

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

Treva Thompson, Timothy Lanier,
Pamela King, and Darius Gamble,
individually and behalf of all other
similarly situated, and Greater
Birmingham Ministries,

Plaintiffs,

v.

John H. Merrill, in his official capacity
as Secretary of State, Cindy Sahlie, in
her official capacity as Chair of the
Montgomery County Board of Registrars,
and Leigh Gwathney, in her official
Capacity as Chair of the Board of Pardons
and Paroles,

Defendants.

Civil Action No.
2:16-cv-783-ECM-SMD
Class Action

**STATE DEFENDANTS' ANSWER PLAINTIFFS' SUPPLEMENTAL CLASS-ACTION
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (doc. 93)**

The opening paragraph sets forth Plaintiffs' characterization of their "supplemental" complaint to which no response is required; however, Plaintiffs have in fact both supplemented and amended their complaint such that their failure to file a pleading styled "amended complaint" has unduly complicated matters; given the substance of the pleading, the State Defendants are entitled to file a consolidated and amended answer.

1. Admitted. Averred that the claims arising under Section 2 of the Voting Rights Act have been dismissed.

2. This paragraph contains a citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

3. This paragraph contains a citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

4. This paragraph contains a citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required. Averred that Secretary of State Merrill was pressing for legislation listing felonies of moral turpitude *before* this lawsuit was filed. The State Defendants refer to Ala. Act No. 2017-378 and Ala. Act No. 2019-513 for their complete and accurate contents.

5. Denied.

6. Admitted. Averred that the State Defendants object to Plaintiffs references to HB 282; if the legislation had not passed, it would be irrelevant. HB 282 became Ala. Act No. 2017-378 and was codified at Ala. Code § 17-3-30.1. It has subsequently been amended.

7. This paragraph contains a citation to authority (Ala. Act No. 2017-378), to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

8. This paragraph contains a citation to authority (Ala. Act No. 2017-378), to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

9. This paragraph contains a citation to authority (Ala. Act No. 2017-378), to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions,

to which no response is required. Admitted that the penalties for the felonies listed in Act No. 2017-378 vary. Denied that disenfranchisement is a punishment. Further denied that the *Ex Post Facto* and Cruel and Unusual Punishment Clauses apply to felon disenfranchisement.

10. This paragraph contains a citation to authority (Ala. Act No. 2017-378), to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

11. Admitted that the House Journal says:

DISSENT FILED

Permission was granted for the Journal to reflect that in accordance with Article IV, Section 55, Constitution of Alabama 1901, amended, Representative Knight dissented to the bill, HB282, and the following was filed by him:

Pursuant to Section 55 of the Alabama Constitution of 1901, I wish to have my dissent to HB282 spread upon the minutes of the House Journal. My dissent is founded on the condition that follows:

HB282 in its current form would enfranchise some of our citizens, so we can support it as a step in the right direction. But “moral turpitude” was placed in the Alabama Constitution for the purpose of disfranchising African Americans, and it needs to be repealed altogether. We ask the State of Alabama to release to the public complete information about the racial impact of the crimes that this bill defines to be “moral turpitude.”

Averred that Rep. John Knight stated that he preferred to file a lawsuit over legislative change, and that he is listed as a witness for the Plaintiffs in their Initial Disclosures. Otherwise denied.

12. This paragraph contains a citation to authority (Ala. Act No. 2017-378 and Ala. Code § 17-3-30.1), to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required. Averred that Ala. Code § 17-3-30.1 is not a criminal punishment; it is an elections statute which governs elections held after its effective date.

13. Admitted.

14. This paragraph contains a citation to authority (Ala. Act No. 2017-378), to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required. Averred that Ala. Code § 17-3-30.1 is not a criminal punishment; it is an elections statute which governs elections held after its effective date. Admitted that the Secretary of State has interpreted Ala. Code § 17-3-30.1 to be an elections statute which governs elections held after its effective date, and has offered guidance to the Boards of Registrars to that effect. Otherwise denied.

