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

CARA MCCLURE, et al.,

Plaintiffs,

v.

JEFFERSON COUNTY COMMISSION, et al.,

Defendants.

No. 2:23-cv-00443-MHH

(ORAL ARGUMENT REQUESTED)

ALEXIA ADDOH-KONDI, et al.,

Plaintiffs,

v.

JEFFERSON COUNTY COMMISSION, et al.,

Defendants,

No. 2:23-cv-00503-MHH

DEFENDANTS' MOTION TO DISMISS
THE ADDOH-KONDI PLAINTIFFS' COMPLAINT

Defendants hereby move to dismiss the Addoh-Kondi Plaintiffs' complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of jurisdiction and under Rule 12(b)(6) for failure to state a claim. The parties conferred to the extent applicable under the Court's Initial Order, ECF 16.

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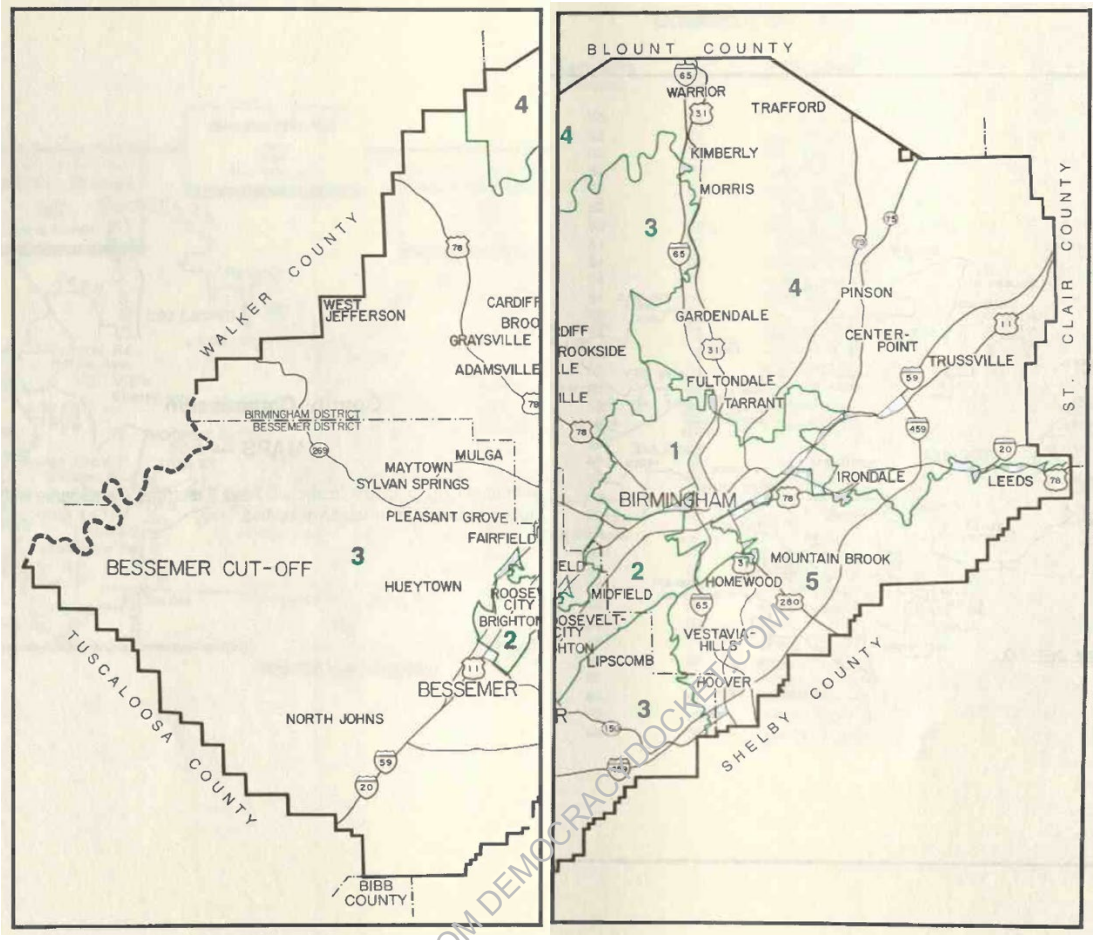
INTRODUCTION

The Addoh-Kondi Plaintiffs' complaint states that the claim they raise "is *not* a claim of intentional discrimination." Compl. ¶¶10, 53, ECF 1 (emphasis added).[1] With that concession, the complaint must be dismissed. "Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1997). In a redistricting case, that means a plan "*purposefully* distinguishes between voters on the basis of race." *Shaw v. Reno*, 509 U.S. 630, 646 (1993) (*Shaw I*).

