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

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

LAKEISHA CHESTNUT, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No.:
v.	)	2:18-cv-907-KOB
	)	
JOHN H. MERRILL, Secretary of State,	)	
	)	
Defendant.	)	

MOTION TO DISMISS

Defendant John Merrill, Alabama Secretary of State, moves to dismiss Plaintiffs' complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure on the grounds that Plaintiffs lack standing to assert their claims, and this Court therefore lacks jurisdiction over Plaintiffs' claims.

Introduction

Seven years after Alabama passed its 2011 congressional redistricting plan, and seven years after that plan was precleared by the Department of Justice, and just two years before the redistricting process starts all over again, Plaintiffs filed this action alleging that Alabama should adopt new Congressional districts that include a second majority-minority district. *See* Complaint, doc. 1. Some Plaintiffs allege that they live in current District 7, which is majority black, and others allege that they live in Lee, Butler, or Mobile County, Alabama, and that at least some of those

counties could be included in a second majority-minority district. Doc. 1 at ¶¶ 13-20. They each seek the same relief, that this Court "[o]rder the adoption of a valid congressional redistricting plan that includes a second majority-minority district in Alabama." Doc. 1 at 28. However, none of the Plaintiffs allege that they would in fact reside in the second majority-minority district (if one may Constitutionally be drawn),[1] and the Supreme Court has held that a Plaintiff in a gerrymandering case has standing to challenge only the district where he or she resides. *Gill*, 138 S. Ct. at 1930. Plaintiffs have therefore not alleged sufficient facts to establish standing.

Legal Standard

"Article III of the Constitution limits the jurisdiction of federal courts to the consideration of 'Cases' and 'Controversies.'" *Stalley ex rel. United States v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) (quoting U.S. Const. Art. III § 2). A federal court therefore lacks subject matter jurisdiction

[1] For example, federal law does not require Alabama to racially gerrymander in order to draw a second majority-minority district. In fact, the Constitution prohibits it from doing so. Among other factors, Plaintiffs ultimately must prove that a district can be drawn around a reasonably compact population of African-Americans who will comprise a majority of the district's voting age population. *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (holding that the minority group must be "sufficiently large and reasonably compact to constitute a majority" in the district); *Bartlett v. Strickland*, 556 U.S. 1, 11-12 (2009) (rejecting claim of minority voters who would not have constituted a majority of voting age population in the desired district) (plurality opinion); *Negron v. City of Miami Beach*, 113 F.3d 1563, 1569 (11th Cir. 1997) ("[T]he proper statistic for deciding whether a minority group is sufficiently large and geographically compact is voting age population as defined by citizenship."); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 430 (2006) ("There is no § 2 right to a district that is not reasonably compact.") (Opinion of Kennedy, J.). If these factors are not met, then Alabama is prohibited from districting on the basis of race to create a majority-minority district. *See Cooper v. Harris*, 137 S.Ct. 1455, 1470 (2017).

when a complaint fails to make plausible allegations of standing. *See id*. Those bringing suit in federal court "may not invoke federal-court jurisdiction unless [they] can show 'a personal stake in the outcome of the controversy.'" *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). A plaintiff must show such a personal stake by meeting the "familiar three-part test for Article III standing: that he '(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.'" *Gill*, 138 S. Ct. at 1929 (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)). Under the third element, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife, Inc.*, 504 U.S. 555, 561 (1992). The burden of establishing standing rests with the party invoking federal jurisdiction. *Id.*

As stated above, a plaintiff alleging that he or she lives in a racially gerrymandered district "has standing to assert only that his own district has been so gerrymandered." *Gill*, 138 S. Ct. at 1930 (citing *United States v. Hays*, 515 U.S. 737, 744–45 (1995)). One complaining of gerrymandering, but "who does not live in a gerrymandered district 'assert[s] only a generalized grievance against governmental conduct of which he or she does not approve.'" *Gill*, 138 S. Ct. at 1930 (quoting *Hays*, 515 U.S. at 745). A plaintiff complaining of racial gerrymandering "cannot sue to invalidate the whole State's legislative districting map," but rather "such

complaints must proceed 'district-by-district.'" *Gill*, 138 S. Ct. at 1930 (quoting *Ala. Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1265 (2015)).

Legislatures cannot remedy the alleged vote-dilution injury of an individual residing in one district by drawing a majority-minority district elsewhere in the State. *Shaw v. Hunt*, 517 U.S. 899, 916-17 (1996). Such a proposed remedy misconceives the nature of a vote-dilution claim as belong "to the minority as a group and not to its individual members. It does not." *Id.* at 917.

