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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

KHADIDAH STONE, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2:21-cv-1531-AMM
	)	
WES ALLEN, in his official capacity as Secretary of State of Alabama, *et al*.,	)	
	)	
Defendants.	)	

DEFENDANTS REP. PRINGLE AND SEN. LIVINGSTON'S
MOTION TO DISMISS THE FOURTH AMENDED COMPLAINT

Come now defendants Rep. Chris Pringle and Sen. Steve Livingston in their official capacities as the House and Senate Chairs of the Alabama Legislature's Permanent Legislative Committee on Reapportionment ("the Chairs") and move the Court to dismiss with prejudice the claims made against them in the Fourth Amended Complaint, doc. 126, under F.R.Civ.P. 12(b)(1, 6). Specifically, claims against the Chairs should be dismissed because:

(1) Plaintiffs lack standing to sue them,

(2), Rep. Pringle and Se. Livingston have legislative immunity,

(3) the Voting Rights Act has no private rights of action, and,

(4) Plaintiffs' Section 2 claims lack merit.

Legal Standard

To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). The Court must "take the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff." *Pielage v. McConnell,* 516 F.3d 1282, 1284 (11th Cir. 2008). This rule "is inapplicable to legal conclusions." *Iqbal,* 556 U.S. at 678. A motion to dismiss under Rule 12(b)(1) is analyzed under the same standard as one under Rule 12(b)(6). *Semmes v. United States*, No. CV 07-B-1682-NE, 2009 WL 10688451 at *1 (N.D. Ala. March 31, 2009). However, in ruling on a Rule 12(b)(1) motion, the Court may look beyond the complaint to undisputed facts in the record and undisputed facts plus the court's resolution of disputed facts. *Butler v. Morgan*, 562 Fed. App'x 832, 834-35 (11th Cir. 2014). The burden of proof on a Rule 12(b)(1) motion is on the party averring jurisdiction. *Lawley v. Danville Regional Foundation*, No. 2:08-cv-00825-LSC, 2008 WL 11377631 at *2 (N.D. Ala. Sept. 5, 2008).

Background

The Fourth Amended Complaint ("Complaint"), doc. 126, challenges Senate districts Alabama adopted in 2021 in the areas of Huntsville and Montgomery. Doc. 126, ¶¶ 2-4, 23, 80-92. The Complaint alleges claims for vote dilution under Section

2 of the Voting Rights Act in the form of cracking the population of Black voters in the Huntsville area and packing that of Black voters in the Montgomery area. Doc. 83, ¶¶4, 3 respectively. The Complaint does not challenge a House district.

As to the Chairs, the Complaint alleges that:

> Defendants Steve Livingston and Chris Pringle are sued in their official capacities as Co-Chairs of the Alabama Permanent Legislative Committee on Reapportionment ("the Committee") that was responsible for the 2021 maps challenged here. In that capacity, Defendant Pringle prepared and developed redistricting plans for the State following the decennial census and presided over the meetings of the Committee. The Committee was tasked with making a "continuous study of the reapportionment problems in Alabama seeking solutions thereto" and reporting its investigations, findings, and recommendations to the Legislature as necessary for the "preparation and formulation" of redistricting plans for the Senate and House districts in the State of Alabama. Ala. Code §§ 29-2-51, 29-2-52. Defendant Pringle led the drawing of the challenged districts. 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. In earlier proceedings before this Court, Defendants Livingston and Pringle willingly waived any claim to legislative immunity.

Doc. 126, ¶ 22. As relief, Plaintiffs seek:

> A. Declare the State Senate districting plan adopted in SB 1 a violation of Section 2 of the Voting Rights Act of 1965;
>
> B. Enjoin the Defendants and their agents from holding elections in the challenged districts adopted in SB 1 and any adjoining districts necessary to remedy the Voting Rights Act violations, 42 U.S.C. § 1983; 52 U.S.C. § 10302(b);
>
> C. Set a reasonable deadline for the State of Alabama to adopt and enact a districting plan for the State Senate that remedies the Voting Rights Act violations;

> D. Award Plaintiffs their costs, expenses, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to and in accordance with 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988(b);
>
> E. Retain jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court;
>
> F. Retain jurisdiction over this matter and require all Defendants to subject future State Senate redistricting plans for preclearance review from this court or the U.S. Attorney General under Section 3(c) of the VRA, 52 U.S.C. § 10302(c);
> G. Grant such other and further relief as the Court may deem just and proper.

Id., Prayer for Relief, ¶¶ A-G.

The Permanent Legislative Committee on Reapportionment exists in response the Alabama Legislature's "continuing need for comprehensive study, research and planning … in the area of reapportionment." Ala. Code § 29-2-50. Although reapportionment and redistricting are distinct concepts, in practice the Committee's primary activities are preparing statewide redistricting plans for consideration by the Legislature. *See* doc. 126, ¶¶ 22, 39-40; Ex. A, Declaration of Rep. Chris Pringle, ¶¶3-4 (hereinafter, "*Pringle*, ¶_"); Ex. B, Declaration of Sen. Steve Livingston, ¶¶3-4 ("*Livingston*, ¶__")[1].

[1] The Chairs do not waive legislative immunity by providing declarations in support of their motion to dismiss. A waiver must be "clear and unequivocal," *see Snapper, Inc. v. Redan*, 171 F.3d 1249, 1260-61 (11th Cir. 1999) (noting (in a removal context) that "litigation-based waivers" usually require "clear and unequivocal" evidence of intent to waive). A waiver is "clear and unequivocal" only if a party "tak[es] some substantial offensive or defensive action in the state court action indicating a willingness to litigate in that tribunal…." *Yusefzadeh v. Nelson, Mullins, Riley, & Scarbrough, LLP*, 365 F.3d 1244, 1246 (11th Cir. 2004) (quoting Charles A. Wright, *et al*., 14B FEDERAL PRACTICE & PROCEDURE §3721 (2003)). The Chair's declarations, being in support of a motion to dismiss, in no way indicate "a willingness to litigate" in this court. They indicate just

The Plaintiffs Lack Standing to Sue the Chairs.

