

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

SHEILA McNEIL,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No. 2:26-cv-00411-BL-JTA
	)	
HON. KAY IVEY, in her official capacity as Governor of the State of Alabama, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	
	)	

**STATE DEFENDANTS’ MOTION TO DISMISS & BRIEF IN SUPPORT**

The complaint is not a model of clarity. Nonetheless, the essence of it is that Sheila McNeil is the Democratic nominee for Place 2 on the Public Service Commission and, as such, challenges recent legislative changes to the PSC specifically because those changes were enacted during the ongoing 2026 election cycle. Much of the complaint is premised on a misunderstanding of the challenged law. Under Ala. Act No. 2026-345, Place 2 remains subject to statewide election this year. Even if it did not, the appropriate remedy would not be to block the forthcoming changes to the PSC. The Equal Protection Clause and Due Process Clause do not provide any citizen with general veto power over the State when it comes to structuring and directing entities created by the State, and candidates are no exception. For these and other reasons, the Court should dismiss.

## BACKGROUND

McNeil alleges there has been a “public groundswell of support for PSC reform” this year, doc. 1 at 8 ¶ 13, with “approximately 80% of respondents” to a poll of “Republican voters” “identifying cost-of-living as their top concern[,] a finding that underscores why PSC reform, and particularly, the issue of utility rates, had become a focal point of the 2026 legislative session and election cycle,” *id.* at 9 at ¶ 14. The Legislature responded with Ala. Act No. 2026-345. Exhibit 1.

The Act expands the PSC from three Commissioners to seven. Ex. 1 at 1-2, *ll.* 27–31. Over time, the Act provides for a transition from statewide elections to districted elections. *Id.* at 2-4 *ll.* 38-107. As a part of this transition, the Governor is to appoint four new Commissioners “[n]o later than July 15, 2026” from lists provided to her “no later than June 1, 2026,” and those four Commissioners will “serve initial terms” of two or four years, “beginning January 18, 2027.” *Id.* at 3, *ll.* 69-84. The Act also establishes the Cabinet position of Secretary of Energy as the administrative head of the PSC beginning January 19, 2027. *Id.* at 6-7 *ll.* 158-85. The Secretary is “appointed by and serve[s] at the pleasure of the Governor,” *id.* at 6 *ll.* 160-61, and so is politically accountable in that way.

The Act also covers a number of matters related to the PSC that have nothing in particular to do with the Governor or Attorney General.

## LEGAL STANDARD

With respect to Fed. R. Civ. P. 12(b)(1), an attack may be facial or factual. *Stalley ex rel. U.S. v. Orlando Regl. Healthcare System, Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008). For facial attacks, the court accepts the allegations in the complaint as true and determines “if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction.” *Id.* For factual attacks, extrinsic material may be used. *Id.* at 1233.

With respect to Fed. R. Civ. P. 12(b)(6), “[t]o survive a motion to dismiss, 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) (internal quotation marks and citations omitted). As opposed to facts, legal conclusions are not accepted as true. *Id.*

## ARGUMENT

**The PSC races on the ballot in 2026 remain statewide.** McNeil alleges otherwise, asserting, for instance, that she had “begun active statewide campaigning,” doc. 1 at 2 ¶ 1, and “traveled to and campaigned in at least fourteen Alabama counties,” *id.* at 19 ¶ 29(f), when “the geographic scope of the race” changed, *id.* at 22 ¶ 36. She prays the Court will “order that the 2026 PSC election proceed under the at-large structure” in place before Ala. Act No. 20026-345, including that the race “be contested as a statewide at-large seat,” doc. 1 at 31 ¶ G.