15. Plaintiffs Swetnam, Yow, and Zimmer have been dismissed as Plaintiffs in this case, and thus no response is required as to them. Admitted that the Secretary of State has correctly interpreted Ala. Code § 17-3-30.1 to be an elections statute which governs elections held after its effective date, and has offered guidance to the Boards of Registrars to that effect. Averred that this implementation allows felons who were previously disenfranchised by Ala. Const. art. VIII, § 177 for felonies that are not listed in Ala. Code § 17-3-30.1 to vote. Averred that Plaintiffs Thompson, Lanier and King were all disenfranchised before Ala. Code § 17-3-30.1 (including when this lawsuit was filed), and that Ala. Code § 17-3-30.1 had no effect on them.

16. Plaintiffs Giles and Corley have been dismissed as Plaintiffs in this case, doc. 179-1, and thus no response is required.

17. Plaintiffs Reynolds and Newby have been dismissed as Plaintiffs in this case, doc. 96, and thus no response is required.

18. Denied.

19. The first sentence is admitted. The second sentence is admitted, except that the Voter Declaration signed under penalty of perjury continues; the complete provision states “I am not barred from voting by reason of a disqualifying felony conviction (The list of disqualifying

felonies is available on the Secretary of State's web site at: sos.alabama.gov/mtfelonies)." Averred that Alabama's voter registration form includes a toll-free phone number to call with questions. The last sentence is denied.

20. Denied.

21. The first sentence is admitted, except that the instruction continues: the complete (pertinent) instruction states "To register in Alabama you must: . . . not have been convicted of a felony involving moral turpitude (or have had your civil and political rights restored). The list of moral turpitude felonies is available on the Secretary of State web site at: sos.alabama.gov/mtfelonies." The second sentence is denied. Averred that the claim in Count 18 concerning the federal form has been dismissed. Doc. 179-1.

22. Admitted. Averred that the claim in Count 18 concerning the federal form has been dismissed. Doc. 179-1.

23. This court's Memorandum Opinion and Order, dated December 26, 2017, doc. 80, speaks for itself.

24. This court's Memorandum Opinion and Order, dated December 26, 2017, doc. 80, speaks for itself.

25. This paragraph sets forth Plaintiffs' characterization of their "supplemental" complaint to which no response is required; however, Plaintiffs have in fact both supplemented and amended their complaint such that their failure to file a pleading styled "amended complaint" has unduly complicated matters; given the substance of the pleading, the State Defendants are entitled to file a consolidated and amended answer. Denied that the Secretary of State has improperly implemented Ala. Code § 17-3-30.1. Averred that the Secretary of State has correctly

interpreted Ala. Code § 17-3-30.1 to be an elections statute which governs elections held after its effective date, and has offered guidance to the Boards of Registrars to that effect.

ADDITIONAL PARTIES

26. Admitted that Plaintiff Gamble is black and resides in Gardendale, Alabama in Jefferson County. He is 44 years old. Admitted that Plaintiff Gamble was charged with and plead guilty to, pursuant to a negotiated plea agreement, Trafficking in Cannabis in violation of Ala. Code § 13A-12-231(1)(a), a Class A felony, on or about February 11, 2008. Admitted that trafficking in cannabis is a felony of moral turpitude pursuant to Ala. Code § 17-3-30.1, and that the Alabama Secretary of State's office offers guidance to the Board of Registrars that Ala. Code § 17-3-30.1 applies to elections held after its effective date. Admitted that 2008 – when Plaintiff Gamble was convicted – is before 2017 – when Ala. Code § 17-3-30.1 was first enacted. Admitted that trafficking in cannabis is not a crime listed in Ala. Code § 15-22-36.1(g), and thus Plaintiff Gamble is not disqualified from seeking a CERV on the basis of this conviction. Any assertion that Ala. Code § 15-22-36.1(g) ever listed all of the felonies of moral turpitude is denied; such a reading would mean that CERV's are unavailable for the only felonies for which they are needed, and thus eliminate any use for CERV's. This paragraph contains a citation to authority (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), to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required. Similarly, the AOC memo, which was not attached to the complaint and which was never authoritative, speaks for itself. Averred that, in 1983, the Supreme Court of Alabama explained that trafficking involves moral turpitude in a decision that is cited in the *Segrest* Opinion's

discussion of the difference between possession for personal use and possession for resale, as follows:

