

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

JOAN HALL *et al.*,

Plaintiffs,

v.

Civil Action No. 2:03-cv-151

**COMMONWEALTH OF VIRGINIA, and
JEAN JENSEN, SECRETARY,
STATE BOARD OF ELECTIONS,
in her official capacity,**

Defendants,

and

**GARY THOMPSON, *et al.*,
and
JERRY W. KILGORE, in his
official capacity as Attorney General
of the Commonwealth of Virginia,**

Proposed Defendant-Intervenors.

ANSWER

COME NOW Commonwealth of Virginia and Jean Jensen, Secretary, State Board of Elections, in her official capacity, and answer to the specific averments of the Complaint of the Plaintiffs, as follows:

1. The Defendants admit that the Virginia General Assembly passed House Bill 18 on July 10, 2001, after reviewing several alternative redistricting plans for the United States House of Representatives Districts in the Commonwealth of Virginia, and admit that Former Governor Gilmore signed the 2001 Redistricting Plan into law on July 19, 2001, as alleged in ¶ 1

of the Complaint. However, the Defendants specifically deny that the 2001 Redistricting Plan was to be used for elections *beginning in 2002*.

2. The allegations of ¶¶ 2, 3, 4, 5, 6 of the Complaint state conclusions of law and the Plaintiffs' characterizations of the case which the Defendants are not required to either admit or deny. To the extent a response is required, Defendants deny the allegations contained in ¶¶ 2 through 6.

3. The Defendants are without sufficient knowledge or information to admit or deny the allegations contained in the first sentence of ¶ 7 of the Complaint and, therefore, deny same. Furthermore, the Defendants specifically deny the remaining allegations contained in ¶ 7 of the Complaint.

4. The Defendants are without sufficient knowledge or information admit or deny the allegations contained in ¶¶ 8, 9, 10, 11, 12, 13, 14 of the Complaint and, therefore, deny same.

5. The Defendants admit upon information and belief the allegations contained in ¶¶ 15, 16, 17 of the Complaint.

6. The Defendants admit upon information and belief that in comparison with the 2000 Fourth Congressional District, and based on the 2000 census, the 2001 redistricting plan reduced by 5.8% the African American population residing in the Fourth Congressional District. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in ¶ 18 and, therefore, deny same.

7. The Defendants are without sufficient knowledge or information to form a belief as to the truthfulness of the allegations contained in ¶ 19 of the Complaint so as to either admit or deny said allegations and, therefore, deny same.

8. Defendants are without sufficient knowledge or information to admit or deny the allegations of ¶ 20 of the Complaint and, therefore, deny same.

9 The Defendants admit upon information and belief the allegations contained in ¶ 21 of the Complaint.

10. Defendants are without sufficient knowledge or information to admit or deny the allegations of ¶ 22 of the Complaint and, therefore, deny same.

11. The Defendants deny that the June 19, 2001, special election took place one week after the gubernatorial election. The Defendants are without sufficient information to admit or deny the remaining allegations of ¶ 23 of the Complaint and, therefore, deny same.

12. The Defendants deny that the special election was held one week after a gubernatorial vote. The Defendants admit upon information and belief that Lucas gained approximately 48% of the district-wide vote, only slightly less than the 52% majority vote for Forbes; however, the Defendants are without sufficient knowledge or information to admit or deny the remaining allegations contained in ¶ 24 of the Complaint, and, therefore, deny same.

13. The allegations of ¶¶ 25, 26, and 27 of the Complaint are denied.

14. The Defendants are without sufficient knowledge or information to admit or deny the allegations contained in ¶ 28 of the Complaint and, therefore, deny same.

15. Defendants are without sufficient knowledge or information to admit or deny the allegations of ¶¶ 29, 30, 31 of the Complaint and, therefore, deny same.