Ala. Act No. 2026-345 expressly provides that two commissioners will be elected *statewide* in November 2026. It says: “At the general election held in November 2026, two commissioners shall be elected *in the same manner as commissioners were elected before June 1, 2026*, as provided in subdivision (a)(2).” Ex. 1 at 4 *ll.* 87-90 (emphasis added). And, subdivision (a)(2) makes clear that, through November 2026, the PSC Commissioners “shall be elected by the qualified electors of the state.” Ex. 1 at 2 *ll.* 41-47. It is beginning in 2028, and continuing through 2032, that the PSC Commissioners will be elected from districts, so that all Commissioners will represent districts effective January 2033. *Id.* at 3-4 *ll.* 65-107. Consistent with this six-year transition, the term of office up for election in 2026 has been extended from four years to six years. *Id.* at 2 *ll.* 33-37 (four years); *id.* at 4 *ll.* 108-11 (six years).

McNeil’s claims fail to the extent that they are premised on her erroneous belief that the 2026 race for Place 2 on the PSC has become a districted race. *See* doc. 1 at 21-22 ¶¶ 35-36 (Equal Protection); *id.* at 23 ¶ 41(a) & (c) (Substantive Due Process); *id.* at 26 ¶¶ 49(a) & (c), 50 (Procedural Due Process). The race remains statewide.

***Anderson - Burdick does not apply.*** The *Anderson – Burdick* framework—to which McNeil cites, doc. 1 at 21 ¶ 34; *id.* at 23 ¶ 40—was developed in a line of precedents including *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v.*

*Takushi*, 504 U.S. 428 (1992). It “requires [courts] to weigh the character and magnitude of the asserted First and Fourteenth Amendment injury against the state’s proffered justifications for the burdens the state imposes, taking into consideration the extent to which those justifications require the burden to plaintiffs’ rights.” *Poelle v. Fla. Sec’y of State*, 131 F.4th 1201 (11th Cir. 2025) (cleaned up). The “analysis follows a sliding scale,” imposing greater scrutiny as the burden on “a plaintiff’s speech, association, or voting rights” increases. *Id.* at 1230-31.

Typical cases analyzed under the *Anderson – Burdick* framework involve things like the burden for a candidate or political organization to get on the ballot. For example, *Anderson* concerned John Anderson’s challenge to Ohio’s deadline for an independent candidate for President to get on the 1980 ballot, 460 U.S. at 782, while *Storer v. Brown*, cited by McNeil, doc. 1 at 21 ¶ 34, likewise involved independent candidates seeking ballot access, 415 U.S. 724, 726-27 (1974). *Williams v. Rhodes*, also cited by McNeil, doc. 1 at 23 ¶ 40, concerned “a new political party” seeking ballot access, 393 U.S. 23, 24 (1968). *Burdick* concerned “whether Hawaii’s prohibition on write-in voting unreasonably infringes upon its citizens’ rights,” 504 U.S. at 430.

It may well be that a “mid-election” “chang[e to] the geographic scope of the race,” doc. 1 at 21, 22 ¶ 36, would appropriately be analyzed under the *Anderson – Burdick* framework, if it existed (and if McNeil sued the appropriate defendant).

However, since McNeil’s race remains statewide and the only true change she identifies is the lengthening of her term, if she wins, no burden exists, and McNeil’s *Anderson – Burdick* claims fail.

**The *Purcell* Principle does not apply.** The *Purcell* Principle takes its name from *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (*per curiam*), which recognized that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls,” *id.* at 4-5. Even assuming *arguendo* that switching from a statewide race to a districted one during an election is the sort of thing that the *Purcell* Principle concerns, it has not happened here, for the reasons discussed *supra*. None of the other things about which McNeil complains involve the mechanics of an election (and she has not sued any election officials). And, in any event, the *Purcell* Principle is about court orders, not legislation. *Allen v. Milligan*, 608 U.S. \_\_\_, 2026 WL 1552756, \*2 (June 2, 2026) (*per curiam*) (“While federal courts should not impose changes close to an election, States are free to decide for themselves whether last-minute changes to an election are in their best interests.”) (citation omitted). Accordingly, McNeil’s reliance on the *Purcell* Principle, *e.g.*, doc. 1 at 3 ¶ 4; *id.* at 20 ¶ 31, is misplaced.