In light of the foregoing cases, we cannot hold that the mere possession of marijuana is a crime involving moral turpitude, even though it is classified as a felony. **In so holding, we draw a distinction between possession for personal use and possession for resale to others.** We cannot see how felony possession for personal use differs from misdemeanor possession for personal use as an indicium of a witness's future trustworthiness. The legislative choice to punish subsequent personal possessory offenses, crimes *mala prohibita* in nature, more severely than the initial possessory offense, does not, by itself, change the character of the offense as it relates to moral turpitude. Possession for resale, however, takes on an entirely different character, one which does involve moral turpitude. *Gholston v. State*, [338 So.2d 454 (Ala. Crim. App. 1976).]

Trafficking in and encouraging others to utilize a controlled substance, such as marijuana, indicates far greater untrustworthiness and depravity of character than personal consumption of a controlled substance. One could logically assume that, because of the illegal nature of trafficking itself, a person would likely lie and operate covertly in order to engage in such selling. On the other hand, personal consumption is likely achieved without such conduct.

Ex parte McIntosh, 443 So.2d 1283 (Ala. 1983). Trafficking is obviously possession with intent to resell, and the Supreme Court of Alabama so said nearly 25 years before Gamble's conviction. Otherwise denied.

27. Admitted that Plaintiff Gamble meets the eligibility requirements for a CERV except for the requirement that he pay "all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on the disqualifying cases," Ala. Code § 15-22-36.1(a)(3). Admitted that Plaintiff Gamble applied for, and was denied, a CERV in 2014. Admitted that, at the time of his conviction, the court imposed a \$50,000 fine on Plaintiff Gamble. Averred that the fine has since been reduced to \$25,000. Order, *State of Alabama v. Darius L. Gamble*, Case No. 58-CC-2006-001468.00 (Shelby County, Ala. Circuit Court Aug. 16, 2019).¹

¹ The court may take judicial notice of court documents from State proceedings. *Lozman v. City of Riviera Beach*, 713 F.3d 1066, 1075 n.9 (11th Cir. 2013).

Admitted that Plaintiff Gamble has regularly paid monthly installments of \$25 since July 2016 and previously regularly paid monthly installments of \$50. Admitted that Plaintiff Gamble's failure to pay his fine by February 11, 2016, as agreed to in his Felony Plea Agreement, triggered the imposition of a collection fee of 30% on the unpaid monies. Averred that the originally imposed collection fee has since been reduced based on the reduced fine. Denied that Plaintiff Gamble currently owes \$63,073.30 in fines and fees. Averred that Plaintiff Gamble currently owes \$30,023.30 in fines and fees as of December 15, 2019. Averred that \$6,082.30 of this total is for a collection fee which need not be paid before Plaintiff Gamble is eligible for a CERV. *See* Ala. Code § 15-22-36.1(a)(3). Thus, Plaintiff Gamble must pay just less than \$24,000 in fines and court costs and fees in order to be eligible for a CERV. Admitted that Plaintiff Gamble does not owe restitution. Averred that a criminal fine is part of the sentence, and that Plaintiff Gamble agreed to it as part of his plea agreement. Denied that Plaintiff Gamble is not financially able to pay the nearly \$24,000 in full at this time or anytime in the foreseeable future. Averred that Plaintiff Gamble can apply for a pardon. Admitted that Plaintiff Gamble wishes to vote. Otherwise denied.

