chair of the Board of Registrars for Montgomery County and that he is sued in his official capacity only. Otherwise denied.

68. Admitted that Plaintiffs seek a Defendant class; denied that a Defendant class should be certified

69. Admitted that Cliff Walker is the Chairman of the Board of Pardons and Paroles and is sued in his official capacity. Admitted that the Board of Pardons and Paroles is the State agency tasked with reviewing CERV applications and issuing CERVs. Otherwise denied.

### **CLASS ALLEGATIONS**

70. Admitted that Plaintiffs seek to bring a class action. The second and third sentences are admitted. The fourth sentence is denied.

71. The State Defendants lack sufficient information to admit or deny and therefore deny the same and demand strict proof thereof.

72. Denied.

73. Denied as to Plaintiffs Swetnam, Giles, and Reynolds. As to the remaining Plaintiffs, the State Defendants lack sufficient information to admit or deny and therefore deny the same and demand strict proof thereof.

74. Denied as to Plaintiffs Swetnam, Giles, Corley, and Reynolds. Admitted that Plaintiffs' counsel Jim Blacksher is experienced in voting rights litigation, though the determination as to all counsel is reserved for the court. As to the remaining allegations, the State Defendants lack sufficient information to admit or deny and therefore deny the same and demand strict proof thereof.

75. Admitted that Defendants have acted, or refused to act, on grounds generally applicable to the entire class and subclasses. Otherwise denied.

76. Denied.

77. The first and second sentences are denied. The third sentence is admitted.

78. Denied.

79. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same and demand strict proof thereof. Denied that a Defendant class should be certified.

80. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same and demand strict proof thereof. Denied that a Defendant class should be certified.

81. Denied.

#### **FACTUAL ALLEGATIONS**

82. Denied.

83. *Dillard v. Crenshaw County*, 640 F. Supp. 1347 (M.D. Ala. 1986), speaks for itself. The State Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph and therefore deny the same.

84. *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), speaks for itself. Admitted that Alabama was a covered State under Section 4 of the Voting Rights Act. The State Defendants lack sufficient information to admit or deny the remaining allegations and therefore deny the same.

85. Denied.

86. *Allen v. City of Evergreen*, 2014 WL 12607819 (S.D. Ala. 2014), speaks for itself. Denied that the isolated events in Evergreen reflect on the State as a whole or are in any way relevant to the claims in this case.

87. Denied.

88. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

89. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same. Averred that Alabama in 2018 is not South Carolina in 1880.

90. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same. Averred that Alabama in 2018 is not Virginia in 1875.

91. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same. Averred that Alabama in 2018 is not North Carolina in 1875.

92. *Ratliff v. Beale*, 20 So. 865 (Miss. 1896), speaks for itself. As to the remaining allegations, the State Defendants lack sufficient information to admit or deny and therefore deny the same. Averred that Alabama in 2018 is not Mississippi in 1890.

93. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

94. The first sentence is admitted. *Hunter v. Underwood*, 471 U.S. 222 (1985), speaks for itself.

95. *Hunter v. Underwood*, 471 U.S. 222 (1985), speaks for itself.

96. *Underwood v. Hunter*, 730 F.2d 614 (11<sup>th</sup> Cir. 1984), speaks for itself.

97. Section 182 of the Alabama Constitution of 1901 speaks for itself. The remaining allegations are argument to which no response is required.

98. *Underwood v. Hunter*, 730 F.2d 614 (11<sup>th</sup> Cir. 1984), speaks for itself. The remaining allegations are argument to which no response is required.

99. *Hunter v. Underwood*, 471 U.S. 222 (1985), speaks for itself.

100. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

101. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

102. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

103. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

104. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

105. The last sentence is denied. Otherwise, the State Defendants lack sufficient information to admit or deny and therefore deny the same.

106. *Dillard v. Crenshaw County*, 640 F. Supp. 1347 (M.D. Ala. 1986), speaks for itself. Otherwise, the State Defendants lack sufficient information to admit or deny and therefore deny the same.



107. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

108. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

109. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

110. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

111. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

112. *Underwood v. Hunter*, 730 F.2d 614 (11<sup>th</sup> Cir. 1984), speaks for itself.

113. *Underwood v. Hunter*, 730 F.2d 614 (11<sup>th</sup> Cir. 1984), speaks for itself.

114. *Underwood v. Hunter*, 730 F.2d 614 (11<sup>th</sup> Cir. 1984), speaks for itself.

