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

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

LAQUISHA CHANDLER, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2:21-cv-1531-AMM
	)	
WES ALLEN, *et al.*,	)	**THREE-JUDGE COURT**
	)	
Defendants.	)	

DEFENDANTS REP. PRINGLE AND
SEN. LIVINGSTON'S MOTION TO DISMISS

Come now defendants Rep. Chris Pringle and Sen. Steve Livingston in their official capacities as the House and Senate Chairs of the Alabama Legislature's Permanent Legislative Committee on Reapportionment ("the Chairs") and move the Court to dismiss the claims against them with prejudice under F.R.Civ.P. 12(b)(1, 6). Specifically, claims against the Chairs should be dismissed because:

(1) they have legislative immunity from this suit,

(2) plaintiffs do not have standing to sue them, and

(3) for the reasons shown in Defendants Motion to Dismiss, doc. 92, which is incorporated by reference into this motion.

Legal Standard

To survive a motion to dismiss under Rule 12(b)(6), "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). The Court must

"take the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff." *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008). This rule "is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678. A motion to dismiss under Rule 12(b)(1) is analyzed under the same standard as one under Rule 12(b)(6). *Semmes v. United States*, No. CV 07-B-1682-NE, 2009 WL 10688451 at *1 (N.D. Ala. March 31, 2009). However, in ruling on a Rule 12(b)(1) motion, the court may look beyond the complaint to undisputed facts in the record and undisputed facts plus the court's resolution of disputed facts. *Butler v. Morgan*, 562 Fed. App'x 832, 834-35 (11th Cir. 2014). The burden of proof on a Rule 12(b)(1) motion is on the parties averring jurisdiction. *Lawley v. Danville Regional Foundation*, No. 2:08-cv-00825-LSC, 2008 WL 11377631 at *2 (N.D. Ala. Sept. 5, 2008).

Background

The 3rd Amended Complaint ("Complaint"), doc. 83, challenges certain House and Senate districts that the Alabama Legislature adopted in 2021. The Complaint alleges claims for racial gerrymandering against the Chairs and the Alabama Secretary of State under the 14th Amendment via 42 U.S.C. § 1983, *id.* (¶ 5, Counts 1 and 2), and for vote dilution in violation of §2 of the Voting Rights Act ("VRA"). *Id.* (¶¶ 5-8, Count 3). Particular to the Chairs, the Complaint alleges that:

> Defendants Jim McClendon and Chris Pringle are sued in their official capacities as Co-Chairs of the Alabama Permanent Legislative

> Committee on Reapportionment ("the Committee") that was responsible for the 2021 maps challenged here. In that capacity, Defendants McClendon and Pringle prepared and developed redistricting plans for the State following the decennial census and presided over the meetings of the Committee. The Committee was tasked with making a "continuous study of the reapportionment problems in Alabama seeking solutions thereto" and reporting its investigations, findings, and recommendations to the Legislature as necessary for the "preparation and formulation" of redistricting plans for the Senate and House districts in the State of Alabama. Ala. Code §§ 29-2-51, 29-2-52. Defendants McClendon and Pringle led the drawing of the challenged districts. They will likely lead efforts to re-draw the districts to remedy their unconstitutionality if the Court orders the State to do so.

Doc. 83, ¶ 24. As relief, plaintiffs seek, in relevant part:

> (1) declaratory judgments that racial gerrymanders in Alabama's House and Senate violate the 14th Amendment, and that Senate districts violate §2 of the VRA,
>
> (2) a permanent injunction "enjoin[ing] Defendants and their agents" from holding elections in both the districts plaintiffs challenge and adjoining districts, as necessary to remedy alleged violations, and
>
> (3) a deadline "for the State of Alabama" to adopt new legislative districts compliant with the VRA and the Constitution, and
>
> (4) under § 3(c) of the VRA, a requirement that "all Defendants" submit future House and Senate districts to this Court or the U.S. Attorney General for preclearance.