The subject-matter jurisdiction of federal courts is constitutionally limited to "Cases" and "Controversies." U.S. Const. art III, § 2. "To have a case or controversy, a litigant must establish that he has standing, which requires proof of three elements. The litigant must prove (1) an injury in fact that (2) is fairly traceable to the challenged action on the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Florida Secretary of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (cleaned up). "Standing, moreover, concerns the congruence or fit between the plaintiff and the defendants. 'In its constitutional dimension, standing imports justiciability: whether plaintiff has made out a "case or controversy" *between himself and the defendant[s]* within the meaning of Art[icle] III. … **Thus, in a suit against state officials for injunctive relief, a plaintiff does not have Article III standing with respect to those officials who are powerless to remedy the alleged injury.**" *Scott v. Taylor*, 405 F.3d 1251, 1259 (11th Cir. 2005) 1259 (Jordan, J. concurring) (first emphasis in original, second emphasis added).

The Chairs cannot provide any relief sought by Plaintiffs. They cannot declare SB1 in violation of the Voting Rights Act; they have no authority to administer

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the opposite. *Fain v. Biltmore Securities, Inc.*, 166 F.R.D. 39, 40 (M.D. Ala. 1996) (no waiver where a party's actions "were for the purpose of preserving the status quo.")

elections[2]; they cannot cause the Legislature to enact new Senate districts, and they cannot make preclearance submissions. *Pringle*, ¶¶ 6-8; *Livingston*, ¶¶ 6-8. Instead, "[u]nder Alabama law, the Secretary of State is the proper state entity to administer the congressional district plan and state election laws." *Chestnut v. Merrill*, no. 2:18-CV-907-KOB, 2018 WL 9439672 at *2 (N.D. Ala. October 16, 2018) (state legislators "in their official capacities 'have no legal interest in the implementation of laws they pass.'"). The timing and duration of legislative sessions is set forth in the Alabama Constitution of 2022, *e.g.* Art. IV, § 48.01 (regular and organizational sessions) and Art. V, § 122 (special sessions, which must be called by the Governor). Moreover, when the Legislature meets, the Chairs do not control its calendar, or the agenda of legislative committees (except for the Reapportionment Committee), or whether their preferred plan is passed by the House and Senate, or is amended, or subject to being substituted. *Pringle*, ¶ 4; *Livingston*, ¶¶ 6. All this is controlled by a combination of other committee chairs, the President Pro Tem of the Senate, the Speaker of the House, and the Chairs' other House and Senate colleagues. Finally,

[2] Because the Chairs are not and cannot administer elections, plaintiffs also cannot meet the second requirement for standing, traceability. *See Doe v. Pryor*, 344 F.3d 1282, 1285 (11th Cir. 2003) (where the Attorney General had "taken no action to enforce [a challenged law] against' the plaintiff, her injuries were "not 'fairly traceable'" to the only defendant before the Court); *see also Lewis v. Governor of Alabama*, 944 F.3d 1287, 1299 (11th Cir. 2019) ("[T]he causation element of standing requires the named defendants to possess authority to enforce the complained-of provision.") (quoting *Digital Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 958 (8th Cir. 2015)).

the Chairs have no authority to make preclearance submissions. Instead, the Attorney General is the entity authorized to make preclearance submission for the State, Ala. Code § 36-15-17 (authorizing the Attorney General to "institute and prosecute, in the name of the state, all … proceedings necessary to protect the rights and interests of the state").

"When '[t]he existence of one of more of the essential elements of standing depends on the unfettered choices made by independent actors not before the courts and whose exercise of ... discretion the courts cannot presume either to control or to predict,' plaintiffs must demonstrate that 'those choices have been or will be made in such a manner as to produce causation and permit redressability of injury.'" *Lewis v. Governor of Alabama*, 944 F.3d 1287, 1304-05 (11th Cir. 2019) (quoting *Lujan*, 504 U.S. at 512 (ellipsis added in *Lewis*).Plaintiffs cannot possibly make this showing. "Because these defendants have no power to redress the injuries alleged, the plaintiffs have no case or controversy with these defendants that will permit them to maintain this action in federal court." *Okpalobi v. Foster*, 244 F.3d 405, 427 (11th Cir. 2001) (en banc)) (*citing Muskrat v. United States*, 219 U.S. 346 (1911)); *see also Okpalobi,* 244 F.3d at 430 (Higgenbotham, J., concurring)("The question of standing in this case is easily framed. We should ask whether enjoining defendants from enforcing the statute complained of will bar its application to these plaintiffs. The answer is no."); *McClure v. Jefferson Cnty. Commission*, No. 2:23-cv-443-

MHH, slip op. at 13, 2023 WL 8792145, at *__ (N.D. Ala. Dec. 19, 2023) ("Stated simply, the plaintiffs may not pursue a claim against the Commission if an order from this Court to the Commission will not directly or indirectly redress the plaintiffs' alleged injury.").

The Plaintiffs have failed to establish standing, and their claims against the Chairs should be dismissed.

Claims Against the Chairs Must Be Dismissed Because They Have Absolute Legislative Immunity From Suit. [3]

"Absolute legislative immunity attaches to all actions taken 'in the sphere of legitimate legislative activity.'" *Brogan v. Scott-Harris*, 523 U.S. 44, 54 (1998) (holding that local legislators "are likewise absolutely immune" from suit under § 1983 "for their legislative activities") (citing *Tenny v. Brandlove*, 341 U.S. 367, 372 (1951); *Scott v. Taylor*, 405 F.3d at 1254 (holding "these state legislator defendants enjoy legislative immunity protecting them from a suit challenging their actions taken in their official legislative capacities and seeking declaratory or injunctive relief.") (footnote omitted); *see also, id*., 405 F.3d at 1255-56 (legislator defendants

[3] Separate from but "parallel to" legislative immunity is legislative privilege, which "protects the legislative process" and shields legislators "from the costs and distraction of discovery, enabling them to focus on their duties." *Florida v. Byrd*, No. 4:22-cv-109-AW-MAF, 2023 WL 3676796 at *2 (N.D. Fla. May 25, 2023). The Chairs are expected to assert legislative privilege, as appropriate, in response to discovery directed to them or their staff members and aides.

sued in an "official capacity suit for prospective relief are entitled to absolute immunity").