115. *Hunter v. Underwood*, 471 U.S. 222 (1985), speaks for itself.

116. Admitted that the Amendment 579 was adopted in 1996; otherwise, denied.

117. As to the first sentence, the State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same. Amendment 579 speaks for itself.

118. Admitted.

119. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

120. Denied.

121. Admitted that, in 2007, while he was Director of the Legal Division for the Administrative Office of Courts, Griffin Sikes wrote a memo containing the language in the allegations. Denied that his opinion is entitled to any weight. Otherwise denied.

122. The first sentence is denied. Admitted that Governor James reinstituted “chain gangs.” As to the third sentence, the State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same. Otherwise denied.

123. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

124. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

125. Admitted that the chain gain allegations were settled. *Austin v. Hopper*, 15 Supp.2d 1210 (M.D. Ala. 1998), speaks for itself.

126. Admitted that the Alabama Legislature proposed Amendment 579 in 1995. Otherwise, the State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

127. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

128. Denied.

129. Admitted that *Hunter v. Underwood*, 471 U.S. 222 (1985), said that the experts in that case made that estimate. Otherwise denied.

130. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

131. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

132. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

133. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

134. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

135. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

136. Admitted that blacks comprise approximately one quarter of the State's voting age population. The State Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph and therefore deny the same.

137. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

138. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

139. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

140. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

141. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

142. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

143. Admitted that Marc Meredith and Michael Morse conducted a study in 2013 and 2014. The study speaks for itself. Otherwise denied.

144. Denied.

145. The statute speaks for itself.

146. Denied.

147. Admitted, except as to the first word which is denied.

148. Admitted.

149. Denied.

150. The statutes speak for themselves.

151. The statute speaks for itself.

152. The statute speaks for itself.

153. Denied.

154. The statutes speak for themselves.

155. Denied.

156. Denied.

157. The statute speaks for itself.

158. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same.

159. The statutes speak for themselves.

160. Denied.

## **CLAIMS**

**Count 1: Intentional Race Discrimination, 14<sup>th</sup> Amendment  
(42 U.S.C. § 1983)  
(All Plaintiffs and Plaintiff Class)  
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

161. Averred that Plaintiffs' incorporation of paragraphs 1 through 160 is characteristic of a disfavored shotgun pleading. *See Anderson v. Dist. Bd. of Tr. of Cent. Florida Cmty. Coll.*, 77 F.3d 364, 365-66 (11<sup>th</sup> Cir. 1996). Nonetheless, in the context of this Complaint and the proceedings to date, and in an abundance of

caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 160, above.

162. Admitted that the Supreme Court in *Hunter v. Underwood*, 471 U.S. 222 (1985), said that Section 182 was adopted in 1901 with an explicit intent to exclude blacks from the electoral franchise. Averred that Amendment 579 and Amendment 865 were not passed with the intent to discriminate.

163. *Hunter v. Underwood*, 471 U.S. 222 (1985), speaks for itself. Admitted that the decision was 8-0.

164. As to the first sentence, Amendment 579 speaks for itself. As to the second and third sentences, the State Defendants lack sufficient information to admit or deny and therefore deny the same. As to the fourth sentence, if the allegation about the existence of legislative history is factual, then the State Defendants lack sufficient information to admit or deny and therefore deny the same. If the allegation is argument, then no response is necessary. Admitted that Section 182 of the 1901 Alabama Constitution was found to be intentionally racially discriminatory.

165. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same, and demand strict proof thereof.

166. Denied.

**Count 2: Intentional Race Discrimination, 15<sup>th</sup> Amendment**  
**(42 U.S.C. § 1983)**  
**(All Plaintiffs and Plaintiff Class)**  
**(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

167. Averred that Plaintiffs' incorporation of paragraphs 1 through 160 is characteristic of a disfavored shotgun pleading. *See Anderson v. Dist. Bd. of Tr. of Cent. Florida Cmty. Coll.*, 77 F.3d 364, 365-66 (11<sup>th</sup> Cir. 1996). Nonetheless, in the context of this Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 160, above.

