

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

LAQUISHA CHANDLER, *et al.*,

Plaintiffs,

v.

WES ALLEN, *et al.*,

Defendants.

No. 2:21-cv-1531-AMM

PLAINTIFFS' REPLY TO NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants raise the Eighth Circuit's decision in *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, slip op. at 1-22 (8th Cir. Nov. 20, 2023) ("*Arkansas NAACP*"), the first time since the passage of the Voting Rights Act in 1965 that any federal appellate court has held that only the federal government may sue under Section 2. Defendants' comments miss the mark in two respects.

First, emphasizing the panel majority's engagement with "text and structure" in holding that "Congress intended to place enforcement in the hands of the Attorney General, rather than private parties," Resp. 2 (quoting *Arkansas NAACP* at 9), underscores the formalistic reasoning behind the ruling. As the Eleventh Circuit held, "[i]t is implausible that Congress designed a statute that primarily prohibits certain state conduct, made that statute enforceable by private parties [via Section 3 of the VRA], but did not intend for private parties to be able to sue States." *Ala. State*

Conf. of NAACP v. Alabama, 949 F.3d 647, 652 (11th Cir. 2020), *rev'd and vacated as moot* by 141 S. Ct. 2618 (2021). While Defendants pejoratively characterize Chief Judge Smith's dissent as "lower courts should just leave well-enough alone," this only highlights the merits of his "adher[ing] to the extensive history, binding precedent, and implied Congressional approval of Section 2's private right of action." *Arkansas NAACP* at 30 (Smith, J., dissenting) (citation omitted). In the words of Chief Justice Roberts in affirming a VRA injunction in an action brought by private parties, complaining that what a court did "is essentially no different from what many courts have done for decades under this Court's superintendence" is "not such a bad definition of *stare decisis*." *Allen v. Milligan*, 599 U.S. 1, 26 (2023).

Second, Defendants contend that Plaintiffs "have invoked §1983 to enforce only their constitutional claims," Resp. 2, and under the logic of *Arkansas NAACP*, amending again to add a § 1983 claim would be inappropriate. They are wrong. Plaintiffs have asserted § 1983 as a basis for jurisdiction since the beginning and when they raised § 1983 as an independent basis to maintain their Section 2 claim, ECF No. 115 at 33–35, Defendants never argued that Plaintiffs' complaint failed to plead § 1983 as a basis for the VRA claim, *see generally* ECF No. 117. Defendants cannot now properly contend that Plaintiffs did not plead § 1983 as a basis for their VRA claim when they did not do so in their motion to dismiss briefing. *See Bodine v. Cook's Pest Control Inc.*, 830 F.3d 1320, 1324–25 (11th Cir. 2016).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which provides electronic notice of filing to all counsel of record.

This the 21st day of November, 2023.

/s/ Davin Rosborough