I. Rep. Pringle Has Legislative Immunity.

The Fourth Amended Complaint challenges no House Districts. Rep. Pringle played only a ministerial role as House Chair (*i.e.*, presenting the Senate's proposed 2021 districts to the House for a vote) in passage of the challenged Senate districts, and he will have no substantive role in passage of new Senate districts. *See Pringle*, ¶¶ 5-6. In short, Rep. Pringle knows basically nothing about the Plaintiffs' remaining claims. Nevertheless, Rep. Pringle reasserts his claim to legislative immunity for his legislative activities. The Complaint alleges Rep. Pringle "prepared and developed redistricting plans for the State following the decennial census and presided over the meetings of the Committee," and "led the drawing of the challenged districts," and "will likely lead efforts to re-draw the districts to remedy their illegality if the Court orders the State to do so." Doc. 126, Complaint, ¶ 22.

Absolute legislative immunity applies if "legislators were engaging in legislative activity in the particular case under consideration." *Ellis v. Coffee Cnty. Board of Registrars*, 981 F.2d 1185, 1190 (11th Cir. 1993). There is no better example of "legislative activity" than preparing redistricting bills and shepherding them through the Legislature. *See Brogan*, 523 U.S. at 54-56 (holding legislative immunity could be invoked for acts that are "integral steps in the legislative process"

and where city council "governed 'in a field where legislators traditionally have power to act.'") (citation omitted); *DeSisto College, Inc. v. Line*, 888 F.2d 755, 765 (11th Cir. 1989) ("[V]oting, debate and reacting to public opinion are manifestly in furtherance of legislative duties."), *cert denied*, 495 U.S. 952 (1990).

Because Rep. Pringle's challenged acts as Chair were inherently legislative, he has absolute legislative immunity, and Plaintiffs' claims against him should be dismissed with prejudice. *Hall v. Louisiana*, 974 F. Supp. 2d 944, 957 (M.D. La. 2013) (holding the Louisiana Legislature was entitled to legislative immunity in a vote-dilution challenge to judicial districts: "In sum, the Court is persuaded that the Legislature acted in accordance with its legislative duties, and that its alleged acts fall within the 'sphere of legitimate legislative immunity.'").

Rep. Pringle and counsel acknowledge that at the May 20, 2022 status conference, in response to a question from the Court, counsel for the Chairs indicated that Rep. Pringle and Sen. McClendon[4] "have obviously waived their [legislative] immunity." Counsel's statement accurately reflected Rep. Pringle's intent at the time not to asset privilege if the case proceeded, but the case did not proceed. It had been stayed in March 2022, docs. 59 and 61, and remained stayed for over a year, until July 10, 2023. Doc. 75. The Third Amended Complaint was filed July 24, 2023, doc.

[4] Sen. McClendon is no longer a Legislator or a party to this case. He may be expected to asserted legislative immunity for his legislative activity if he is subpoenaed to testify or produce documents.

93, and within two weeks Rep. Pringle asserted immunity. Doc. 93. Legislative immunity is a "*personal* defense" to each legislator. *Scott v. Taylor*, 405 F.3d 1251, 1254-55 (11th Cir. 2005)(emphasis added). As such, it can be waived only by the legislator himself or herself. *See, e.g., Unites States ex rel. Heesch v. Diagnostic Physicians Group, P.C.*, 2014 WL 12603513, *1-2 (S.D. Ala. June 25, 2014) (upholding attorney-client privilege where party argued it was "owner of the privilege, and as a result, [third party] cannot waive [party's] privilege without its consent.") And because the case was stayed at the time of the May 20, 2022 status conference, and Rep. Pringle promptly asserted immunity when the stay was lifted and the Third Amended Complaint was filed, Plaintiffs are not prejudiced by his change of intent. *See United States v. Barfield*, 396 F.3d 1144, 1150(11th Cir. 2005) (laches context).

II. Sen. Livingston Has Legislative Immunity.

At the time of the May 20, 2022 status conference, Sen. Livingston was not Senate Chair of the Committee, was not a party to this case, and was not represented by the Committee's counsel. *See* docs. 45, 53, 73 and 76. Since then, he has not engaged in litigation other than to seek dismissal of this case and assert immunity. Docs. 93 and 118. He is undoubtedly entitled to legislative immunity for his legislative activities as Senate Chair and as a Legislator.

The Voting Rights Act Has No Private Cause Of Action.

Additionally, as argued at greater length by the Alabama Secretary of State, Section 2 of the Voting Rights Act does not unambiguously confer new rights, *31 Foster Child. v. Bush*, 329 F.3d 1255, 1270 (11th Cir. 2003). Section 2 itself created no implied right of action, for if there is no new unambiguous right, "there is no basis for a private suit, whether under § 1983 or under an implied right of action," *Gonzaga Univ. v. Doe*, 536 U.S. 273, 286 (2002). And even if private persons may bring Section 2 claims, Plaintiffs have not plausibly alleged that Black voters in the Montgomery and Huntsville areas have less opportunity than others to (1) participate in the political process, and (2) elect the candidates of their choice. *Chisom v. Roemer*, 501 U.S. 380 (1991); *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986).

I. Section 2 Does Not Unambiguously Confer New Individual Rights.

If a federal statute does not create "new individual rights" "in clear and unambiguous terms," then "there is no basis for a private suit, whether under § 1983 or under an implied right of action" directly under the statute, here Section 2. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 286, 290 (2002); *accord Alexander v. Sandoval*, 532 U.S. 275, 289 (2001).