168. Denied.

**Count 3: Racial Discrimination in Voting, Section 2 of the Voting Rights Act**  
**(52 U.S.C. § 10301)**  
**(All Plaintiffs and Plaintiff Class)**  
**(Against Defendant State of Alabama, Defendant Merrill, Defendant Noblin, and Defendant Class)**

169. This claim has been dismissed and, thus, no answer is required.

170. This claim has been dismissed and, thus, no answer is required.

171. This claim has been dismissed and, thus, no answer is required.

172. This claim has been dismissed and, thus, no answer is required.

**Count 4: Non-Racial Discrimination in Voting, 14<sup>th</sup> Amendment**  
**(42 U.S.C. § 1983)**  
**(All Plaintiffs and Plaintiffs Subclasses A, B, C)**  
**(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

173. This claim has been dismissed and, thus, no answer is required

174. This claim has been dismissed and, thus, no answer is required.

175. This claim has been dismissed and, thus, no answer is required.

176. This claim has been dismissed and, thus, no answer is required.

177. This claim has been dismissed and, thus, no answer is required.

178. This claim has been dismissed and, thus, no answer is required.

179. This claim has been dismissed and, thus, no answer is required.

180. This claim has been dismissed and, thus, no answer is required.

181. This claim has been dismissed and, thus, no answer is required.

182. This claim has been dismissed and, thus, no answer is required.

183. This claim has been dismissed and, thus, no answer is required.

184. This claim has been dismissed and, thus, no answer is required.

185. This claim has been dismissed and, thus, no answer is required.

186. This claim has been dismissed and, thus, no answer is required.

187. This claim has been dismissed and, thus, no answer is required.

188. This claim has been dismissed and, thus, no answer is required.



**Count 5: Non-Racial Discrimination in Voting, 1<sup>st</sup> Amendment**  
**(42 U.S.C. § 1983)**  
**(All Plaintiffs and Plaintiffs Subclasses A, B, C)**  
**(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

189. This claim has been dismissed and, thus, no answer is required.

190. This claim has been dismissed and, thus, no answer is required.

191. This claim has been dismissed and, thus, no answer is required.

**Count 6: Unconstitutional Burden on the Right to Vote, 14<sup>th</sup> Amendment**  
**(42 U.S.C. § 1983)**  
**(All Plaintiffs except Plaintiff King and Plaintiff Subclasses D, E, F)**  
**(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

192. This claim has been dismissed and, thus, no answer is required.

193. This claim has been dismissed and, thus, no answer is required.

194. This claim has been dismissed and, thus, no answer is required.

195. This claim has been dismissed and, thus, no answer is required.

196. This claim has been dismissed and, thus, no answer is required.

197. This claim has been dismissed and, thus, no answer is required.

198. This claim has been dismissed and, thus, no answer is required.

199. This claim has been dismissed and, thus, no answer is required.

200. This claim has been dismissed and, thus, no answer is required.

201. This claim has been dismissed and, thus, no answer is required.

202. This claim has been dismissed and, thus, no answer is required.

203. This claim has been dismissed and, thus, no answer is required.

204. This claim has been dismissed and, thus, no answer is required.

**Count 7: Unconstitutional Burden on the Right to Vote, 1<sup>st</sup> Amendment  
(42 U.S.C. § 1983)**

**(All Plaintiffs, except Plaintiff King, and Plaintiff Subclasses D, E, F)  
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

205. This claim has been dismissed and, thus, no answer is required.

206. This claim has been dismissed and, thus, no answer is required.

207. This claim has been dismissed and, thus, no answer is required.

**Count 8: Deprivation of Procedural Due Process, 14<sup>th</sup> Amendment  
(42 U.S.C. § 1983)**

**(Plaintiffs Treva Thompson, Melissa Swetnam, Antwoine Giles,  
Anna Reynolds, Larry Joe Newby, Mario Dion Yow, and  
Plaintiff Subclasses G and H)  
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

208. This claim has been dismissed and, thus, no answer is required.

209. This claim has been dismissed and, thus, no answer is required.

210. This claim has been dismissed and, thus, no answer is required.

211. This claim has been dismissed and, thus, no answer is required.

212. This claim has been dismissed and, thus, no answer is required.

213. This claim has been dismissed and, thus, no answer is required.

214. This claim has been dismissed and, thus, no answer is required.

215. This claim has been dismissed and, thus, no answer is required.

216. This claim has been dismissed and, thus, no answer is required.

**Count 9: Void for Vagueness, 1<sup>st</sup> and 14<sup>th</sup> Amendments  
(42 U.S.C. § 1983)**

**(All Plaintiffs, except Plaintiff King, and Plaintiff Subclass D)  
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