16. The allegations of ¶ 32 of the Complaint are denied.

17. The Defendants lack sufficient knowledge or information to admit or deny the allegations in the first sentence of ¶ 33 of the Complaint and, therefore, deny same. The Defendants specifically deny that, if passed, Congressional Plan 188 would have increased the

African-American voting population in the Fourth Congressional District to 40.4%. The allegations in the third sentence of ¶ 33 of the Complaint state conclusions of law which the Defendants are required neither to admit nor deny. The Defendants admit upon information and belief that the Deeds Plan, House Bill 19, would have increased the population of African-Americans in the Fourth Congressional District to 40.3% and that the Maxwell-Crittenden Plan would have increased the population of African-Americans to 52.8%; however, the remaining allegations in sentences four and five state conclusions of law which the Defendants are required neither to admit nor deny.

18. Upon information and belief, the Defendants admit the allegations in ¶ 34 of the Complaint.

19. The Defendants lack sufficient knowledge or information to admit or deny the allegations in ¶ 35 of the Complaint and, therefore, deny same.

20. The allegations of ¶ 36 of the Complaint state conclusions of law which the Defendants are required neither to admit nor deny. The Defendants specifically deny the Commonwealth of Virginia in its entirety is subject to the preclearance procedures of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 *et seq.*

21. The Defendants admit that the Department of Justice precleared the 2001 Redistricting Plan on October 16, 2001. The Defendants, however, specifically deny the remaining allegations contained in ¶ 37 of the Complaint.

22. The Defendants deny the allegations in ¶ 38 of the Complaint.

23. The Defendants admit upon information and belief that the 2001 Redistricting Plan, as passed by the Virginia General Assembly signed into law by former Governor Jim

Gilmore, and used in the 2002 elections, will be used in every Congressional election until 2012. The Defendants deny the remaining allegations of ¶ 39 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

1. Defendants assert that the Congressional Redistricting Plan enacted as Ch.7, Spec. Sess. I, was narrowly tailored to achieve a compelling state interest.

SECOND DEFENSE

2. The Complaint fails to state any claim against the Defendants upon which relief may be granted.

THIRD DEFENSE

3. The Defendants affirmatively deny that the Plaintiffs have suffered any injury or damage as a result of any action or omission on the part of Defendants.

FOURTH DEFENSE

4. The Defendants deny each and every allegation of the Complaint not specifically admitted herein and demand strict proof thereof.

FIFTH DEFENSE

5. The Defendants will rely on all defenses raised in their Motion to Dismiss and Memorandum in Support filed contemporaneously herewith.

SIXTH DEFENSE

6. The Defendants will rely on all properly raised defenses to the Complaint, including, without limitation, that, as a matter of law, the Complaint fails to state a legally cognizable claim for violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and that Plaintiffs lack standing to challenge a district within the Commonwealth of Virginia.

WHEREFORE, in response to the Plaintiffs' prayer for relief, the Defendants respectfully request that the Court deny the relief sought by the Plaintiffs, dismiss the Complaint filed by the Plaintiffs, enter judgment in favor of the Defendants and against the Plaintiffs as Plaintiffs are entitled to no relief in this action.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA, *et al.*
Defendants herein

By: _____
Counsel

Jerry W. Kilgore
Attorney General of Virginia

Francis S. Ferguson
Judith Williams Jagdmann
Deputy Attorneys General

Edward M. Macon
Christopher R. Nolen
Paul M. Thompson
Senior Assistant Attorneys General

James C. Stuchell
Virginia State Bar No. 41941
Assistant Attorney General

Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
804/786-2071
804/371-2087

CERTIFICATE OF SERVICE

I hereby certify that on May __, 2003, true and correct copies of the foregoing were mailed to Anita Hodgkiss, Lawyers' Committee for Civil Rights Under Law, 1401 New York Avenue, N.W., Suite 400, Washington, DC 20005-0400; Donald L. Morgan, Esq., Cleary, Gottlieb, Steen & Hamilton, 2000 Pennsylvania Avenue, NW, Washington, DC 20006; J. Gerald Hebert, Esq., Law Office of J. Gerald Hebert, P.C., 5019 Waple Lane, Alexandria, VA 22304, counsel for Plaintiffs; and Michael A. Carvin, Esq., Louis K. Fisher, Esq., and Cody R. Smith, Esq., Jones Day, 51 Louisiana Avenue, NW, Washington, D.. 20001, counsel for Proposed Intervenor-Defendants Thompson, et al.