BACKGROUND

Nearly forty years ago, a group of plaintiffs challenged the Jefferson County Commission's system of at-large elections for its commissioners as a violation of the Voting Rights Act. *See Taylor v. Jefferson County Comm'n*, No. 84-C-1730-S (N.D. Ala.). The litigation ended in a consent decree, establishing five single-member districts. *See* Compl. ¶32, ECF 1; *see also* Ala. Code §45-37-72. Shown below, the consent decree established two majority-Black districts that covered most of Birmingham:

[1] Docket numbers for the complaint and its attachments refer to Addoh-Kondi Plaintiffs' docket, No. 2:23-cv-503-NAD (N.D. Ala.), filed before this Court consolidated the Addoh-Kondi Plaintiffs' case with *McClure v. Jefferson County*, No. 2:23-cv-00443-MHH (N.D. Ala.).

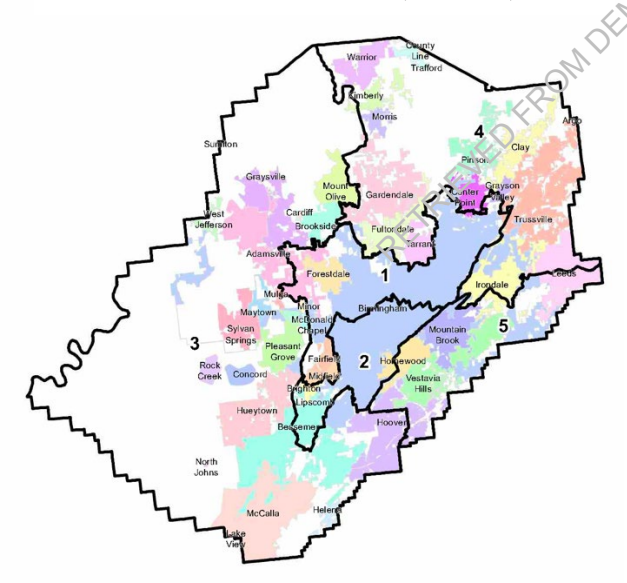


ECF 1-1.

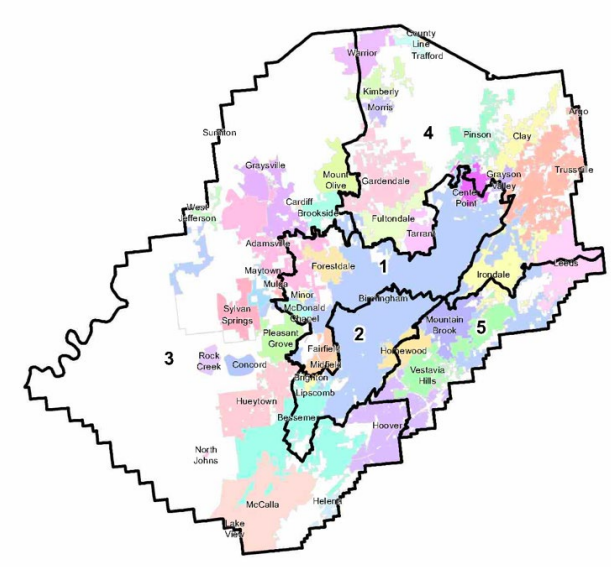
Since the *Taylor* consent decree, the Commission updates the district lines after every census to adjust for population changes and restore population equality across all five districts. Ala. Code §11-3-1.1; *see Gray v. Sanders*, 372 U.S. 368, 379-81 (1963). In the 1980s, the 1990s, the 2000s, and the 2010s, the U.S. Department of Justice precleared adjustments to the districts pursuant to Section 5 of the Voting Rights Act. *Id.* ¶¶5-6; *see Shelby Cnty. v. Holder*, 570 U.S. 529, 537 (2013) (describing preclearance requirements); Voting Rights Act of 1965, §5, 79 Stat. 437, 439 (codified at 52 U.S.C. §10304).