Id., Prayer for Relief, ¶¶ A-D, G.[1]

[1] Not relevant to the arguments made here, the Complaint also seeks fees and costs, requests the Court to retain jurisdiction to ensure compliance with its orders, and ask for "other and further relief as the Court may deem just and proper." Doc. 83, Prayer for Relief, ¶¶ E-F, H.

The Permanent Legislative Committee on Reapportionment exists in response the Alabama Legislature's "continuing need for comprehensive study, research and planning … in the area of reapportionment." Ala. Code § 29-2-50. Although reapportionment and redistricting are distinct concepts, in practice the Committee's primary activities are preparing statewide redistricting plans for consideration by the Legislature. *See* doc. 83, Complaint, ¶¶ 50, 56-59, 67-68, 71, 73-74, 77, 80-81 (describing the Legislature's consideration of redistricting maps originating from the Committee).

Claims Against the Chairs Must Be Dismissed Because The Chairs Have Absolute Legislative Immunity From Suit. [2]

"The principle that legislators are absolutely immune from liability for their legislative activities has long been recognized in Anglo-American law. This privilege 'has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries' and was 'taken as a matter of course by those who severed the Colonies from the Crown and founded our nation.'" *Brogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998) (holding that local legislators "are likewise absolutely immune" from suit under § 1983 "for their legislative activities") (citing *Tenny v.*

[2] Separate from but "parallel to" legislative immunity is legislative privilege, which "protects the legislative process" and shields legislators "from the costs and distraction of discovery, enabling them to focus on their duties." *Florida v. Byrd*, No. 4:22-cv-109-AW-MAF, 2023 WL 3676796 at *2 (N.D. Fla. May 25, 2023). The Chairs will, as appropriate, assert legislative privilege in response to discovery directed to them or their staff members and aides.

Brandlove, 341 U.S. 367, 372 (1951); *see also* 523 U.S. at 54 ("Absolute legislative immunity attaches to all actions taken 'in the sphere of legitimate legislative activity.'") (citing *Tenney*, 341 U.S. at 788); *Scott v. Taylor*, 405 F.3d 1251, 1254 (11th Cir. 2005) (holding "these state legislator defendants enjoy legislative immunity protecting them from a suit challenging their actions taken in their official legislative capacities and seeking declaratory or injunctive relief.") (footnote omitted). In *Scott*, the Eleventh Circuit held that legislator defendants sued in an "official capacity suit for prospective relief are entitled to absolute immunity." *Id.*, 405 F.3d at 1255-56 (reversing and remanding with instruction to dismiss legislator defendants).

Absolute legislative immunity applies if "legislators were engaging in legislative activity in the particular case under consideration." *Ellis v. Coffee County Board of Registrars*, 981 F.2d 1185, 1190 (11th Cir. 1993). The challenged activities of the Chairs were necessarily legislative. Plaintiffs charge the Chairs with leading the committee "responsible for the 2021 maps challenged here," and further alleged that the Chairs "led the drawing of the challenged districts." Doc. 83, Complaint, ¶ 24. The "2021 maps" were in fact bills, *i.e.* proposed laws, introduced in the 2021 2nd Special Session of the Legislature. The Complaint alleges that after the 2020 Census was released, "under the leadership of [the Chairs]" the Committee "began to develop redistricting plans for the State Senate and State House of Representatives districts." *Id.* ¶ 43. The Committee, still led by the Chairs, then conducted public hearings on the plans, *id.* at ¶ 46, and later met

during the special redistricting session, considered the plans, debated them, and voted to send them forward for further consideration by separate House and Senate Committees and the respective legislative chambers. *Id.* at ¶¶ 50-81. Plaintiffs also allege that the Chairs played roles in the passage of the redistricting plans in each chamber. *E.g., id.* at ¶¶ 68, 72.