ADDITIONAL PARTY ALLEGATIONS

28. Admitted that Plaintiff Greater Birmingham Ministries adds new allegations.

29. Admitted that Greater Birmingham Ministries does devote staff time and resources to helping those with felony convictions (1) determine whether they are eligible to register to vote; (2) complete voter registration applications; (3) determine whether they are eligible for a CERV; and, (4) apply for a CERV. Averred that Ala. Code § 17-3-30.1, which includes a list of felonies involving moral turpitude for purposes of voting in Alabama, should have reduced the staff time and resources required to assist any individual voter. Any allegation that the staff time and resources required has increased is denied, and the State Defendants demand strict proof thereof.

30. Denied, and the State Defendants demand strict proof thereof.

31. Denied, and the State Defendants demand strict proof thereof.

CLASSES AND SUBCLASSES

32. The State Defendants acknowledge that the Plaintiffs are now seeking a different class and subclasses, and deny that class certification is appropriate.

33. Swetnam, Yow, and Zimmer have been dismissed as Plaintiffs in this case, docs. 96, 107, 157, & 180, and thus cannot represent a class. Admitted that Plaintiffs Gamble, Thompson, Lanier and King seek to represent a class defined as set out herein. Denied that a class should be certified.

34. Admitted that the Plaintiffs seek relief for the putative class as to Counts 1, 2, and 12. Denied that a class should be certified. Denied that Plaintiffs are entitled to any relief.

35. Swetnam, Yow, and Zimmer have been dismissed as Plaintiffs in this case, docs. 96, 107, 157, & 180, and thus cannot represent a subclass. Admitted that Plaintiffs Gamble, Thompson, Lanier and King seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

36. Swetnam has been dismissed as a Plaintiff in this case, doc. 96, and thus cannot represent a subclass. Admitted that Plaintiffs Gamble and Thompson seek to represent a subclass defined as set out herein. Denied that a subclass should be certified.

37. As to the first sentence, admitted that the Plaintiffs seek to bring a class action; denied that any class or subclass should be certified. The second and third sentences are admitted. The fourth sentence is denied.

38. The first sentence is admitted. The second sentence is denied.

39. Denied.

40. Swetnam, Yow, and Zimmer have been dismissed as Plaintiffs in this case, docs. 96, 107, 157, & 180, and thus cannot represent a class or subclass. As to the remaining Plaintiffs, the first sentence is denied. The second sentence is denied.

41. Denied.

42. Denied.

43. Denied.

ADDITIONAL ALLEGATIONS WITH RESPECT TO COUNTS 1, 2, 11, 12, AND 13

**Count 1: Intentional Race Discrimination, 14th Amendment
(42 U.S.C. § 1983)
(All Plaintiffs² and Plaintiff Class)
(Against Defendant Merrill, Defendant Sahlie, and Defendant Class³)**

44. Averred that Plaintiffs' incorporation of paragraphs 1 through 45 (*sic*) 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 43, above.

45. Averred that Plaintiffs' incorporation of their original complaint 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses to the original complaint.

² All plaintiffs except Thompson, Lanier, King, Gamble, and Greater Birmingham Ministries have been dismissed.

³ Averred that the Plaintiffs filed their motion for class certification, doc. 106, without seeking a defendant class and no defendant class should be certified.

46. This paragraph sets forth Plaintiffs' characterization of Count 1 and legal conclusions, to which no response is required. Additionally, this paragraph contains a citation to authority, to which the State Defendants refer for the complete and accurate contents.

47. Denied.

Count 2: Intentional Race Discrimination, 15th Amendment
(42 U.S.C. § 1983)
(All Plaintiffs⁴ and Plaintiff Class)
(Against Defendant Merrill, Defendant Sahlie, and Defendant Class⁵)

48. Averred that Plaintiffs' incorporation of paragraphs 1 through 45 (*sic*) 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 43, above.

49. Averred that Plaintiffs' incorporation of their original complaint 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses to the original complaint.

50. This paragraph sets forth Plaintiffs' characterization of Count 1 and legal conclusions, to which no response is required. Additionally, this paragraph contains a citation to authority, to which the State Defendants refer for the complete and accurate contents.

