

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

LAQUISHA CHANDLER, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	Case No. 2:21-cv-1531-AMM
	)	
WES ALLEN, <i>et al.</i> ,	)	<b>THREE-JUDGE COURT</b>
	)	
<i>Defendants.</i>	)	

**DEFENDANTS' RESPONSE IN PARTIAL OPPOSITION TO  
PLAINTIFFS' MOTION FOR LEAVE TO AMEND [DOC. 123]**

Plaintiffs seek leave to amend their complaint for a fourth time. They seek to drop their constitutional claims and one plaintiff and to add a brand-new claim under Section 2 of the Voting Rights Act. Defendants have no objection to Plaintiffs voluntarily dismissing claims and plaintiffs.<sup>1</sup> Defendants do respectfully oppose Plaintiffs' motion for leave to amend to the extent they seek to add a new Section 2 claim.

Plaintiffs' proposed new claim would be subject to dismissal for the same reason that the existing Section 2 claim is subject to dismissal: Section 2 does not provide Plaintiffs a private right of action under the Voting Rights Act or a right to

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<sup>1</sup> While Defendants have not yet served discovery, Plaintiffs have served discovery, to which Defendants have responded and/or are responding, including on the claims Plaintiffs propose to dismiss. Additionally, Defendants have been working with experts, and Plaintiffs' expert reports are due next month. Nonetheless, Defendants do not oppose dismissal of any claims or plaintiffs.

sue under 42 U.S.C. § 1983.<sup>2</sup> In support of this position, Defendants adopt their arguments raised in support of their motions to dismiss. *See docs. 92, 93, 117.*

While Defendants did not oppose Plaintiffs' amendment when Plaintiffs filed their third amended complaint, that should not be held against Defendants here. The third amended complaint added no new claims and cut the number of districts Plaintiffs challenged on constitutional grounds from 32 to 19. *Compare Doc. 57, with Doc. 83.* By contrast, Plaintiffs now seek to *add* a newly discovered claim two years after this suit was initiated and months after Defendants' motions to dismiss were submitted (having already been refiled once following Plaintiffs' previous amendment).

Plaintiffs' proposed additional Section 2 claim is subject to dismissal, which means their amendment would be futile. That is reason enough to deny their motion for leave to amend as to the Section 2 claims. *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1320 (11th Cir. 1999) (“[D]enial of leave to amend is justified by futility

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<sup>2</sup> The proposed amended complaint is also futile as to the Committee Chairs. As explained in their pending motion to dismiss, plaintiffs have no standing to sue the Committee Chairs and the Committee Chairs have legislative immunity. *See Docs. 93 & 118.* Plaintiffs' assertion in their proposed complaint that “Defendants Livingston and Pringle will likely lead efforts to re-draw the districts to remedy their illegality if the Court orders the State to do so[.]” doc. 123-1 at 6; *see also id.* at 45, do not rectify their standing problems. While the Legislature should be offered an opportunity to draw new lines, if needed, neither the Legislature nor the State is a defendant, and thus neither can be enjoined. Further, two Members of the Alabama Legislature cannot redraw district lines on their own (and neither can the Secretary of State). In addition, as to standing, Rep. Pringle, as the Committee Chair from the House, has no role as Chair in drafting the Senate plan.

when the ‘complaint as amended is still subject to dismissal.’” (quoting *Halliburton & Assoc., Inc. v. Henderson, Few & Co.*, 774 F.2d 441, 444 (11th Cir. 1985)).

Accordingly, Defendants respectfully request that this Court deny Plaintiffs’ motion to amend and grant Defendants’ pending motions to dismiss.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that on December 5, 2023, I electronically filed the foregoing notice with the Clerk of the Court using the CM/ECF system, which will send notice to all counsel of record.

/s/ James W. Davis  
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