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

ALABAMA STATE CONFERENCE OF)
THE NAACP, et al.,)
)
Plaintiffs,)
)
V.)
)
WES ALLEN, et al.,)
)
Defendants.	

No. 2:21-cv-1531-AMM

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF LAW

Plaintiffs oppose the Secretary's motion for judgment as a matter of law and respectfully request that the Court reject it on both grounds sought.

First, the Court should deny the motion seeking judgment as a matter of law based on the Secretary's argument that "Section 2 of the Voting Rights Act does not create a private right of action," Doc. 247 at 1, for all of these reasons stated in Plaintiffs' opposition to the Defendants' motions to dismiss, Doc. 138, and as a correctly held by the Court, Doc. 143. It should also deny the motion for the further reason that even if Section 2 of the VRA did not create a private right of action, Plaintiffs also brought their claims pursuant to 42 U.S.C. § 1983, which provides jurisdiction to enforce claims under Section 2 of the VRA. *See* Fourth Am. Compl. (Doc. 126) §§ 7, 10, 176. The Secretary fails to raise this as a basis for dismissal at

all, let alone overcome the presumption "that § 1983 can play its textually prescribed role as a vehicle for enforcing [] rights." *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 187 (2023); *see also* Doc. 138 at 23-27.

Second, for all of the reasons explained in Plaintiffs' Proposed Findings of Fact and Conclusions of Law, *see* Doc. 250 ¶¶ 103–266, 569–682, and Oppositions to Defendants' Motions for Summary Judgment and Motion in Limine, Docs. 172, 200, the Secretary is not entitled to judgment as a matter of law for the Huntsville-based district based on the first *Gingles* precondition. Plaintiffs offered more-than ample proof at trial to meet their *Gingles* 1 burden. Regardless, a "district court's determination regarding one of the *Gingles* proofs is [reviewed] for clear error" as "a finding of fact," *Johnson v. Hamrick*, 296 F.3d 1065, 1074 (11th Cir. 2002), and thus presents an "issue of material fact" that "require[d] the court to weigh evidence and evaluate the credibility of witnesses." Order Denying Summary Judgment (Doc. 191) at 4.

Therefore, Plaintiffs respectfully request that the Court deny the instant motion and find for the Plaintiffs based on the evidence presented at trial and fulsome post-trial briefing. DATED this 19th day of December, 2024

<u>/s/ Alison Mollman</u> Alison Mollman (ASB-8397-A33C) Laurel Hattix (ASB-4592-E20I) AMERICAN CIVIL LIBERTIES UNION OF ALABAMA P.O. Box 6179 Montgomery, AL 36106-0179 (334) 265-2754 amollman@aclualabama.org lhattix@aclualabama.org

/s/ Deuel Ross Deuel Ross* NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. 700 14th Street NW Ste. 600 Washington, DC 20005 (202) 682-1300 dross@naacpldf.org

Leah Aden* Stuart Naifeh* Kathryn Sadasivan (ASE-517-E48T) Brittany Carter* Ashley Burrell* Colin Burke* NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. 40 Rector Street, 5th Floor New York, NY 10006 (212) 965-2200 laden@naacpldf.org snaifeh@naacpldf.org ksadasivan@naacpldf.org bcarter@naacpldf.org aburrell@naacpldf.org cburke@naacpldf.org

Respectfully submitted,

<u>/s/ Davin M. Rosborough</u> Davin M. Rosborough* Dayton Campbell-Harris*+ Theresa J. Lee* Sophia Lin Lakin* AMERICAN CIVIL LIBERTIES UNION FOUNDATION 125 Broad St. New York, NY 10004 (212) 549-2500 drosborough@aclu.org dcampbell-harris@aclu.org tlee@aclu.org slakin@aclu.org

Jacob van Leer* AMERICAN CIVIL LIBERTIES UNION FOUNDATION 915 15th St. NW Washington, DC 20005 jvanleer@aclu.org

/s/ Sidney Jackson Sidney Jackson (ASB-1462-K40W) Nicki Lawsen (ASB-2602-C00K) WIGGINS, CHILDS, PANTAZIS, FISHER & GOLDFARB 301 19th Street North Birmingham, AL 35203 (205) 314-0500 sjackson@wigginschilds.com nlawsen@wigginschilds.com

<u>/s/ Jack Genberg</u> Bradley E. Heard* Jack Genberg* Jess Unger* David Dunn* HOGAN LOVELLS US LLP 390 Madison Avenue New York, NY 10017 (212) 918-3000 david.dunn@hoganlovells.com

Blayne R. Thompson* HOGAN LOVELLS US LLP 609 Main St., Suite 4200 Houston, TX 77002 (713) 632-1400 blayne.thompson@hoganlovells.com

Michael Turrill* Harmony R. Gbe* James W. Ettinger* HOGAN LOVELLS US LLP 1999 Avenue of the Stars Suite 1400 Los Angeles, CA 90067 (310) 785-4600 michael.turrill@hoganlovells.com harmony.gbe@hoganlovells.com jay.ettinger@hoganlovells.com SOUTHERN POVERTY LAW CENTER 150 E. Ponce de Leon Avenue, Suite 340 Decatur, GA 30030 (404) 521-6700 bradley.heard@splcenter.org jack.genberg@splcenter.org jess.unger@splcenter.org

Avner Shapiro* SOUTHERN POVERTY LAW CENTER 1101 17th Street NW Suite 510 Washington, DC 20036 240-890-1735 avner.shapiro@splcenter.org

Jessica L. Ellsworth* Shelita M. Stewart* Amanda N. Allen* HOGAN LOVELLS US LLP 555 Thirteenth Street, NW Washington, DC 20004 (202) 637-5600 jessica.ellsworth@hoganlovells.com shelita.stewart@hoganlovells.com amanda.n.allen@hoganlovells.com

Attorneys for Plaintiffs

*Admitted pro hac vice

+ Not admitted in New York

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record in this case.

/s/ Davin M. Rosborough Davin M. Rosborough American Civil Liberties Union Foundation 125 Broad St. New York, NY 10004 (212) 549-2500 drosborough@aclu.org