217. This claim has been dismissed and, thus, no answer is required.

218. This claim has been dismissed and, thus, no answer is required.

219. This claim has been dismissed and, thus, no answer is required.

220. This claim has been dismissed and, thus, no answer is required.

221. This claim has been dismissed and, thus, no answer is required.

222. This claim has been dismissed and, thus, no answer is required.

223. This claim has been dismissed and, thus, no answer is required.

224. This claim has been dismissed and, thus, no answer is required.

225. This claim has been dismissed and, thus, no answer is required.

**Count 10: Arbitrary Disenfranchisement, 14<sup>th</sup> Amendment  
(42 U.S.C. § 1983)**

**(All Plaintiffs and Plaintiff Class)  
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

226. This claim has been dismissed and, thus, no answer is required.

227. This claim has been dismissed and, thus, no answer is required.

228. This claim has been dismissed and, thus, no answer is required.

229. This claim has been dismissed and, thus, no answer is required.

230. This claim has been dismissed and, thus, no answer is required.

231. This claim has been dismissed and, thus, no answer is required.

232. This claim has been dismissed and, thus, no answer is required.

**Count 11: Retroactive Punishment, Ex Post Facto Clause**  
**(42 U.S.C. § 1983)**  
**(All Plaintiffs, except Plaintiff King, and Plaintiff Subclass D)**  
**(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

233. Averred that Plaintiffs' incorporation of paragraphs 1 through 160 is characteristic of a disfavored shotgun pleading. *See Anderson v. Dist. Bd. of Tr. of Cent. Florida Cmty. Coll.*, 77 F.3d 364, 365-66 (11<sup>th</sup> Cir. 1996). Nonetheless, in the context of this Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 160, above.

234. Admitted.

235. Denied.

236. Denied.

237. Denied.

238. Denied.

**Count 12: Disenfranchisement as Cruel and Unusual Punishment,  
8th Amendment  
(42 U.S.C. § 1983)  
(All Plaintiffs and Plaintiff Class)  
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

239. Averred that Plaintiffs' incorporation of paragraphs 1 through 160 is characteristic of a disfavored shotgun pleading. *See Anderson v. Dist. Bd. of Tr. of Cent. Florida Cmty. Coll.*, 77 F.3d 364, 365-66 (11<sup>th</sup> Cir. 1996). Nonetheless, in the context of this Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 160, above.

240. *Atkins v. Virginia*, 536 U.S. 304 (2002), speaks for itself.

241. Denied.

242. Denied.

243. The State Defendants lack sufficient information to admit or deny and therefore deny, and demand strict proof thereof.

244. Denied.

**Count 13: Disenfranchisement for Failure to Pay LFOs, 14<sup>th</sup> Amendment  
(42 U.S.C. § 1983)  
(Plaintiffs Treva Thompson, Melissa Swetnam, and Plaintiff Subclass I)  
(Against Defendant Walker)**

245. Averred that Plaintiffs' incorporation of paragraphs 1 through 160 is characteristic of a disfavored shotgun pleading. *See Anderson v. Dist. Bd. of Tr. of Cent. Florida Cmty. Coll.*, 77 F.3d 364, 365-66 (11<sup>th</sup> Cir. 1996). Nonetheless, in the context of this Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 160, above.

246. *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966) and *Johnson v. Governor of State of Florida*, 405 F.3d 1214 (11<sup>th</sup> Cir. 2005) (*en banc*), speak for themselves.

247. Denied.

248. Denied.

249. *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), speaks for itself.

250. The State Defendants lack sufficient information to admit or deny the allegations in this paragraph and therefore deny the same, and demand strict proof thereof. Averred that Swetnam is improperly voting.

251. *Dunn v. Blumstein*, 405 U.S. 330 (1972), speaks for itself.

252. Denied.

**Count 14: Disenfranchisement for Failure to Pay LFOs, Poll Tax, 24<sup>th</sup>  
Amendment  
(42 U.S.C. § 1983)  
(Plaintiffs Treva Thompson, Melissa Swetnam, and Plaintiff Subclass I)  
(Against Defendant Walker)**

253. This claim has been dismissed and, thus, no answer is required.

254. This claim has been dismissed and, thus, no answer is required.

255. This claim has been dismissed and, thus, no answer is required.

256. This claim has been dismissed and, thus, no answer is required.

**Count 15: Disenfranchisement for Failure to Pay LFOs, Section 2 of the  
Voting Rights Act  
(52 U.S.C. § 10301)  
(Plaintiffs Treva Thompson, Melissa Swetnam, and Plaintiff Subclass I)  
(Against Defendant State of Alabama and Defendant Walker)**

257. This claim has been dismissed and, thus, no answer is required.

258. This claim has been dismissed and, thus, no answer is required.

259. This claim has been dismissed and, thus, no answer is required.

260. This claim has been dismissed and, thus, no answer is required.

**PRAYER FOR RELIEF**

Denied that the Plaintiffs are entitled to any relief.