Following the 2020 Census, the Jefferson County Commission adjusted district lines to account for slight population changes. The Commission adopted new districts in November 2021 (or the "Enacted Plan"). Shown below, underpopulation in Districts 1 and 2 required those district boundaries to expand slightly, but the 2021 Enacted Plan generally abided by the existing district lines. Compl. ¶44, ECF 1. Shown in Plaintiffs' complaint and its attachments, the geography of the districts has remained mostly the same since the *Taylor* consent decree in 1985. *Compare* ECF 1-2 (2000-census districts), *with* ECF 1-3 (2010-census districts), *and* ECF 1-4 (2020-census districts).

Benchmark Districts (ECF 1-3)



2021 Enacted Plan Districts (ECF 1-4)



Plaintiffs allege that the Enacted Plan "maintains majorities of Black residents" in District 1 and District 2. Compl. ¶44, ECF 1. According to the complaint, the overall percentage of Black Voting Age Population (BVAP) in Districts 1 and 2

is 76.3% and 64.1% respectively, which is a decline in the BVAP in those districts before the line changes. *Compare* ECF 1-4 at 9, *with* ECF 1-3 at 9 (reporting 76.5% BVAP for pre-2020 District 1 and 66.8% BVAP for pre-2020 District 2).[2] Plaintiffs also allege that there has been "a dramatic increase" of Black individuals in Districts 3, 4, and 5 since the districts were first created in 1985. Compl. ¶40, ECF 1.

More than seventeen months after the Commission approved the districts in November 2021, the Addoh-Kondi Plaintiffs sued. Their complaint concludes that the Enacted Plan violates the Equal Protection Clause. *Id.* ¶¶52-61. But the complaint states that its "racial gerrymandering cause of action is *not* a claim of intentional discrimination" and "not based on the disparate treatment of voters that results in racial vote dilution." *Id.* ¶10 (emphasis added).

The complaint alleges that the Commission's redistricting obligations changed after *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013), and that the Commission could no longer justify the existing redistricting plan. *Id.* ¶¶6-8. The Supreme Court's decision in *Shelby County* invalidated Section 4(b)'s "coverage formula" in the Voting Rights Act, meaning Jefferson County was no longer automatically

[2] There are slight numerical discrepancies between the facts alleged in the complaint, the reports attached to the complaint, and the Enacted Plan. *Compare*, *e.g.* ECF 1-4 at 7 (reporting District 2 and 3 populations as 134,748 and 133,751 respectively), *with* Commission Meeting, Jefferson County Commission at 19:00 (Nov. 4, 2021), https://jccal.new.swagit.com/videos/147366 (statement of Barry Stephenson) (reporting District 2 and 3 populations as 134,737 and 133,762 respectively); *compare, e.g.*, ECF 1-3 at 9 and ECF 1-4 at 9, *with* Compl. ¶¶41, 44, ECF 1 (reporting slightly different BVAP percentages). For purposes of this motion to dismiss, the discrepancies are immaterial and Defendants take the Addoh-Kondi Plaintiffs' allegations as true.

subject to preclearance. 570 U.S. at 557. But the Court "issue[d] no holding on §5 itself" in *Shelby County*, only "the coverage formula," which the Court said Congress could rewrite. *Id*.

The complaint concludes that after *Shelby County*, the Commission "was no longer required to comply with Section 5" for the 2021 redistricting cycle. Compl. ¶6, ECF 1. And the Commission's "undisputed failure … to consider whether the race conscious design and target populations of the 1985 Consent Decree were still needed and the Commission's admitted policy of maintaining the 1985 districts with Black and White majorities" violated the Equal Protection Clause. *Id.* ¶57. The complaint alleges that the Commission should have chosen a plan that reduced the number of Black individuals in Districts 1 and 2 and increased the number of Black individuals in District 3 as a way to "provide Black voters an equal opportunity to elect candidates of their choice in three Commission districts." *Id.* ¶¶47-51; *see also id.* ¶7.

The complaint requests a declaratory judgment that the Enacted Plan is unconstitutional, injunctive relief "prohibiting implementation" of the Enacted Plan "in future elections," an order "[r]equir[ing] Defendants to promptly adopt a remedial redistricting plan," and a court-drawn plan if necessary. *Id.* at 20.