Argument

Plaintiffs have not made plausible allegations that a favorable decision would redress their alleged injuries, and they therefore fail to establish that they have a personal stake in the outcome. The relief specifically requested is "the adoption of a valid congressional redistricting plan that includes a second majority-minority district in Alabama." Doc. 1 at 28. Because Plaintiffs have not alleged that they would live in this second majority-minority district, nor have they requested that the district be drawn to include any or all of them, it is "merely speculative," rather than "likely," that Plaintiffs' requested remedy will redress their alleged injuries. *Lujan*, 504 U.S. at 561.

Plaintiffs Marlene Martin, Bobby DuBose, Rodney Love, Janice Williams, and Karen Jones (collectively, "CD 7 Plaintiffs") have not asked for specific relief that their own Congressional District be redrawn, but ask instead that a second

majority-minority district be drawn elsewhere in the State. To the extent Alabama has violated a duty to draw such a district, the failure to do so does not cause a personal injury to the CD 7 Plaintiffs. To the extent the CD 7 Plaintiffs allege an injury due to the way their own district was drawn, drawing a second majority-minority district in another part of the State would not redress that injury. The CD 7 Plaintiffs lack standing to assert their claims.

The remaining Plaintiffs (LaKeisha Chestnut, Roderick Clark, and John Harris) allege that an "additional majority-minority district could be drawn incorporating all or some of" the respective counties in which they reside. Doc. 1 at ¶¶ 13, 19-20. However, these Plaintiffs fail to allege that any of them would actually or even likely reside in this second district. As merely "some of" the counties of residence of Plaintiffs Chestnut, Clark, and Harris "could be" incorporated into the district, the portion of each county in which they actually reside could be left out of the requested second majority-minority district. *Id.*

Ultimately, Plaintiffs' claim as alleged amounts to a "generalized grievance against governmental conduct." *Hays*, 515 U.S. at 745. Principles of standing established for racial gerrymandering claims limit Plaintiffs "to assert only that [their] own district[s] [have] been so gerrymandered." *Id.* at 744–45. Plaintiffs fail to request relief that redresses the individual alleged injuries arising from their own allegedly gerrymandered districts, but instead ask only that a second majority-

minority district be drawn somewhere in the State including some unknown group of voters. This requested relief bears little resemblance to the "district by district" process by which racial gerrymandering claims may proceed. *See Ala. Legislative Black Caucus*, 135 S. Ct. at 1265. As such, Plaintiffs' claims amount to generalized grievances and do not establish standing.

In sum, Plaintiffs fail to meet their burden to establish standing. Plaintiffs have not alleged that they would actually reside in the second majority-minority district, and "[t]he [alleged] vote-dilution injuries suffered by [Plaintiffs] are not remedied by creating a safe majority-black district somewhere else in the State." *Shaw*, 517 U.S. at 916-17. Additionally, Plaintiffs do not request the redrawing of each of their individual districts. Unable to establish claims regarding their individual districts, Plaintiffs' claims instead merely consist of generalized grievances about Alabama's Congressional Districts. Generalized grievances do not constitute controversies, and Plaintiffs therefore have not established standing to bring these claims. As such, Secretary Merrill moves that Plaintiffs' claims be dismissed.[2]

[2] Defendant recognizes that Plaintiffs may amend to allege sufficient facts to demonstrate standing. If so, and if other allegations remain the same, Defendant reserves the right to address what he believes to be another shortcoming in Plaintiffs' allegations. As stated in n.1, *supra*, Plaintiffs must show that African-Americans would comprise a majority of the voting age population in a constitutional district in order to prevail in their Section 2 claim. Thus far, though, Plaintiffs allege only that "[t]he African-American population in Alabama is sufficiently numerous and geographically compact to form a majority of *eligible voters* in two congressional districts." Doc. 1 at ¶6 (emphasis added). It is not clear that "eligible voters" is the same as "voting age population." This issue is the subject of a motion to dismiss filed by the Georgia Secretary of State in very similar litigation. *Dwight v. Kemp*, CA No. 1:18cv02869 (N.D. Ga) (docs. 13, 13-1).

Respectfully submitted,

Steve Marshall
Attorney General

s/ James W. Davis
James W. Davis (ASB-4063-I58J)
Deputy Attorney General

Winfield J. Sinclair (ASB-1750-S81W)
Misty S. Fairbanks Messick (ASB-1813-T71F)
Laura E. Howell (ASB-0551-A41H)
Brad A. Chynoweth (ASB-0030-S63K)
Assistant Attorneys General

Office of the Attorney General
501 Washington Avenue
Montgomery, Alabama 36130-0152
Telephone: (334) 242-7300
Fax: (334) 353-8440
jimdavis@ago.state.al.us
wsinclair@ago.state.al.us
mmessick@ago.state.al.us
lhowell@ago.state.al.us
bchynoweth@ago.state.al.us

Counsel for the Defendant

CERTIFICATE OF SERVICE

I certify that on July 9, 2018, I filed the foregoing document electronically via the Court's CM/ECF system, which will send a copy to all counsel of record.

s/James W. Davis
Counsel for the Defendant