51. Denied.

⁴ All plaintiffs except Thompson, Lanier, King, Gamble, and Greater Birmingham Ministries have been dismissed.

⁵ Averred that the Plaintiffs filed their motion for class certification, doc. 106, without seeking a defendant class and no defendant class should be certified.

Count 11: Retroactive Punishment, *Ex Post Facto* Clause
(42 U.S.C. § 1983)
(Plaintiffs GBM, Gamble, Thompson, Swetnam, Yow, Zimmer, Lanier, King⁶
and *Ex Post Facto* Subclass)
(Against Defendant Merrill, Defendant Sahlie, and Defendant Class⁷)

52. Averred that Plaintiffs' incorporation of paragraphs 1 through 45 (*sic*) 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 43, above.

53. Averred that Plaintiffs' incorporation of their original complaint 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses to the original complaint. Further averred that Plaintiffs' additional allegations either completely change the nature of the original claim, or add a second different claim under the same Count; either result is improper.

54. This paragraph contains a reference to authority (Alabama's voter registration laws), to which the State Defendants refer for the complete and accurate contents. Admitted that the Board of Registrars did – and do – make the initial determination about whether an applicant is qualified to register to vote, and that anyone who is denied is entitled to appeal to the State court system. Otherwise denied.

⁶ All plaintiffs except Thompson, Lanier, King, Gamble, and Greater Birmingham Ministries have been dismissed. Plaintiff King did not originally bring this claim.

⁷ Averred that the Plaintiffs filed their motion for class certification, doc. 106, without seeking a defendant class and no defendant class should be certified.

55. This paragraph contains a citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required. Averred that Ala. Code § 17-3-30.1 is not a criminal punishment; it is an elections statute which governs elections held after its effective date. Admitted that the Secretary of State has interpreted Ala. Code § 17-3-30.1 to be an elections statute which governs elections held after its effective date, and has offered guidance to the Boards of Registrars to that effect. Otherwise denied.

56. Denied.

57. Denied.

**Count 12: Disenfranchisement as Cruel and Unusual Punishment,
8th Amendment
(42 U.S.C. § 1983)
(All Plaintiffs⁸ and Plaintiff Class)
(Against Defendant Merrill, Defendant Sahlie, and Defendant Class⁹)**

58. Averred that Plaintiffs' incorporation of paragraphs 1 through 45 (*sic*) 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 43, above.

59. Averred that Plaintiffs' incorporation of their original complaint 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their

⁸ All plaintiffs except Thompson, Lanier, King, Gamble, and Greater Birmingham Ministries have been dismissed.

⁹ Averred that the Plaintiffs filed their motion for class certification, doc. 106, without seeking a defendant class and no defendant class should be certified.

responses to the original complaint. Further averred that Plaintiffs' additional allegations either completely change the nature of the original claim, or add a second different claim under the same Count; either result is improper.

60. Admitted that the Plaintiffs seek to bring this claim on behalf of the class; denied that a class should be certified. Otherwise denied.

61. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required. Denied that Ala. Code § 17-3-30.1 is criminal punishment.

62. Denied.

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

64. Denied.

**Count 13: Disenfranchisement for Failure to Pay LFOs, 14th Amendment
(42 U.S.C. § 1983)
(Plaintiffs GBM, Gamble, Thompson, Swetnam¹⁰, and LFO Subclass)
(Against Defendant Gwathney)**

65. Averred that Plaintiffs' incorporation of paragraphs 1 through 45 (*sic*) 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 43, above.

66. Averred that Plaintiffs' incorporation of their original complaint is characteristic of a disfavored shotgun pleading. *See Anderson v. Dist. Bd. of Tr. of Cent. Florida Cmty. Coll.*, 77

¹⁰ All plaintiffs except Thompson, Lanier, King, Gamble, and Greater Birmingham Ministries have been dismissed. Plaintiff GBM originally did not bring this claim.

F.3d 364, 365-66 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses to the original complaint.

67. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required. Admitted that Ala. Code § 17-3-30.1 does not in any way amend the CERV process, though it did reduce the number of people who are disenfranchised. Denied that the requirement that those convicted of felonies of moral turpitude who wish to receive a CERV pay “all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on the disqualifying cases,” Ala. Code § 15-22-36.1(a)(3), is unconstitutional.

68. Denied that Ala. Code § 17-3-30.1 disenfranchises anyone; it is the Alabama Constitution that disenfranchises those persons convicted of felonies involving moral turpitude; the State Defendants refer to Ala. Const. art. VIII, § 177 and Ala. Code § 17-3-30.1 for the complete and accurate contents of these provisions. Further denied that Secretary Merrill is improperly interpreting Ala. Code § 17-3-30.1. Swetnam as been dismissed as a Plaintiff in this case, doc. 96, and thus no response is required as to her. Otherwise denied.

69. Denied.

SUPPLEMENTAL CLAIMS

**Count 16: Unlawful Deprivation of State-Created Right to Vote,
Due Process Clause, 14th Amendment
(42 U.S.C. § 1983)
(Plaintiffs GBM, Gamble, Thompson, Swetnam, Yow, Zimmer, Lanier, King¹¹
and *Ex Post Facto* Subclass)
(Against Defendant Merrill, Defendant Sahlie, and Defendant Class¹²)**

¹¹ All plaintiffs except Thompson, Lanier, King, Gamble, and Greater Birmingham Ministries have been dismissed.

¹² Averred that the Plaintiffs filed their motion for class certification, doc. 106, without seeking a defendant class and no defendant class should be certified.

70. Averred that Plaintiffs' incorporation of paragraphs 1 through 45 (*sic*) 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 43, above.

71. Averred that Plaintiffs' incorporation of their original complaint 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses to the original complaint.

72. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

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74. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

75. Denied.

76. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

77. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required. Averred that Secretary of State Merrill was pressing for legislation listing felonies of moral turpitude *before* this lawsuit was filed.

78. Denied.

79. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required. Otherwise denied. Averred that Ala. Code § 17-3-30.1 is not a criminal punishment; it is an elections statute which governs elections held after its effective date.

80. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

81. Denied.

**Count 17: Unlawful Retroactive Deprivation of Right to Vote,
Due Process Clause, 14th Amendment
(42 U.S.C. § 1983)
(Plaintiffs GBM, Gamble, Thompson, Swetnam, Yow, Zimmer, Lanier, King¹³
and *Ex Post Facto* Subclass)
(Against Defendant Merrill, Defendant Sahlie, and Defendant Class¹⁴)**

82. Averred that Plaintiffs' incorporation of paragraphs 1 through 45 (*sic*) 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 (11th Cir. 1996). Nonetheless, in the context of this

¹³ All plaintiffs except Thompson, Lanier, King, Gamble, and Greater Birmingham Ministries have been dismissed.

¹⁴ Averred that the Plaintiffs filed their motion for class certification, doc. 106, without seeking a defendant class and no defendant class should be certified.

Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 43, above.

83. Averred that Plaintiffs' incorporation of their original complaint 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses to the original complaint.

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86. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

87. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

88. Denied.

89. Denied.

90. Denied.

**Count 18: Failure to Specify Eligibility Requirements,
National Voter Registration Act
(52 U.S.C. § 20510)
(Plaintiff GBM)
(Against Defendant Merrill)**

91. Averred that Plaintiffs' incorporation of paragraphs 1 through 45 (*sic*) 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses set forth in paragraphs 1 through 43, above.

92. Averred that Plaintiffs' incorporation of their original complaint 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 (11th Cir. 1996). Nonetheless, in the context of this Supplemental Complaint and the proceedings to date, and in an abundance of caution, the State Defendants incorporate their responses to the original complaint.

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95. This paragraph contains citation to authority, to which the State Defendants refer for the complete and accurate contents, or sets forth legal conclusions, to which no response is required.