STANDARD OF REVIEW

At the motion-to-dismiss stage, the Court is limited to the Plaintiffs' pleadings, attached exhibits, materials incorporated by reference in the complaint, and matters for which the Court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007); *Grossman v. Nationsbank, N.A.*, 225 F.3d 1228, 1231 (11th Cir. 2000). The Court must accept as true all well-pleaded facts at the motion to dismiss stage, but the Court need not accept as true Plaintiffs' legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rather, Plaintiffs must support each legal conclusion with well-pleaded factual allegations. *Id.* These facts must support a "reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Plaintiff must do more than plead facts that are "'merely consistent with' a defendant's liability," because such pleadings "'stop[] short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555; *see also Harris v. Bd. of Trs. Univ. of Alabama*, 846 F. Supp. 2d 1223, 1235-36, 1239 (N.D. Ala. 2012).

ARGUMENT

Plaintiffs cannot plausibly state a claim for violation of the Equal Protection Clause because their complaint concedes that the Commission did not purposefully discriminate on the basis of race. *See* Compl. ¶10, ECF 1. That should end this case. But Plaintiffs' novel view appears to be that the Constitution required the Commission to be *more* race conscious. According to Plaintiffs, it was unconstitutional for the Commission to follow existing lines after *Shelby County*; the Commission was instead required to make race-based changes to longstanding districts to remove Black voters from Districts 1 and 2. Compl. ¶46, ECF 1; *see id.* ¶¶6-7. That theory, contrary to the Equal Protection Clause, must be dismissed for failure to plausibly state a claim. Even if the Court does not dismiss on those grounds, the complaint should be dismissed for failure to establish Article III-required redressability.

I. Plaintiffs Concede that the Commission Did Not Purposefully Discriminate on the Basis of Race.

A. The Equal Protection Clause of the Fourteenth Amendment "forbids 'racial gerrymandering,' that is, *intentionally* assigning citizens to a district on the basis of race without sufficient justification." *Abbott v. Perez*, 138 S. Ct. 2305, 2341 (2018) (emphasis added) (quoting *Shaw I*, 509 U.S. at 641). Discrimination must be "purposeful." *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 274 (1979) (emphasis added) (citing *Swann v. Charlotte-Mecklenburg Bd. of Edu.*, 402 U.S. 1, 16 (1971)); *see also Parks v. City of Warner Robins*, 43 F.3d 609, 616 (11th Cir. 1995) ("[P]roof

of discriminatory intent or purpose is a necessary prerequisite to any Equal Protection Clause claim."); *Mencer v. Hammonds*, 134 F.3d 1066, 1070 (11th Cir. 1998) ("A government actor … cannot violate a plaintiff's equal protection rights unless the defendant has the intent to discriminate."). It is not enough to allege that a redistricting plan "result[s] in a racially disproportionate impact." *Arlington Heights*, 429 U.S. at 264-65; *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1915-16 (2020) (plurality). Nor is it sufficient to allege that lawmakers were "aware" of race, *Shaw I*, 509 U.S. at 646, or that the Commission acted "'in spite of'" race, short of acting "'because of'" it, *Feeney*, 442 U.S. at 279. "'Discriminatory purpose' … implies more than intent as volition or intent as awareness of consequences." *Id*.

Applied here, Plaintiffs' complaint disclaims that the Commission purposefully discriminated: "Plaintiffs' racial gerrymandering cause of action is *not* a claim of intentional discrimination." Compl. ¶10, ECF 1 (emphasis added). Plaintiffs cannot simultaneously disclaim intent and state an Equal Protection Clause claim. *See Feeney*, 442 U.S. at 279; *Arlington Heights*, 429 U.S. at 264-65.[3] The complaint can be dismissed on that ground alone.

[3] Because Plaintiffs agree that the Commission did not intentionally discriminate, Plaintiffs' allegations about split municipalities allege nothing more than a policy disagreement about which municipalities should be kept whole and which should be split. *See, e.g.*, Compl. ¶¶8, 59, ECF 1. Plaintiffs propose, for example, prioritizing fewer split municipalities and sacrificing equal population and assert that the Commission should have allowed the plan's population deviation to exceed 8% to decrease the number of split municipalities. *Id.* ¶49. That is a policy choice, not a

Plaintiffs suggest that the Supreme Court's decision in *Shaw v. Reno* relieves them of their burden of proving intent. *See, e.g.*, Compl. ¶¶9-10 (disclaiming intent and describing claim as one "based on the unique Equal Protection jurisprudence first announced in *Shaw*"). It does not. *Shaw* explains that it is a redistricting plaintiff's burden to prove that a redistricting plan "*purposefully* distinguishes between voters on the basis of race." 609 U.S. at 646 (emphasis added); *see also, e.g.*, *Burton v. City of Belle Glade*, 178 F.3d 1175, 1189 (11th Cir. 1999) (proof of "discriminatory purpose" is required except when "decisions created an express racial classification"). Plaintiffs here, like in every redistricting case, "bear[] the burden of proving the *race-based motive*" that predominated in redistricting. *Shaw v. Hunt*, 517 U.S. 899, 905 (1996) (*Shaw II*) (emphasis added). Nothing in *Shaw* nor any other racial gerrymandering case relieves Plaintiffs of that burden to prove intentional discrimination. Having disclaimed intent here, Plaintiffs' complaint must be dismissed.