The "*Gonzaga* test" is the "established method for ascertaining unambiguous conferral" of "individual rights upon a class of beneficiaries to which the plaintiff belongs." *Health and Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 183

(2023) (internal quotation marks omitted). This "significant hurdle" is surmounted "where the provision in question is phrased in terms of the persons benefited and contains rights-creating, individual-centric language with an unmistakable focus on the benefited class." *Id.* at 183-84 (internal quotation marks omitted). Courts "are to look at the text and structure of a statute in order to determine if it unambiguously provides enforceable rights." *31 Foster Child.* 329 F.3d at 1270.

Here, the text, structure, and history of the Voting Rights Act reveals that Section 2 created no new individual rights. First, the VRA created new remedies enforceable by the U.S. Attorney General, not new rights enforceable by millions of private plaintiffs. Second, the right to vote free from discrimination recognized and protected by Section 2 is not a *new* right; it was not created or conferred by the VRA. Finally, Section 2 does not have "an *unmistakable* focus on the benefited class," *Gonzaga*, 536 U.S. at 284, in lieu of a "general proscription" of "discriminatory conduct." *California v. Sierra Club*, 451 U.S. 287, 294 (1981).

A. Section 2, as an Exercise of Congress's Remedial Authority to Enforce the Fifteenth Amendment, Does Not Confer Substantive Rights on Private Individuals.

Unless a federal statute creates "substantive private rights," *Sandoval*, 532 U.S. at 290, it does not secure "rights enforceable under § 1983." *Gonzaga*, 536 U.S. at 285 (quoting *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 107-08 n.4 (1989)). Congress does not confer substantive rights when enforcing the

provisions of the Fourteenth and Fifteenth Amendments. *City of Boerne v. Flores*, 521 U.S. 507, 527 (1997) ("Any suggestion that Congress has a substantive, non-remedial power under the Fourteenth Amendment is not supported by our case law."); U.S. Amend. XIV § 5 ("The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."); U.S. Amend. XV § 2 ("The Congress shall have power to enforce this article by appropriate legislation."). The VRA is an exercise of Congress's power to enforce the "constitutional prohibition against racial discrimination in voting" guaranteed by the Fifteenth Amendment. *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966). As such, it created only "new remedies," not new rights. *Id.* at 308, 315, 329-31. Therefore, Section 2—one of its "remedial portions"—is not privately enforceable under § 1983. *Id.* at 316.

From the ratification of the Fifteenth Amendment up until the passage of the VRA, Congress attempted to secure the right to vote free from discrimination in myriad ways—all largely ineffective. *See Katzenbach*, 383 U.S. at 310-14 (chronicling Congress's "unsuccessful remedies" prescribed "to cure the problem of voting discrimination"). Something more was needed—more than the Enforcement Act of 1870, more than the Civil Rights Acts of 1957, 1960, and 1964, and more than § 1983. Consistent with the scope of its enforcement power, Congress passed in 1965 a "complex scheme" of "stringent new remedies" necessary to "banish the blight of racial discrimination in voting." *Katzenbach*, 383 U.S. at 308, 315; *see also*

Bd. of Trs. of Univ. of Ala. v. Garrett, 531 U.S. 356, 373 (2001) (Congress promulgated "in the Voting Rights Act a detailed but limited remedial scheme."). With these "new, unprecedented remedies," Congress enforced the provisions of the Fifteenth Amendment without making "a *substantive* change in the governing law." *City of Boerne*, 521 U.S. at 519, 526.

As originally enacted, "the coverage provided by § 2 was unquestionably coextensive with the coverage provided by the Fifteenth Amendment." *Chisom v. Roemer*, 501 U.S. 380, 392 (1991); *see also City of Mobile v. Bolden*, 446 U.S. 55, 61 (1980). As such, its inclusion in the VRA, by itself, would have done nothing to redress violations of the underlying right to vote free from discrimination that wasn't already being done through § 1983 actions to enforce the Fifteenth Amendment. But Section 2 paired with Section 12 did a new thing: grant the federal government the power to bring civil and criminal actions to secure Fifteenth Amendment rights (*i.e.*, a new remedy). *Katzenbach*, 383 U.S. at 316. And the "stringent new remedies" of the VRA worked. *Katzenbach*, 383 U.S. at 308. *See also Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 202 (2009).

Further, Supreme Court has been less willing to identify "individually enforceable private rights" where a statute provides a "federal review mechanism." *Gonzaga*, 536 U.S. at 289-90. As the Eighth Circuit recently summarized, "If the text and structure of § 2 and § 12 show anything, it is that Congress intended to place

enforcement in the hands of the Attorney General, rather than private parties." *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204, 1211 (8th Cir. 2023) ("*Arkansas NAACP*"). This inclusion of a robust and express "federal review mechanism" suggests further that Congress did not confer privately enforceable rights.

In sum, even if text or structure "provide some indication that Congress may have intended to create individual rights" through Section 2, they undoubtedly provide "some indication it may not have," which "means Congress has not spoken with the requisite 'clear voice.'" *31 Foster Child.*, 329 F.3d at 1270. That "[a]mbiguity precludes enforceable rights." *Id.*

B. Section 2 Does Not Unambiguously Confer *New* Rights.

Even if Congress conferred substantive rights with the passage of the VRA, only "*new* rights" are enforceable under § 1983. *Sandoval*, 532 U.S. at 290 (emphasis added). Section 2 protects the right of any citizen to vote free from discrimination. Protecting an existing right is not creating a new one, and the right to vote free from discrimination was enshrined more than 150 years ago in the Fifteenth Amendment. *See Reese*, 92 U.S. at 217-18. Section 2 protects that preexisting right by delineating how States might violate it and by giving the Attorney General the tools and authority he needs to enforce the guarantees of the Fifteenth Amendment. Because Section 2 conferred no "new rights," it cannot be

privately enforceable under § 1983. *Compare with* 52 U.S.C. § 10101(a)(2)(B) (*see Schwier v. Cox*, 340 F.3d 1284, 1296-97 (11th Cir. 2003)), *inter alia*.