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97. Denied. Averred that the claim in Count 18 concerning the federal form has been dismissed. Doc. 179-1.

98. Denied.

99. Admitted that the Plaintiffs sent Secretary of State Merrill a letter. Denied that the letter is attached as Exhibit A. Otherwise denied.

100. Denied.

101. Denied.

Each and every allegation not expressly admitted is hereby denied, and strict proof thereof is demanded.

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. Averred that class certification would needlessly complicate these proceedings further and expand the scope of discovery.

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.

DEFENSES

1. Plaintiffs have failed to state a claim.
2. The 1996 Amendment (Amendment 579), which repealed and replaced the 1901 Suffrage and Elections Article, is not unconstitutional.
3. The 1996 Amendment (Amendment 579) was not proposed or adopted with discriminatory intent.
4. The 1996 Amendment (Amendment 579) was not proposed or adopted with punitive intent.
5. The 2012 Amendment (Amendment 865), which re-adopted that 1996 and added a provision about secret ballots, is not unconstitutional.
6. The 2012 Amendment (Amendment 865) was not proposed or adopted with discriminatory intent.
7. The 2012 Amendment (Amendment 865) was not proposed or adopted with punitive intent.
8. The relevant intent is that of the Alabama Legislature that proposed the relevant Amendment and/or the electorate who voted for the 1996 Amendment (Amendment 579) and/or the 2012 Amendment (Amendment 865).
9. Large portions of the Complaint are irrelevant, immaterial, and scandalous.
10. Ala. Code § 17-3-30.1 is not unconstitutional.
11. Ala. Code § 17-3-30.1 was not enacted with punitive intent.
12. 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

in elections held after its effective date. This Act moots multiple claims and rebuts the vagueness arguments that infect the Complaint.

13. Plaintiffs lack standing.

14. Plaintiff Thompson lives in Huntsville, Alabama in Madison County and thus lacks standing to bring any claims against the Chair of the Montgomery County Board of Registrars.

15. Plaintiff Lanier lives in Birmingham, Alabama in Jefferson County and thus lacks standing to bring any claims against the Chair of the Montgomery County Board of Registrars.

16. Plaintiff Gamble lives in Gardendale, Alabama in Jefferson County and thus lacks standing to bring any claims against the Chair of the Montgomery County Board of Registrars.

17. To the extent that Greater Birmingham Ministries fails to establish that it works with felons residing in Montgomery County, it lacks standing to bring any claims against the Chair of the Montgomery County Board of Registrars.

18. Many putative class members live outside of Montgomery County, Alabama and thus lack standing to bring any claims against the Chair of the Montgomery County Board of Registrars.