There could hardly be a more legitimate legislative act than preparing bills, especially redistricting bills, and shepherding them through the Legislature. *Brogan*, 523 U.S. at *54-*56 (holding legislative immunity could be invoked for acts that are "integral steps in the legislative process" and where city council "governed 'in a field where legislators traditionally have power to act.'") (citation omitted); *Yeldell v. Cooper Green Hospital, Inc.*, 956 F.2d 1056, 1062 (11th Cir. 1992) ("[P]reparing committee reports, and participating in committee investigations and proceedings are generally deemed legislative and, therefore, protected by the doctrine of legislative immunity.") (citation omitted); *DeSisto College, Inc. v. Line*, 888 F.2d 755, 765 (11th Cir. 1989) ("[V]oting, debate and reacting to public opinion are manifestly in furtherance of legislative duties."), *cert denied*, 495 U.S. 952 (1990); *Baytree of Inverrary Realty Partners v. City of Lauderhill*, 873 F.2d 1407, 1409 (11th Cir. 1989) ("[I]ndividual defendants have absolute immunity from any federal suit for damages if their challenged conduct furthers legislative duties.").

Because the challenged acts of the Chairs—preparing and shepherding through the Legislature the 2021 House and Senate districts—were inherently

legislative, the Chairs have absolute legislative immunity, and plaintiffs' claims against them should be dismissed with prejudice. *Hall v. Louisiana*, 974 F. Supp. 2d 944, 957 (M.D. La. 2013) (holding the Louisiana Legislature was entitled to legislative immunity against a vote-dilution challenge to judicial districts: "In sum, the Court is persuaded that the Legislature acted in accordance with its legislative duties, and that its alleged acts fall within the 'sphere of legitimate legislative immunity.'").

The Plaintiffs Lack Standing to Sue the Chairs.

The subject-matter jurisdiction of federal courts is constitutionally limited to "Cases" and "Controversies." U.S. Const. art III, § 2. "To have a case or controversy, a litigant must establish that he [or she] has standing, which requires proof of three elements. The litigant must prove (1) an injury in fact that (2) is fairly traceable to the challenged action on the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Florida Secretary of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (cleaned up). "Standing, moreover, concerns the congruence or fit between the plaintiff and the defendants. 'In its constitutional dimension, standing imports justiciability: whether plaintiff has made out a "case or controversy" *between himself and the defendants* within the meaning of Article III.' Thus, in a suit against state officials for injunctive relief, a plaintiff does not have Article III standing with respect to those officials who are powerless to remedy the alleged

injury." *Scott*, 405 F. 3d at 1259 (Jordan, J. concurring) (emphasis in original, cleaned up) (citations omitted).

Plaintiffs seek an injunction enjoining the use of legislative districts declared in violation of the Constitution or the VRA, a deadline for the Legislature to adopt new districts, and a requirement for future legislative districts to be precleared. The Chairs can provide none of this relief. The Chairs have no authority to administer elections, and plaintiffs do not allege otherwise.[3] "The courts have long recognized that state legislators in their official capacities 'have no legal interest in the implementation of laws they pass.'" *Chestnut v. Merrill*, no. 2:18-CV-907-KOB, 2018 WL 9439672 at *2 (N.D. Ala. October 16, 2018) (citations omitted). "Rather, '[l]egislators are not charged with enforcing and implementing voting districts.'" *Id.* (citations omitted). In fact, just several years ago the Court held that Sen. Jim McClendon, then Senate Chair of the Reapportionment Committee, had no authority to enforce electoral districts. *Chestnut*, 2018 WL 9439672 at *2 ("Under Alabama law, the Secretary of State is the proper state entity to administer the congressional district plan and state election laws.").

[3] Because the Chairs are not and cannot administer elections, plaintiffs also cannot meet the second requirement for standing, traceability. *See Doe v. Pryor*, 344 F.3d 1282, 1285 (11th Cir. 2003) (where the Attorney General had "taken no action to enforce [a challenged law] against' the plaintiff, her injuries were "not 'fairly traceable'" to the only defendant before the Court); *see also Lewis v. Governor of Alabama*, 944 F.3d 1287, 1299 (11th Cir. 2019) ("[T]he causation element of standing requires the named defendants to possess authority to enforce the complained-of provision.") (quoting *Digital Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 958 (8th Cir. 2015)).