**Candidates do not have veto power over the State when it comes to controlling State entities.** To the extent that McNeil’s claims are grounded in some

particularized right she claims to have as a candidate—*see e.g.*, doc. 1 at 22 ¶ 36 (Equal Protection, “nature of the office[] and the institutional authority of the elected commissioners”); *id.* 23 ¶ 41 (Substantive Due Process, asserting “protected liberty and property interests”); *id.* 26 ¶ 49 (Procedural Due Process, asserting “cognizable liberty and property interests”)—her claims fail. *King v. Campbell*, 988 So.2d 969 (Ala. 2007), is instructive.

In *King v. Campbell*, Plaintiffs sued to challenge an Act concerning the creation of an additional Circuit Judgeship in Alabama’s 29th Judicial Circuit. *Id.* at 971-73. The judgeship was first created in 1985 to be filled at the 1988 General Election, but subsequent legislation repeatedly delayed at which election the seat would be filled. *Id.* at 971-72. In 2006, legislation provided that the Governor would first make an appointment and then the seat would be filled at the 2010 General Election. *Id.* at 972-73. Pertinent here, Chad Woodruff qualified with the Alabama Democratic Party and the Party certified him as their unopposed nominee *before* the 2006 Act became law. *Id.* at 972-73. The Supreme Court of Alabama rejected an argument that “Woodruff’s status as the nominee of the Alabama Democratic Party made him a ‘quasi-incumbent’” “and thereby insulated from the effects of the abolition of the office.” *Id.* at 979.

The Court reasoned that “a public office that is a creature of the legislature confers no vested right.” *Id.* Quoting from an 1891 decision, the Court elaborated:

When an office is not provided for by the Constitution, but is the creature of statute, there is no element of contract between the officer chosen and the public, or constituent body which confers the office. *Being created, and its functions and emoluments conferred, by the legislature, the same body may abolish it, take away or reduce its functions and emoluments, or make any change its wisdom or caprice may suggest, not inhibited by the organic law.*

*King*, 988 So.2d at 979 (quoting *Lane v. Kolb*, 9 So. 873, 874 (Ala. 1891)) (emphasis added).

The Legislature created the PSC, Ala. Code § 37-1-1; *see also* Ex. 1 at 1-2 ll. 26-31, and the Legislature can abolish or alter the PSC. McNeil’s status as a candidate and as the Democratic Party’s nominee does not impact that. She has no State-law created “protected liberty and property interests,” doc. 1 at 23 ¶ 41, or “cognizable liberty and property interests,” *id.* at 26 ¶ 49, in the PSC remaining unchanged just because she is a party nominee.

Given all this, and focusing on McNeil’s Substantive Due Process claim, McNeil cannot show that she has any right that is “deeply rooted in our history and tradition and essential to our Nation’s scheme of ordered liberty.” *Eknes-Tucker v. Governor of Ala.*, 80 F.4th 1205, 1220 (11th Cir. 2023) (cleaned up). Accordingly, rational basis applies, *id.*, and is easily satisfied. There is no single right answer to the number of seats that should be on the PSC (if any) or how long the terms of office should be or whether the PSC should stand apart from numerous Cabinet agencies run by Secretaries and Commissioners accountable to the Governor. *Cf. Holder v.*

*Hall*, 512 U.S. 874, 881 (1994) (holding plaintiffs could not bring a challenge under § 2 of the Voting Rights Act to the size of a government body in part because “[t]here is no principled reason why one size would be picked over another as the benchmark for comparison”). To the extent that McNeil complains that “the election cycle [is] already underway,” doc. 1 at 25 ¶ 45, Ala. Act No. 2026-345 did accommodate current candidates by continuing those offices and allowing candidates to continue to run statewide this year.