B. The complaint's allegations that the Commission intentionally redistricted based on *existing district lines* are not tantamount to allegations that the Commission redistricted based on *race*. The complaint alleges that the Commission intentionally followed existing district lines, or the old "design" originating with the *Taylor* consent decree and later adjustments repeatedly approved by the U.S. Department of

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legal requirement. The Constitution does not dictate that choice absent a claim of race-based motive. *See Shaw I*, 509 U.S. at 646.

Justice. Compl. ¶57, ECF 1. Plaintiffs fault the Enacted Plan for "continu[ing] to perpetuate" the existing lines, thereby "maintain[ing] the majorities of Black residents" in District 1 and District 2 and thus failing to create an "effective crossover district[]" with more Black voters in District 3. *Id.* ¶¶43-44, 46. But these allegations about the *effect* of following district lines are not allegations of *intent*. *See Feeney*, 442 U.S. at 279; *Arlington Heights*, 429 U.S. at 264-65.

Allegations that the Commission followed existing district lines is not the "'[d]iscriminatory purpose'" that a plausible Equal Protection Clause claim requires. *Feeney*, 442 U.S. at 279. At best, such allegations could establish the Commission redistricted with some *awareness* that the resulting racial demographics of the districts would resemble those in past plans. *See id*. But awareness falls short of stating a claim that the Commission unconstitutionally redistricted "'because of'" race in November 2021. *Id.* "'Discriminatory purpose' … implies more than intent as volition or intent as to awareness of consequences." *Id.*

C. Nothing in the Constitution required the Commission to abandon the existing district lines, and thereby abandon continuity of representation from one redistricting cycle to the next. *See, e.g.*, *Abrams v. Johnson*, 521 U.S. 74, 99-100 (1997) (affirming state interest in "maintaining core districts"); *White v. Weiser*, 412 U.S. 783, 794 (1973) (States have a legitimate interest in "maintaining existing relationships between incumbent congressmen and their constituents"); *Vieth v. Jubelirer*,

541 U.S. 267, 359-60 (2004) (Breyer, J., dissenting) (discussing downsides of volatility when continuity of representation is diminished). Nor does the Constitution require regularity of a district's shape or minimization of municipal splits without some well-pled facts that those irregularities were the means of purposeful discrimination. *Shaw I*, 509 U.S. at 646. Plaintiffs have none here.

To be sure, the government cannot "immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan," *Allen v. Milligan*, 143 S. Ct. 1487, 1505 (2023), but Plaintiffs cannot plausibly allege those are the circumstances here. The districts' origins are the *Taylor* consent decree, which resolved Voting Rights Act litigation. *Supra*, pp. 1-2. In the decades thereafter, the U.S. Department of Justice repeatedly precleared the districts—confirmation that they did not have the "purpose" or "the effect of denying or abridging the right to vote on account of race or color." 52 U.S.C. §10304(a). It strains all credulity to contend that those past district lines were "an old racially discriminatory plan," *Milligan*, 143 S. Ct. at 1505, that the Commission could not constitutionally follow this redistricting cycle.

D. Plaintiffs' complaint takes the contrary view: that the existing district lines went from permissible to impermissible after the Supreme Court's *Shelby County* decision. *Id.* ¶6. It castigates the commission's districts, formed to comply with the

Voting Rights Act, as racial gerrymanders. *Id.* ¶¶6-8. That argument misunderstands *Shelby County*, and it misunderstands the Equal Protection Clause's guarantee.