Likewise with the prayed-for deadline for the Legislature to adopt new legislative districts: the Chairs can provide no relief. The timing and duration of legislative sessions are set forth in the Alabama Constitution of 2022, *e.g*. Art. IV, § 48.01 (regular and organizational sessions) and Art. V, § 122 (special sessions, which must be called by the Governor). Moreover, when the Legislature meets, the Chairs do not control its calendar, or the agenda of legislative committees (except for the Reapportionment Committee), or whether their preferred plan is passed by the House and Senate, or is amended, or subject to being substituted. All this is controlled by a combination of other committee chairs, the President Pro Tem of the Senate, the Speaker of the House, and the Chairs other House and Senate colleagues.[4] Plaintiffs, who have the burden of establishing standing, have not alleged otherwise. "When '[t]he existence of one of more of the essential elements of standing depends on the unfettered choices made by independent actors not before the courts and whose exercise of .... discretion the courts cannot presume either to control or to predict,' plaintiffs must demonstrate that 'those choices have been or will be made in such a manner as to produce causation and permit redressability of injury.'" *Lewis v. Governor of Alaba*ma, 944, F.3d 1287, 1304-05 (11th Cir. 2019). Plaintiff have not and cannot make this showing.

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[4] See the bill history for the House districts, HB, https://alison.legislature.state.al.us/bill-search?tab=2 (last visited July 22, 2023) and the bill history for the Senate districts, SB1, https://alison.legislature.state.al.us/bill-search?tab=2 for illustrations of the multiple steps and votes needed to the bills to become laws. The Chairs requests the Court to take judicial notice of this information. F.R. Evid. 201(b)(2) and (c)(2).

Finally comes plaintiffs' request to subject future legislative districts to preclearance. The Chairs have no authority to make preclearance submissions. *See* Ala. Code §§ 29-2-50-52 (setting forth the duties of the Committee and the Chairs). Instead, the Attorney General is authorized to, *inter alia*, make preclearance submission for the State, Ala. Code § 36-15-17 (authorizing the Attorney General to "institute and prosecute, in the name of the state, all … proceedings necessary to protect the rights and interests of the state").

"The question before" the Court "is whether plaintiffs' requested relief—in particular against [the Chairs]—would significantly increase the likelihood that" Alabama would cease enforcing the challenged districts, adopt new districts, and submit those districts for preclearance. *Lewis*, 944 F.3d at 1301. As shown above, the answer is "no." There is no congruence between the plaintiffs and the Chairs. The Chairs are powerless to remedy the plaintiffs' alleged injury. *See Okpalobi v. Foster*, 244 F.3d 405, 427 (11th Cir. 2001) (en banc) ("Because these defendants have no power to redress the injuries alleged, the plaintiffs have no case or controversy with these defendants that will permit them to maintain this action in federal court.") (*citing Muskrat v. United States*, 219 U.S. 346 (1911)); *see also Okpalobi,* 244 F.3d at 430 (Higgenbotham, J., concurring)("The question of standing in this case is easily framed. We should ask whether enjoining defendants from enforcing the statute complained of will bar its application to these plaintiffs. The answer is no."). For this reason, the plaintiffs have failed to establish standing, and their claims against the Chairs should be dismissed.

Plaintiffs Lack a Private Cause of Action Under The VRA, And Their Equal Protection Claim Fails To State A Claim Upon Which Relief Can Be Granted.

These arguments are made in the Defendants' Motion to Dismiss, doc. 92, which the Chairs adopt by reference.

Conclusion

The Third Amended Complaint is due to be dismissed with prejudice as against the Chairs.

/s/ *Dorman Walker*
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CERTIFICATE OF SERVICE

I certify that on July 24, 2023, 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/*Dorman Walker*