Denied that the Plaintiffs are entitled to the certification of a class or subclasses.

Denied that the Plaintiffs are entitled to costs, expenses, and/or attorney's fees. In the event of an award, the State Defendants reserve the right to contest the amount thereof.

### **ADDITIONAL DEFENSES**

1. The State of Alabama has sovereign immunity.
2. This Court has dismissed all of the claims against the State of Alabama, and the State is thus due to be dismissed.
3. Plaintiffs Giles, Corley and Reynolds lack standing and are due to be dismissed.
4. Plaintiff Swetnam has unclean hands.
5. Some Plaintiffs lack standing as to some of the claims they bring.
6. Plaintiffs' *Ex Post Facto* clause claim relies on the allegedly undefined nature of the phrase moral turpitude to supply the retroactivity element, and it thus moot.
7. The 1996 Amendment (Amendment 579) was not enacted with discriminatory intent.
8. The 2012 Amendment (Amendment 865) was not enacted with discriminatory intent.



9. The 1996 Amendment (Amendment 579) was not enacted with punitive intent.

10. The 2012 Amendment (Amendment 865) was not enacted with punitive intent.

11. The relevant intent is that of the Alabama Legislature and/or the electorate who voted for the 1996 Amendment (Amendment 579) and/or the 2012 Amendment (Amendment 865).

12. Large portions of the Complaint are irrelevant, immaterial, and scandalous.

13. Alabama Act No. 2017-378, codified at Ala. Code § 17-3-30.1, provides a comprehensive list of felonies which involve moral turpitude specifically for the purpose of applying Section 177 of the Alabama Constitution. This Act moots multiple claims and rebuts the vagueness arguments that infect the Complaint.

14. The State Defendants plead laches.

15. The State Defendants assert the statute of limitations as set out in Ala. Code § 6-2-38(*l*) bars all claims that accrued before September 26, 2014.

Respectfully submitted,

Steve Marshall  
*Attorney General*

Andrew L. Brasher (ASB-4325-W73B)  
*Solicitor General*

James W. Davis (ASB-4063-I58J)  
*Deputy Attorney General*

s/ Misty S. Fairbanks Messick  
Winfield J. Sinclair (ASB-1750-S81W)

Misty S. Fairbanks Messick (ASB-1813-T71F)

Laura E. Howell (ASB-0551-A41H)

Brad Chynoweth (ASB-0030-S63K)  
*Assistant Attorneys General*

OFFICE OF THE ATTORNEY GENERAL  
501 Washington Avenue  
Post Office Box 300152

Montgomery, Alabama 36130-0152

telephone: 334.353.8674

facsimile: 334.353.8440

[abrasher@ago.state.al.us](mailto:abrasher@ago.state.al.us)

[jimdavis@ago.state.al.us](mailto:jimdavis@ago.state.al.us)

[wsinclair@ago.state.al.us](mailto:wsinclair@ago.state.al.us)

[mmessick@ago.state.al.us](mailto:mmessick@ago.state.al.us)

[lhowell@ago.state.al.us](mailto:lhowell@ago.state.al.us)

[bchynoweth@ago.state.al.us](mailto:bchynoweth@ago.state.al.us)

**CERTIFICATE OF SERVICE**

I hereby certify that, on January 12, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Armand G. Derfner  
[aderfner@dernaltman.com](mailto:aderfner@dernaltman.com)

Danielle Lang  
[dlang@campaignlegalcenter.org](mailto:dlang@campaignlegalcenter.org)

James U. Blacksher  
[jblacksher@ns.sympatico.ca](mailto:jblacksher@ns.sympatico.ca)

Jessica Ring Amunson  
[jamunson@jenner.com](mailto:jamunson@jenner.com)

J. Gerald Herbert  
[gherbert@campaignlegalcenter.org](mailto:gherbert@campaignlegalcenter.org)

J. Mitch McGuire  
[jmcguire@mandabusinesslaw.com](mailto:jmcguire@mandabusinesslaw.com)

s/ Misty S. Fairbanks Messick  
Of Counsel