C. Section 2 Does Not Unambiguously Confer *Individual* Rights.

Finally, unless a federal statute confers "individual rights," *Gonzaga*, 536 U.S. at 285-86, it does not secure "rights enforceable under § 1983." *Id.* at 285 (quoting *Golden State Transit Corp.*, 493 U.S. at 107-08 n.4). Statutes that "have an aggregate focus," in that "they are not concerned with whether the needs of any particular person have been satisfied … cannot give rise to individual rights." *Id.* at 288 (internal quotation marks omitted).

Section 2(a) references "a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). But there is no presumption of § 1983 enforceability just because a statute "speaks in terms of 'rights.'" *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 18-20 (1981). Rather, courts must take "pains to analyze the statutory provisions in detail, in light of the entire legislative enactment, to determine whether the language in question created enforceable rights, privileges, or immunities within the meaning of § 1983." *Suter*, 503 U.S. at 357 (internal quotation marks omitted).

As explained above, the "right" referenced in the text of Section 2(a) is the preexisting right to vote free from discrimination conferred by the Fifteenth

Amendment.[5] If Section 2 created a right, it must be something different. And if this different right exists, it must be "unambiguously conferred." *Gonzaga*, 536 U.S. at 282. That federal judges have disagreed over this question is evidence of ambiguity. *Cf. Georgia State Conf. of NAACP v. Georgia*, 2022 WL 18780945, at *4 (N.D. Ga. Sept. 26, 2022) (three-judge court) (concluding that Section 2 conferred a private right) *to Arkansas NAACP*, 86 F.4th 1204, 1209–10 (8th Cir. 2023) (holding that it "is unclear what to do when a statute focuses on both" the person regulated *and* the individual protected). If unmistakable clarity and unambiguity is the standard for conferring individual rights enforceable under § 1983, Section 2 does not meet it.

II. The VRA Contains No Clear Evidence That Congress Intended To Authorize Private Suits Under Section 2.

"[C]reating a cause of action is a legislative endeavor," *Egbert v. Boule*, 596 U.S. 482, 491 (2022), because to do so "is to assign new private rights and liabilities—a power that is in every meaningful sense an act of legislation," *id.* at 503 (Gorsuch, J., concurring). Put simply, "private rights of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001).

The sole role played by a federal court is to look to the "text and structure" of the statute for "clear evidence that Congress intended to authorize" private suits. *In re Wild*, 994 F.3d 1244, 1255-56 (11th Cir. 2021) (en banc); *see also Sandoval*,

[5] This right is an individual right. *See Shaw v. Hunt*, 517 U.S. 899, 917 (1996); *LULAC v. Perry*, 548 U.S. 399, 437 (2006).

532 U.S. at 286. Plaintiffs already concede that Congress has not *expressly* authorized private persons to sue under Section 2, as it did in the Civil Rights Act of 1964. (Doc. 112-1, at 25.) And "a careful examination of the statute's language" reveals no unambiguous conferral of new individual rights nor a clear authorization for private plaintiffs to seek judicial enforcement of Section 2's guarantees. *In re Wild*, 994 F.3d at 1255.

As explained above, Section 2 does not confer "new individual rights" "in clear and unambiguous terms." *Gonzaga*, 536 U.S. at 286, 290. A court's "role in discerning whether personal rights exist in the implied right of action context" does "not differ from its role" "in discerning whether personal rights exist in the § 1983 context." *Gonzaga*, 536 U.S. at 285. "Accordingly, where the text and structure of a statute provide no indication that Congress intends to create new individual rights, there is no basis for a private suit, whether under § 1983 or under an implied right of action." *Id.* at 286. Thus, where Congress confers only new remedies and not new rights, as it did with Section 2, there can be no implied right of action.

Section 3 of the VRA does not change the analysis. That section confers certain powers on a court if, for example, it finds a constitutional violation in a "proceeding instituted by the Attorney General or an aggrieved person." 52 U.S.C. § 10302(c). But Section 3's "aggrieved person" language at most recognizes the existence of statutes by which private parties could enforce the Fourteenth and

Fifteenth Amendments, like Section 1983, which predated the VRA. *See Morse v. Republican Party of Virginia*, 517 U.S. 186, 289 (1996) (Thomas, J., dissenting). Thus, while Section 3 recognizes that other private rights of action exist, the provision does not create a new one or show that Section 2 creates one.

Finally, this question remains an open one in this Circuit. The Supreme Court has only ever "assumed—without deciding—that the Voting Rights Act of 1965 furnishes an implied cause of action under § 2." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J., concurring) (citing *Bolden*, 446 U.S. at 60 n.8 (plurality op.)). Plaintiffs previously argued that the Supreme Court's decided this question in 1996 in a divided 2-3-4 decision involving not Section 2, but the private enforceability of Section 10. *See* Doc. 112-1 at 18-22. But they are mistaken.

Plaintiffs Fail To State A Claim Under The Text Of Section 2.

Even assuming that private plaintiffs have statutory authority to bring a Section 2 claim, Plaintiffs here have failed to state a claim that the challenged electoral systems are not "equally open" to minority voters. Plaintiffs must allege facts plausibly showing that members of a minority group "have less opportunity than other members of the electorate [1] to participate in the political process *and* [2] to elect representatives of their choice." 52 U.S.C. § 10301(b) (emphasis added). In *Chisom v. Roemer*, the Supreme Court clarified that Section 2 did "not create two

separate and distinct rights." 501 U.S. 380, 397 (1991). Rather, "the opportunity to participate and the opportunity to elect" form a "unitary claim." *Id.* at 397-98. Thus, proving only the second—less opportunity to elect—"is not sufficient to establish a violation unless … it can also be said that the members of the protected class have less opportunity to participate in the political process." *Id.* at 397.