In 2013, the Supreme Court concluded in *Shelby County* that the "coverage formula" in Section 4(b) of the Voting Rights Act was unconstitutional as written. 570 U.S. at 557. At the time, the "coverage formula" decided when jurisdictions, including Alabama, would be automatically subject to Section 5 preclearance. The "coverage formula" depended initially on whether a State had racially invidious tests or devices as a prerequisite to voting as of November 1, 1964, and whether voter registration or turnout was sufficiently low as of November 1, 1964. *See* §4(b), 79 Stat. 438. Congress twice amended the "coverage formula" to depend on a State's circumstances as of 1968 and then 1975. *See Shelby Cnty.*, 579 U.S. at 538. But after those amendments, Congress did not further revise or update the "coverage formula"—which meant the coverage formula's focus remained "on decades-old data relevant to decades-old problems, rather than current data reflecting current trends." *Id.* at 538-39, 553. All that *Shelby County* decided was that Congress could not constitutionally single out States based on such "decades-old" conditions. *See id.* at 553-54. Congress could rewrite the coverage formula "based on current conditions," *id.* at 557, but it could not be enforced as written.

The Court "issue[d] no holding on §5 itself" in *Shelby County. Id*. And there is no plausible reading of *Shelby County* that requires Defendants to abandon the

existing districts. Contrary to Plaintiffs' complaint (at ¶6), the *Taylor* consent decree and the Commission's past compliance with Voting Rights Act preclearance did not become overnight "'original sin'" after *Shelby County*. *Abbott*, 138 S. Ct. at 2324. Dismissal of that remarkable theory is warranted for three reasons.

First, Plaintiffs' suit, if predicated on that theory, must be rejected as inexcusably delayed. *See Chestnut v. Merrill*, 377 F. Supp. 3d 1308, 1315 (N.D. Ala. 2019) (quoting *Venus Lines Agency Inc. v. CVG Int'l Am., Inc.*, 234 F.3d 1225, 1230 (11th Cir. 2000)); *see also, e.g.*, *Sanders v. Dooly Cnty.*, 245 F.3d 1289, 1290-91 (11th Cir. 2001) (concluding the unreasonable delay barred injunctive relief). By Plaintiffs' logic, their constitutional claim arose as early as the *Shelby County* decision a decade ago, *see* Compl. ¶6, ECF 1, and at least before the Commission used the existing plans as its baseline this redistricting cycle. But here, Plaintiffs allowed elections to pass in 2014 and 2018 without challenging the district lines they fault as racial gerrymanders. Plaintiffs then waited another seventeen months *after* the Commission redistricted and more than five months *after* the 2022 elections to challenge the Enacted Plan. Dismissal based on Plaintiffs' delay alone would be warranted. *See, e.g.*, *White v. Daniel*, 909 F.2d 99, 102-103 (4th Cir. 1990) (finding an inexcusable delay where plaintiffs failed to challenge the prior districting plan, which was

identical to the new districting plan); *Chestnut*, 377 F. Supp. 3d at 1315 (applying laches doctrine for a delay of seven years in a redistricting case).[4]

Second, the Supreme Court has never embraced the novel theory Plaintiffs press here: that past compliance with Sections 2 and 5 of the Voting Rights Act somehow gives rise to a springing constitutional violation today. The Supreme Court has rejected Plaintiffs' suggestion that past compliance with the Voting Rights Act is unconstitutional. *See Milligan*, 143 S. Ct. at 1516-17 (rejecting constitutional challenge to §2 of the Voting Rights Act); *Shelby Cnty.*, 579 U.S. at 557 (limiting constitutional holding to §4(b)'s coverage formula, not §5).

Third, even if past plans had some constitutional defect, any such defect would not condemn the present redistricting plan in the way Plaintiffs allege. The Supreme Court in *Abbott* rejected that "'[p]ast discrimination'" could "'in the manner of original sin, condemn government action that is not itself unlawful'"—here, redistricting based on existing district lines to adjust for changing population. 138 S. Ct. at 2324 (cleaned up); *see also, e.g.*, *Birmingham Ministries v. Sec'y of State*, 992

[4] Plaintiffs' untimeliness is further highlighted by the complaint's suggestion that Districts 1 and 2 have been problematic since the *Taylor* consent decree. Comp. ¶5, ECF 1. ("These race-conscious districts were adjusted to restore population balance after the 1990, 2000, and 2010 censuses to avoid retrogression that might have violated Section 5 of the Voting Rights Act."); *id.* ¶37 ("The size of the Black majorities in Districts 1 and 2 were purposefully maintained at or above 65% based in part on the mistaken belief that this was necessary to avoid retrogression that violated Section 5 of the Voting Rights Act."). Yet Plaintiffs waited until now to challenge those district lines.