Similarly, McNeil is wrong to assert she has “interests ... established by Alabama law,” doc. 1 at 26 ¶¶ 49-50, to support her Procedural Due Process claim. Her asserted interests in her election not being statewide is misplaced for the reasons addressed *supra*. Her concerns about the changes to the PSC itself do not provide her any State-created interests, *King*, 988 So.2d at 979; *Lane*, 9 So. at 874, that could conceivably entitle her to individualized process. Legislation impacting citizens is enacted all the time without individualized notice. And, in any event, McNeil’s complaint makes plain she was aware of the need to watch that process and voice any concerns, doc. 1 at 9-14 ¶¶ 17-26 (describing legislative events and McNeil’s responses).

**Given that McNeil has no special status as a candidate, she asserts generalized interests that do not support standing; to the extent she asserts particularized interests as a future Commissioner, her injuries are speculative.**

The first requirement of standing is that McNeil “must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up).

“For an injury to be particularized, it must affect the plaintiff in a personal and individual way. General interests common to all members of the public are not particularized injuries.” *Quinn v. Sec’y of State for Georgia*, 175 F.4th 1309, 1315-16 (11th Cir. 2026) (cleaned up). But, to the extent that McNeil’s claims are that she does not approve of the changes Ala. Act No. 2026-345 makes to the PSC, that is all she has asserted. *See e.g.*, doc. 1 at 22 ¶ 36 (Equal Protection, “the nature of the office[] and the institutional authority of elected commissioners”); *id.* at 23 ¶ 41(b) (Substantive Due Process, “the structural integrity and independent authority of that office”); *id.* at 24 ¶ 43 (same, creation of Secretary of Energy); *id.* at 26 ¶ 51 (Procedural Due Process, “fundamental character of the office ... would be restructured”).

To the extent that McNeil claims a particularized interest because, as a candidate, she may well be elected to the PSC, *see e.g.*, Complaint excerpts just cited, it is entirely speculative, or conjectural, whether she will win the election. This Court can take judicial notice that the Alabama Republican Party is competing for the Place 2 seat. Fed. R. Evid. 201(b) (“The court may judicially notice a fact that

is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”); *see also SFM Holdings, Ltd. v. Banc of Am. Securities, LLC*, 600 F.3d 1334, 1337 (11th Cir. 2010) (“In ruling upon a motion to dismiss, the district court may consider an extrinsic document if it is (1) central to the plaintiff's claim, and (2) its authenticity is not challenged.”). Four Republican candidates ran for PSC Place 2 in the May 19, 2026 Primary Election, and incumbent Chris Beeker is competing with former Auditor Jim “Zig” Zeigler in a Primary Runoff Election to determine who will meet McNeil at the November General Election. *See* 2026 Election Information, Primary Election – May 19, 2026, Certification of Results - Republican Party (Excel file with vote totals) (certified by party 6/2/2026) at summary tab ll. 60-65, available at <https://www.sos.alabama.gov/alabama-votes/voter/election-information/2026> (last visited June 2, 2026).<sup>1</sup> McNeil is not guaranteed to win Place 2.

**Standing and immunity bar McNeil's claims as to State officials who do not implement challenged aspects of Ala. Act No. 2026-345.** As to standing, the second and third requirements are that “there must be a causal connection between

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<sup>1</sup> The link is to the Secretary of State's 2026 Election Information webpage. Under the subheading for Primary Election – May 19, 2026 there is an entry entitled Certification of Results - Republican Party (Excel file with vote totals) (certified by party 6/2/2026). That entry has a link to an Excel file with multiple tabs. The first tab is entitled Summary. The information on PSC Place 2 is at lines 60-65 of that tab.

the injury and the conduct complained of” and “it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 560-61.

Ala. Act No. 2026-345 does not assign the Attorney General any enforcement role, and McNeil does not allege that the Attorney General has injured her in any way, doc. 1, generally. She sued Attorney General Marshall because he “is charged with defending the constitutionality of Alabama statutes and with enforcing state law.” *Id.* at 6 ¶ 11. That is insufficient to establish standing.