A. Plaintiffs Fail to Plead Facts Showing an Unequal Opportunity "to Participate in the Political Process."

To determine if Plaintiffs have plausibly alleged that Black voters have "less opportunity than other members of the electorate to participate in the political process," 52 U.S.C. § 10301(b), it is first important to determine what that text means. The 1982 amendments to "§ 2 [were] intended to 'codify' the results test employed in *Whitcomb v. Chavis*, 403 U.S. 124 (1971), and *White v. Regester*, 412 U.S. 755 (1973)." *Chisom*, 501 U.S. at 394 n.21 (quoting *Gingles*, 478 U.S. at 83-84 (O'Connor, J., concurring in the judgment)). And because the phrase "is obviously transplanted from another legal source, it brings the old soil with it." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (internal quotation marks omitted). Thus, "it is to *Whitcomb* and *White* that [courts] should look in the first instance in determining how great an impairment of minority voting strength is required to establish vote dilution in violation of § 2." *Gingles*, 478 U.S. at 97 (O'Connor, J., concurring in the judgment).

Whitcomb helps make clear what is *not* enough to establish a vote dilution claim. There, the Supreme Court reversed the trial court's ruling based on the lack of "evidence and findings that ghetto[6] residents had less" "opportunity to participate in and influence the selection of candidates and legislators." 403 US at 149, 153. The Court described what plaintiffs failed to prove:

> We have described nothing in the record or in the court's findings indicating that poor [blacks] were not allowed [1] to register or vote, [2] to choose the political party they desired to support, [3] to participate in its affairs or [4] to be equally represented on those occasions when legislative candidates were chosen. Nor did the evidence purport to show or the court find that inhabitants of the ghetto were [5] regularly excluded from the slates of both major parties, thus denying them the chance of occupying legislative seats.

Id. at 149–50.

This is what "equal opportunity to participate in the political process" means—the ability to register and vote, choose the party one desires to support, participate in its affairs, and have an equal vote when the party's candidates are chosen. The political party the plaintiffs in *Whitcomb* favored in 1960s Marion County was the Democratic Party, and it was "reasonably clear" that their "votes were critical to Democratic Party success." *Id.* at 150. Thus, the Supreme Court explained, "it seem[ed] unlikely that the Democratic Party could afford to overlook the ghetto in slating its candidates." *Id.*

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[6] The "ghetto" referred to in *Whitcomb* was "a heavily black and poor part of Marion County "termed 'the ghetto area.'" 403 US 128–29.

It made no difference to the Court that the Democratic Party had lost "four of the five elections from 1960 to 1968." *Id.* The record suggested that "had the Democrats won all of the elections or even most of them, the ghetto would have had no justifiable complaints about representation." *Id.* at 152. Thus, "the failure of the ghetto to have legislative seats in proportion to its populations emerge[d] more as a function of losing elections," not built-in racial bias. *Id.* at 153. The plaintiffs' alleged denial of equal opportunity was "a mere euphemism for political defeat at the polls." *Id.* That was not enough.

White v. Regester provides a helpful contrast. There, Black voters of Dallas County, Texas, favored the Democratic Party, but at-large elections and "a white-dominated organization that is in effective control of Democratic Party candidate slating in Dallas County" combined to deny Black voters equal opportunity to participate in the political process. 412 U.S. at 766-67. The district court had found that "the Texas rule requiring a majority vote as a prerequisite to nomination in a primary election" and "the so-called 'place' rule limiting candidacy for legislative office from a multimember district to a specified 'place' on the ticket" "enhanced the opportunity for racial discrimination." *Id.* at 766. But "[m]ore fundamentally," the Democratic Party "did not need the support of the [Black] community to win elections in the county, and it did not therefore exhibit good-faith concern for the political and other needs and aspirations of the [Black] community." *Id.* at 767.

Because "the black community" was "effectively excluded from participation in the Democratic primary selection process," it "was therefore generally not permitted to enter into the political process in a reliable and meaningful manner." *Id.*

In contrast with the plaintiffs in *White*, Plaintiffs here have not alleged that Black voters in Montgomery and Huntsville "have less opportunity than other members of the electorate to participate in the political process." 52 U.S.C. § 10301(b). There are no allegations that Black voters in the two challenged areas are "not allowed to register to vote, to choose the political party they desire[] to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen." *Id.* at 149.

The most Plaintiffs allege is that in Alabama generally "disparities in voter turnout and voter registration rates remain." (Doc. 126, ¶ 153) (alleging that in the 2020 election Black voter registration and turnout lagged about nine percent lower than white voter registration and turnout). But even if this statewide allegation could satisfy the "intensely local appraisal" demanded by Section 2, *Allen v. Milligan*, 599 U.S. 1, 19 (2023), the same Census records from which Plaintiffs pulled their data show that they fall far short of *Whitcomb*'s standard. For example, Alabama in 2018 had the second highest Black voter registration rate in the entire county.[7] And in

[7] U.S. Census Bureau, Table 4b: *Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2018*, www2.census.gov/programs-surveys/cps/tables/p20/583/table04b.xlsx (last visited Dec. 18, 2023). The Court

2016, Black voter turnout in Alabama surpassed white voter turnout by 4%; while nationally, there was a 4% gap going the other way.[8] The 9-point registration and 8-point turnout gaps in 2020 are thus an aberration,[9] as shown by 2022, when Black voters in Alabama registered and voted at higher rates than Black voters nationally and voted at higher rates than white voters in Alabama.[10]

Plaintiffs also generally allege that socioeconomic "disparities hinder Black Alabamians' opportunity to participate in the political process today." (Doc. 126, ¶ 152) (quoting *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1022 (N.D. Ala. 2022)). They allege that "'white Alabamians tend to have more education and therefore higher income' than Black Alabamians," which makes them "'better able than Black Alabamians to afford a car, internet service, a personal computer, or a smart phone; take time off from work; afford to contribute to political campaigns; afford to run

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may take "take[] judicial notice of these reliable sources of information from" government websites. *Lowe v. Pettway*, No. 2:20-CV-01806-MHH, 2023 WL 2671353, at *13 n.13 (N.D. Ala. Mar. 28, 2023); *see also Shelby Cnty. v. Holder*, 570 U.S. 529, 548 (2013) (relying on voter turnout data from the Census Bureau).