F.3d 1299, 1325 (11th Cir. 2021). The conceded absence of purposeful discrimination by the Commission in the 2021 redistricting process, Compl. ¶10, ECF 1, eliminates any "taint" of earlier unconstitutionality. *Johnson v. Gov. of State of Fl.*, 405 F.3d 1214, 1223 (11th Cir. 2005) (concluding that re-enactment of a statute through a deliberative process for race-neutral reasons "conclusively demonstrates that the state … did enact the provision without an impermissible motive"). There is no further requirement that the Commission abandon the longstanding district lines or otherwise move voters from their existing districts based on their race, which would itself be purposeful discrimination.

II. The Constitution Did Not Require the Commission to Intentionally Remove Black Voters from Districts 1 and 2.

What's left of Plaintiffs' complaint are allegations that the Commission *should have* redistricted in a way that yielded different racial outcomes. But those allegations are nothing more than an invitation for the Commission to do what Plaintiffs concede it did not—intentionally redistrict on the basis of race. In particular, Plaintiffs allege that the Commission should have created a third district to give "Black voters an effective opportunity to elect candidates of their choice" or form "one or more 'crossover' districts." *Id.* ¶¶46, 61; *see id.* ¶¶7, 9. But that alleged *failure* of the Commission to redistrict on the basis of race does not state an Equal Protection Clause claim. *See Parks*, 43 F.3d at 616 ("[P]roof of discriminatory intent or purpose is a necessary prerequisite to any Equal Protection Clause claim."); *see also*

Washington v. Davis, 426 U.S. 229, 238 (1976); *Arlington Heights*, 429 U.S. at 264-65 ("disproportionate impact" is insufficient). There is a critical difference in redistricting cases "between what the law *permits* and what it *requires*." *Shaw I*, 509 U.S. at 654 (emphasis added). Applied here, nothing in the Constitution *required* the Commission to abandon the existing district lines and replace them with race-based districts that hit Plaintiffs' preferred racial targets. And had the Commission intentionally removed Black voters from Districts 1 and 2 to hit a racial target for District 3, as Plaintiffs' illustrative plans do, those voters would presumably have had a claim against the Commission for *violating* the Equal Protection Clause. *See Cooper v. Harris*, 137 S. Ct. 1455, 1468 (2017).

At bottom, Plaintiffs' allegations about splitting municipalities or the "packing" of districts are all observations of the Enacted Plan's *effect*, not its intent. *See* Compl. ¶¶2,10, ECF 1. Plaintiffs recite split geographies and demographic changes. *See id.* ¶¶7-8, 34, 43-45. The complaint alleges that "because the Black population of Jefferson County has increased from 33.3% in the 1980 Census to 42.5% Black in the 2020 Census," the districts are "racially packed … in the 2021 plan" by virtue of following the old district lines. *Id.* ¶7; *see also id.* ¶¶43-44.[5] But these are allegations about "racially disproportionate impact" and cannot replace allegations about

[5] Contrary to Plaintiffs' conclusion of "packing," Plaintiffs' allegations show that the BVAP in Districts 1 and 2 actually decreased. *See* Compl. ¶¶ 41, 44, ECF 1 (Districts 1 and 2 went from 78.3% Black and 69.01% Black respectively to 78.27% and 66.18% Black respectively).

a "purpose to discriminate on the basis of race," *Feeney* 442 U.S. at 260, which Plaintiffs agree did not occur this redistricting cycle, Compl. ¶10, ECF 1.

Plaintiffs have thus alleged no discriminatory purpose required to state an Equal Protection Clause claim. *See Davis*, 426 U.S. at 238; *see also Arlington Heights*, 429 U.S. at 264-65; *Shaw I*, 509 U.S. at 642-43. And their theory that the Commission had an obligation to remove voters from districts based on their race would transform the Equal Protection Clause's guarantee of "equal laws" into one requiring particular racial outcomes, with the perverse effect of requiring the Commission to do *more* to sort voters by race. *Feeney*, 442 U.S. at 273.