19. Greater Birmingham Ministries lacks standing to press the intentional race discrimination claims in Counts 1 and 2.

20. Greater Birmingham Ministries lacks standing to press an *Ex Post Facto* claim(s) in Count 11.

21. Greater Birmingham Ministries lacks standing to press a Cruel and Unusual Punishment claim(s) in Count 12.

22. Greater Birmingham Ministries lacks standing to press a challenge to Ala. Code § 15-22-36.1(a)(3).

23. Greater Birmingham Ministries lacks standing to press Count 16.
24. Greater Birmingham Ministries lacks standing to press Count 17.
25. Plaintiffs' *Ex Post Facto* clause claim relies on the allegedly undefined nature of the phrase *moral turpitude* to supply the retroactivity element, and is thus moot.
26. Plaintiff Thompson has failed to state an *Ex Post Facto* claim because the Alabama courts had determined that theft is a crime involving moral turpitude at least three decades before she committed her offense. *Stahlman v. Griffith*, 456 So.2d 287 (Ala. 1984).
27. Plaintiffs Lanier and King have failed to state *Ex Post Facto* claims because they committed their crimes before the 1996 Amendment challenged here was adopted; at the time of their crimes, *all* felonies were disenfranchising.
28. Plaintiff Lanier has failed to state an *Ex Post Facto* claim because the Alabama courts had determined that burglary involves moral turpitude before he committed his offense. *Ex parte McIntosh*, 443 So.2d 1283 (Ala. 1983); *Matthews v. State*, 286 So.2d 91 (Ala. Crim. App. 1973).
29. Plaintiff King has failed to state an *Ex Post Facto* claim because the Alabama courts had determined that murder involves moral turpitude before she committed her offense. *Ex parte McIntosh*, 443 So.2d 1283 (Ala. 1983).
30. Plaintiff Gamble has failed to state an *Ex Post Facto* claim because the Supreme Court of Alabama explained that trafficking involves moral turpitude before Plaintiff Gamble committed his crime. *Ex parte McIntosh*, 443 So.2d 1283 (Ala. 1983).
31. To the extent that Plaintiffs' claims rely on the proposition that, as a matter of State law, they were not disenfranchised by Ala. Const. art. VIII, § 177 prior to the effective date of Ala. Code § 17-3-30.1, that proposition is not only counter-factual, it is inconsistent with the Supreme

Court of Alabama’s authoritative interpretation of Ala. Const. art. VIII, § 177. Order, *Worley v. Gooden*, Case No. 1051712 (Ala. Oct. 25, 2006) (“[W]e explain, for the benefit of the voter registrars of the State of Alabama, that the quoted portion of the final order means only that pursuant to Amendment No. 579 the voter registrars cannot deny voter registration to an individual otherwise qualified to vote simply because he or she has been convicted of *some* felony; denial of voter registration based on a felony conviction is appropriate only if the felony involved moral turpitude.”).¹⁵

32. This court’s jurisdiction is limited to actual cases and controversies.

33. States have an inherent right to disenfranchise felons, and that right is protected by the Fourteenth Amendment to the United States Constitution. The *Ex Post Facto* Clause does not prohibit what the Fourteenth Amendment allows.

34. States have an inherent right to disenfranchise felons permanently, and that right is protected by the Fourteenth Amendment to the United States Constitution. The Eighth Amendment does not prohibit what the Fourteenth Amendment allows.

35. Ala. Code § 15-22-36.1(a)(3) is not unconstitutional.

36. The CERV process is not required by any federal law; it is an act of sovereign grace.

37. The requirement that felons pay “all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on the disqualifying cases,” Ala. Code § 15-22-36.1(a)(3), is not severable.

38. Should the court conclude that Ala. Code § 15-22-36.1(a)(3) is unconstitutional, the State must be given the option to determine whether to continue the CERV process without this requirement or to cease issuing CERVs entirely.

¹⁵ The court may take judicial notice of court documents from State proceedings. *Lozman v. City of Riviera Beach*, 713 F.3d 1066, 1075 n.9 (11th Cir. 2013).

39. Plaintiffs Thompson and Gamble have unclean hands as to Count 13.
40. One or more Counts are barred by the State's sovereign immunity.
41. If Plaintiffs are correct that the NVRA requires the State to list on voter registration forms each and every disenfranchising felony, then the provisions so requiring are unconstitutional.
42. The State Defendants plead *laches*.
43. Plaintiffs have failed to exhaust judicial remedies available to them.
44. The State Defendants assert the statute of limitations as set out in Ala. Code § 6-2-38(l).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on December 17, 2019, 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 Derfner (aderfner@derfneraltman.com); Danielle Lang (dlang@campaignlegalcenter.org); James U. Blacksher (jblacksher@ns.sympatico.ca); Jessica Ring Amunson (jamunson@jenner.com); J. Gerald Herbert (gherbert@campaignlegalcenter.org); J. Mitch McGuire (jmcguire@mandabusinesslaw.com); Mark P. Gaber (mgaber@campaignlegalcenter.org); Michael E. Stewart (mstewart@jenner.com); Jason P. Hipp (jhipp@jenner.com); Jennifer J. Yun (jyun@jenner.com); Molly Danahy (mdanahy@campaignlegal.org); Christopher W. Weller (cww@chlaw.com); and, Marc James Ayers (mayers@bradley.com).

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