[8] *See supra* n.3; U.S. Census Bureau, Table 4b: *Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2016*, www2.census.gov/programs-surveys/cps/tables/p20/580/table04b.xlsx (last visited Dec. 18, 2013).

[9] *See supra* n.3; U.S. Census Bureau, Table 4b: *Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2020*, www2.census.gov/programs-surveys/cps/tables/p20/585/table04b.xlsx/.

[10] *See supra* n.3; U.S. Census Bureau, Table 4b, *Reported Voting and Registration of the Total Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2022*, https://www2.census.gov/programs-surveys/cps/tables/p20/586/vote04b_2022.xlsx (last visited Dec. 17, 2023).

for office; [and] have access to better healthcare.'" (*Id.*) (quoting *Singleton*, 582 F. Supp. 3d at 1022). Plus, "[e]ducation has repeatedly been found to correlate with income [and] independently affects citizens' ability to engage politically." (quoting *Singleton*, 582 F. Supp. 3d at 1022).

But the same could undoubtedly be said for poor Black residents of Marion County in 1960. The *Whitcomb* plaintiffs' claim was on behalf of a "minority group[] with lower than average socioeconomic status." *Whitcomb*, 403 U.S. at 132 n.8. But access to "the political process" meant access to voter registration, voting, and participating in the political party of one's choosing, not access to a car or campaign funds. *Id.* at 149. Like the *Whitcomb* plaintiffs, Plaintiffs here plead facts about socioeconomic disparities, but not about disparities when it comes to their voting rights. Their Voting Rights Act claim fails.

Based solely on the Amended Complaint, there is every reason to believe that "had the Democrats won all of the elections or even most of them," in Districts 2, 7, 8, and 25, Black voters in Montgomery and Huntsville "would have had no justifiable complaints about representation." *Id.* at 152. Thus, "the failure of [Black voters] to have legislative seats in proportion to [their] populations emerge more as a function of losing elections," not built-in racial bias. *Id.* at 153. And losing in the political process is not the same as being excluded from it. *See id.*

B. Plaintiffs Fail to Plead Facts Showing Less Opportunity to Elect.

Plaintiffs must allege facts plausibly showing that members of a minority group "have less opportunity than other members of the electorate … to elect representatives of their choice." 52 U.S.C. § 10301(b). To make that necessary (but not sufficient) showing, a plaintiff must satisfy the *Gingles* preconditions. *See Gingles*, 478 U.S. at 50 (describing the preconditions as "necessary for … districts to operate to impair minority voters' ability to elect representatives of their choice").

The second and third preconditions are needed to establish that "submergence in a white … district impedes [the minority group's] *ability to elect* its chosen representatives," *id.* at 51 (emphasis added), by thwarting "a distinctive minority vote at least plausibly on account of race," *Allen*, 599 U.S. at 19 (internal quotation marks omitted). "[R]acial bloc voting … never can be assumed, but must be proved in each case," *Shaw v. Reno*, 509 U.S. 630, 653 (1993). Evidence of racial bloc voting in one part of a State cannot provide a "strong basis in evidence for concluding that a § 2 violation exists [elsewhere] in the State." *Shaw v. Hunt*, 517 U.S. 899, 916 (1996). And "to establish the third *Gingles* factor, a plaintiff must show not only that whites vote as a bloc, but also that white bloc voting *regularly causes* the candidate preferred by black voters to lose; in addition, plaintiffs must show not only that blacks and whites sometimes prefer different candidates, but that

blacks and whites *consistently* prefer different candidates." *Johnson v. Hamrick*, 196 F.3d 1216, 1221 (11th Cir. 1999).

First, Plaintiffs focus on "the Montgomery … region," which appears to include Montgomery County and District 25. Doc. 126, ¶¶ 2-3. Regarding voting patterns in the region, Plaintiffs allege that during the last ten years "in Montgomery County" elections "at least 85% and usually over 90% of Black voters in Montgomery have consistently supported the same candidates, while white voters' support for those candidates consistently fell below 20%." *Id.* ¶ 97. Plaintiffs, however, do *not* allege that "white bloc voting *regularly causes* the candidate preferred by black voters [in Montgomery County] to lose." *Johnson*, 196 F.3d at 1221. Plaintiffs next allege that for District 25, in 2018, "over 80% of Black voters supported Black candidate David Sadler for Senate district 25, while less than 20% of white voters supported him," and Sadler was defeated. Doc. 126, ¶ 97. But even if one election in which roughly 1 in 5 Black voters votes for the "white-preferred candidate" and 1 in 5 white voters votes for the "Black candidate" constituted racially polarized voting, it cannot show that "white bloc voting *regularly causes* the candidate preferred by black voters [in District 25] to lose." *Johnson*, 196 F.3d at 1221. Plaintiffs try to make up for that fact by alleging that "[i]n races in the current majority-white SD 25, Black candidates and Black-favored candidates have never won election to the state Senate over the past decade-plus." Doc. 126, ¶ 98. But

Plaintiffs never allege that "white bloc voting … *cause[d]*" those results. *Johnson*, 196 F.3d at 1221. Thus, Plaintiffs have failed to adequately allege legally significant racially polarized voting in the "Montgomery region."

Second, Plaintiffs' allegations about "the Huntsville region" suffer a similar mismatch problem. Doc. 126, ¶ 4. They allege that "[i]n the Huntsville region, SB 1 unnecessarily cracks Black voters in State Senate districts 2, 7, and 8 in Huntsville …." *Id.* But their "voting patterns" allegations focus instead on "Madison County," not Districts 2, 7, and 8, and not some broader definition of the Huntsville region. Doc. 126 ¶ 99. Allegations about one part of "the Huntsville region" do not satisfy Section 2' "intensely local appraisal." *Allen*, 599 U.S. at 19.

Conclusion

For the reasons shown above, the Fourth Amended Complaint is due to be dismissed with prejudice as against the Chairs.