III. The Named Defendants Cannot Redress Plaintiffs' Injury.

Plaintiffs request both declaratory relief that the Enacted Plan is unconstitutional and injunctive relief "prohibiting implementation of" the Enacted Plan "in future elections of the Jefferson County Commission." Compl. at 20, ECF 1. Plaintiffs name the Commission and the individual commissioners as Defendants.[6]

A. Plaintiffs must show that their equal protection injury is likely to be redressed by the judicial relief they seek. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). Plaintiffs cannot do so here because their complaint requests elections-related relief and yet fails to name any county officials who administer

[6] When Defendants conferred with Plaintiffs regarding this motion, *see* Initial Order, ECF 16, Defendants requested that Plaintiffs substitute the commissioners for a county elections official. Plaintiffs stated without explanation that they would not do so.

elections. *See Haaland v. Brackeen*, 143 S. Ct. 1609, 1639 (2023). They instead named the individual commissioners, none of whom administers elections. *See* Ala. Code §17-1-3(b) (probate judge is the "chief elections official" of the county), §17-11-2 (establishing the circuit clerk as the absentee election manager), §17-9-1 (requiring the sheriff to preserve order at elections); *see also, e.g.*, *People First of Alabama v. Merrill*, 479 F. Supp. 3d 1200, 1210 (N.D. Ala. 2020) (finding voting laws traceable to and redressable by probate judges); *Jones v. Jefferson Cnty. Bd. of Edu.*, 2:19-cv-1821-MHH, 2019 WL 7500528, *1 (N.D. Ala. Dec. 16, 2019) (describing probate judge as responsible for the administration of the elections for the board of education).

Injunctive relief against a commissioner cannot give plaintiffs the legally enforceable relief they seek from the future use of the redistricting plan in elections, any more than an injunction against a state legislator could give plaintiffs legally enforceable relief from the future use of a statewide redistricting plan. *See Haaland*, 143 S. Ct. at 1639; *Lewis v. Gov. of Alabama*, 944 F.3d 1287, 1301 (11th Cir. 2019) (finding no redressability where the named official had "no enforcement role whatsoever"). To the extent Plaintiffs seek injunctive relief and something more than purely advisory declaratory relief, they must name those responsible for carrying out elections pursuant to the Enacted Plan, not those who enacted it. *See Scott v. Taylor*, 405 F.3d 1251, 1256-57 & n.8 (11th Cir. 2005). Short of that, the complaint must be

dismissed for failure to establish Article III-required redressability. *Haaland*, 143 S. Ct. at 1639-40 ("It is a federal court's judgment, not its opinion, that remedies an injury; thus it is the judgment, not the opinion, that demonstrates redressability. The individual petitioners can hope for nothing more than an opinion, so they cannot satisfy Article III.").

B. The individual commissioners should also be dismissed as improperly named Defendants for an independent reason. Alabama law vests the Jefferson County Commission as a whole with responsibility for redistricting. Ala. Code §§11-3-1.1, 11-3-1.2; *see also Cook v. Cnty. of St. Clair*, 384 So.2d 1, 5 (Ala. 1980) (noting that a county acts through its governing body, the county commission). There is no reason for also naming the individual commissioners themselves in their official capacity. *See Smitherman v. Marshall Cnty. Comm'n*, 746 So.2d 1001, 1005 (Ala. 1999). No one Commissioner can unilaterally decide upon a redistricting plan, nor can any one commissioner decide whether elections are run pursuant to the Enacted Plan.

And while Plaintiffs ask the Court to "[r]equire Defendants to promptly adopt a remedial redistricting plan" as part of their requested relief, Compl. at 20, ECF 1, federal courts do not "require" lawmakers to remedy constitutional violations with new laws. Federal courts *permit* lawmakers to replace redistricting plans if the courts conclude the existing plan is unconstitutional. *See Wise v. Lipscomb*, 437 U.S. 535,

540 (1978) (op. of White, J.) (explaining federal courts should "afford a reasonable opportunity for the legislature"—or here, the Commission—to adopt "a substitute [redistricting] measure, rather than for the federal court to devise and order into effect its own plan"). But the nature of federal courts' remedial power is directed toward the officials executing the law, not those who wrote it. Federal courts in Section 1983 actions enjoin executive officials from enforcing unconstitutional laws; they do not compel lawmakers to rewrite them. *See Jacobson v. Florida Sec'y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020) ("Our power is more limited: we may 'enjoin executive officials from taking steps to enforce a statute.'" (quoting Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 936 (2018))). There is thus no basis for naming the individual commissioners as Defendants and they should be dismissed.

CONCLUSION

For these reasons, the Court should dismiss Plaintiffs' claim for failure to state a claim and for lack of jurisdiction.

Dated: July 7, 2023

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2023, I served the foregoing document with the Clerk of Court using the Court's ECF system, thereby serving all counsel who have appeared in this case.

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