

**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,)

Defendant.)

Case No. 2:21-cv-1531-AMM

DEFENDANT’S MOTION FOR JUDGMENT AS A MATTER OF LAW

Pursuant to Rule 52(c) of the Federal Rules of Civil Procedure, Defendant Secretary Wes Allen (“Secretary Allen”) moves this Court for judgment as a matter of law. While Secretary Allen understands the general rule that questions of law “are exempt from the preservation rule announced in [*Ortiz v. Jordan*, 562 U.S. 180 (2011)],” *Sims v. Sec’y, Fla. Dep’t of Corr.*, 75 F.4th 1224, 1229 (11th Cir. 2023), out of an abundance of caution – and by way of a “belt and suspenders” approach to preservation – Secretary Allen nonetheless renews his arguments that this matter should be decided as a matter of law.

Namely, for all of the reasons argued previously, such as in Secretary Allen’s Motion to Dismiss (Doc. 092), Section 2 of the Voting Rights Act does not create a private right of action. *See, e.g., Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023). Further, for all the reasons argued

previously, such as in Secretary Allen's Motion for Summary Judgment (Doc. 166) and Motion in Limine (Doc. 181), it is plain that the Plaintiffs cannot satisfy the first precondition of *Gingles v. Thornburg*, 478 U.S. 30 (1986) for their claims in Northern Alabama near Huntsville.

CONCLUSION

Pursuant to Rule 52(c), this Court should grant judgment as a matter of law in favor of Secretary Allen establishing that Section 2 of the Voting Rights Act does not create a private right of action and Plaintiffs cannot satisfy *Gingles* I.

Respectfully submitted,

Steve Marshall
Attorney General

/s/ James W. Davis
Edmund G. LaCour Jr. (ASB-9182-U81L)
Solicitor General
James W. Davis (ASB-4063-I58J)
Deputy Attorney General
Soren Geiger (ASB-0336-T31L)
Dylan Mauldin (ASB-3281-Z11M)
Assistant Solicitors General

Misty S. Fairbanks Messick (ASB-1813-T71F)
Brenton M. Smith (ASB-1656-X27Q)
Richard D. Mink (ASB-4802-M76R)
Benjamin M. Seiss (ASB-2110-O00W)
Charles A. McKay (ASB-7256-K18K)
Assistant Attorneys General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA
501 Washington Avenue
P.O. Box 300152
Montgomery, Alabama 36130-0152
Telephone: (334) 242-7300
Fax: (334) 353-8400
Edmund.LaCour@AlabamaAG.gov
Soren.Geiger@AlabamaAG.gov
Dylan.Mauldin@AlabamaAG.gov
Jim.Davis@AlabamaAG.gov
Misty.Messick@AlabamaAG.gov
Brenton.Smith@AlabamaAG.gov
Ben.Seiss@AlabamaAG.gov
Charles.McKay@AlabamaAG.gov
Richard.Mink@AlabamaAG.gov

Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that on December 13, 2024, 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/ James W. Davis
Counsel for Secretary Allen