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CERTIFICATE OF SERVICE

I certify that on July 24, 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/*Dorman Walker*

EXHIBIT
A

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

KHADIDAH STONE, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2:21-cv-1531-AMM
	)	
WES ALLEN, in his official capacity as Secretary of State of Alabama, *et al.*	)	
	)	
Defendants.	)	

DECLARATION OF REP. CHRIS PRINGLE

1. My name is Chris Pringle. This declaration is based on my personal knowledge.

2. I represent Alabama House District 101 in the Alabama Legislature, where I also am the House Chair of the Legislature's Permanent Legislative Committee on Reapportionment (the "Reapportionment Committee").

3. Despite its name, the primary task of the Reapportionment Committee is redistricting.

4. The Reapportionment Committee is responsible for proposing new statewide redistricting plans for congressional, Alabama House of Representatives, Alabama Senate, and State Board of Education districts. Neither the Reapportionment Committee nor the House of Representatives

is required to accept such proposed plans, each of which can be amended, substituted, or rejected in favor another districting plan.

5. As the House Chair of the Reapportionment Committee, I take a leadership role in the development and design of proposed new districts for the House of Representatives.

6. As House Chair, I have no role in the development or design of Senate districts. My only involvement with passage of the Senate districts that became SB1 was in presenting them to the House of Representatives after they were passed by the Senate, and in voting on them as a member of the Legislature. In 2021, the House made no changes to the Senates districts after they were passed by the Senate.

7. I have reviewed the Prayer for Relief[1] in the Fourth Amended Complaint. I have no power to grant the relief requested, neither as House Chair of the Reapportionment Committee nor as a member of the Legislature.

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[1] "WHEREFORE, Plaintiffs respectfully request that the Court:
A. Declare the State Senate districting plan adopted in SB 1 a violation of Section 2 of the Voting Rights Act of 1965;
B. Enjoin the Defendants and their agents from holding elections in the challenged districts adopted in SB 1 and any adjoining districts necessary to remedy the Voting Rights Act violations, 42 U.S.C. § 1983; 52 U.S.C. § 10302(b);
C. Set a reasonable deadline for the State of Alabama to adopt and enact a districting plan for the State Senate that remedies the Voting Rights Act violations;
D. Award Plaintiffs their costs, expenses, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to and in accordance with 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988(b);
E. Retain jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court;
F. Retain jurisdiction over this matter and require all Defendants to subject future State Senate redistricting plans for preclearance review from this court or the U.S. Attorney General under Section 3(c) of the VRA, 52 U.S.C. § 10302(c);
G. Grant such other and further relief as the Court may deem just and proper." Doc. 126, Prayer for Relief.

8. Specifically, I cannot declare that SB 1 violates the Voting Rights Act; I have no authority to prevent the 2021 Senate districts from being used in elections; I have no authority to cause the adoption and enactment of a new redistricting plan for the Senate; I cannot exercise the Court's judicial power; and I cannot exercise or determine any preclearance requirements.

I declare under penalty of the perjury laws of the United States of America that the forgoing is true and correct.

Date: 12/20/23

Chris Pringle

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

KHADIDAH STONE, *et al.*, *Plaintiffs*, v. WES ALLEN, in his official capacity as Secretary of State of Alabama, *et al.*, *Defendants.*	)	Case No. 2:21-cv-1531-AMM

DECLARATION OF SEN. STEVE LIVINGSTON

1. My name is Steve Livingston. This declaration is based on my personal knowledge.

2. I represent Alabama Senate District 8 in the Alabama Legislature, where I also am the Senate Chair of the Legislature's Permanent Legislative Committee on Reapportionment (the "Reapportionment Committee").

3. Despite its name, the primary task of the Reapportionment Committee is redistricting.

4. The Reapportionment Committee is responsible for proposing new statewide redistricting plans for congressional, Alabama House of Representatives, Alabama Senate, and State Board of Education districts.

5. I was not the Senate Chair of the Reapportionment Committee in 2021 when the Senate's current districts were drawn and passed into law as SB1.

My only involvement in the development and design of the current Senate districts was voting on them as an individual member of the Legislature. Consequently, I know how my own district was drawn, but I have little information about how other Senate districts were drawn.

6. As the current Senate Chair of the Reapportionment Committee, I will have a leadership role in the development and design of any proposed new Senate districts. However, neither the Reapportionment Committee nor the Senate is required to accept any such proposed plan, which could be amended, substituted, or rejected in favor another districting plan.

7. I have reviewed the Prayer for Relief[1] in the Fourth Amended Complaint. I have no power to grant the relief requested, neither as Senate Chair of the Reapportionment Committee nor as a member of the Legislature.

8. Specifically, I cannot declare that SB1 violates the Voting Rights Act. I have no authority to prevent the 2021 Senate districts from being used in

[1] "WHEREFORE, Plaintiffs respectfully request that the Court:
A. Declare the State Senate districting plan adopted in SB 1 a violation of Section 2 of the Voting Rights Act of 1965;
B. Enjoin the Defendants and their agents from holding elections in the challenged districts adopted in SB 1 and any adjoining districts necessary to remedy the Voting Rights Act violations, 42 U.S.C. § 1983; 52 U.S.C. § 10302(b);
C. Set a reasonable deadline for the State of Alabama to adopt and enact a districting plan for the State Senate that remedies the Voting Rights Act violations;
D. Award Plaintiffs their costs, expenses, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to and in accordance with 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988(b);
E. Retain jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court;
F. Retain jurisdiction over this matter and require all Defendants to subject future State Senate redistricting plans for preclearance review from this court or the U.S. Attorney General under Section 3(c) of the VRA, 52 U.S.C. § 10302(c);
G. Grant such other and further relief as the Court may deem just and proper." Doc. 126, Prayer for Relief.

elections. I have no authority to cause the adoption and enactment of a new Senate redistricting plan. I cannot exercise the Court's judicial power. And I cannot exercise of determine any preclearance requirements.

I declare under penalty of the perjury laws of the United States of America that the forgoing is true and correct.

Date: 12/19/23

Steve Livingston