“The fact that the Act itself doesn’t contemplate enforcement by the Attorney General counts heavily against plaintiffs’ traceability argument.” *Lewis v. Governor of Alabama*, 944 F.3d 1287, 1299 (11th Cir. 2019) (*en banc*). In *Lewis*, “[i]n the absence of any indication that” the challenged Act “itself contemplate[d] enforcement by the Attorney General, [the] plaintiffs resort[ed] to a host of provisions of the Alabama Code that generally describe the Attorney General’s litigating and opinion-giving authority.” *Id.* at 1300. The Court rejected all of them. *Id.* at 1297-98 & n.6, 1300-01. McNeil likewise has not established traceability as to the Attorney General. She further has not shown how relief against the Attorney General would make it likely her injury will be redressed.

For the same reasons, the Attorney General has immunity from McNeil’s claims. “The Eleventh Amendment bars a suit against state officials when the state

is the real, substantial party in interest.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984) (internal quotation marks and citations omitted). To enforce the supremacy of federal law, *Ex parte Young*<sup>2</sup> allows for forward-looking injunctions against State officials who are violating federal law. *Pennhurst*, 209 U.S. at 102-06. The bar is jurisdictional. *McClendon v. Georgia Dept. of Cmty. Health*, 261 F.3d 1252, 1256 (11th Cir. 2001), and it has not been waived, Ala. Const. art. I, § 14; *Ala. v. Pugh*, 438 U.S. 781, 782 (1978).

“In making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, *it is plain that such officer must have some connection with the enforcement of the act*, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party.” *Ex parte Young*, 209 U.S. at 157 (emphasis added). Here, McNeil has not identified any connection that the Attorney General has to Ala. Act No. 2026-345. Doc. 1, generally. Indeed, he is only mentioned near the end where the Act amends certain provisions that deal with elections and terms of office where the Attorney General and PSC Commissioners and others are addressed together. Ala. Act No. 2026-345 at 10-12, *ll.* 276-321.

These same arguments apply to the Governor to the extent, if any, that McNeil’s claims or request for relief go beyond the Governor’s receipt of lists of

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<sup>2</sup> 209 U.S. 123 (1908).

names for potential appointment as PSC Commissioners, the Governor's appointment of PSC Commissioners, and the Governor's appointment of a Secretary of Energy serving in the Governor's Cabinet and at the Governor's pleasure, and all that entails. Ex. 1 at 3 *ll.* 69-84; *id.* at 6 *ll.* 158-61. If "otherwise implementing, enforcing, or giving effect to the structural provisions of" the Act, doc. 1 at 30 ¶ A(e), constitutes more than that, standing and immunity bar the claim as to the Governor. An injunction as to how the election shall be run, *see id.* at 31 ¶¶ F-G, is likewise barred.

**McNeil fails to state a Voting Rights Act claim.** While McNeil mentions the Voting Rights Act, *e.g.*, doc. 1 at 1, 30, she never provides "a short and plain statement of the claim showing that [she] is entitled to relief," Fed. R. Civ. P. 8(a). Her Counts do not include the Voting Rights Act, doc. 1 at 21-29, and it is doubtful she could assert such a claim, *Presley v. Etowah Cnty. Comm'n*, 502 U.S. 491 (1992).

**McNeil is not entitled to a jury trial.** "[T]he right to have a jury determine issues of fact turns essentially on whether the claim to which those issues relate is legal or equitable." *Ford v. Citizens & S. Nat. Bank, Cartersville*, 928 F.2d 1118, 1121 (11th Cir. 1991) (quoting *Hensley v. E.R. Carpenter Co., Inc.*, 633 F.2d 1106, 1110 n. 5 (5th Cir. Unit A 1980)) (alteration by the Court). Here, McNeil seeks declaratory relief and injunctive relief. Doc. 1 at 1, 27-31. "Purely equitable claims,

even those involving factual disputes, are matters to be resolved by the court rather than a jury.” *Ford*, 928 F.2d at 1122.

### CONCLUSION

The Court should dismiss.

Respectfully submitted,

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