

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DISTRICT**

THE HONORABLE REVEREND	:	CASE NO. 4:22-cv-612
KENNETH L. SIMON, ET AL	:	
	:	RELATED CASE NOS. 2:21-CV-2267
PLAINTIFFS,	:	AND 4:88-CV-1104
	:	
VS.	:	CIRCUIT JUDGE JOAN L. LARSEN
	:	JUDGE SOLOMON OLIVER
GOVERNOR MIKE DEWINE, ET AL.	:	JUDGE JOHN R. ADAMS
	:	
DEFENDANTS.	:	
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**MOTION OF THE SIMON PARTIES TO ALTER OR AMEND JULY 1, 2024,
ORDER, ECF #54**

In accordance with the provisions of Fed. R. Civ. P. 59(e), the Honorable Reverend Kenneth L. Simon, the Honorable Reverend Lewis W. Macklin, II and Helen Youngblood, (“the Simon Parties”), respectfully move to alter or amend this Court’s July 1, 2024, Order granting Defendants’ Renewed Combined Motion to Dismiss, ECF Docket #48. The Court’s July 1, 2024 Order should be altered or amended because it contains a clear error of law concerning the construction of §2 of the Voting Rights Act (hereinafter “VRA”). Specifically, the July 1, 2024 Opinion states on Page ID #1838, “Critically, Plaintiffs direct us to nothing in Armour or any other case that suggests that the ability to nominate a candidate alone is of any §2 significance.” This statement by the Court ignores the fact Armour was not a nomination claim. It was an election claim. Further the plain language of §2 includes the term” nomination.” Accordingly, Plaintiffs direct the Court to the plain language of the VRA which specifically includes the term” nomination” to support the proposition that the term nomination has VRA significance.

The Court's opinion glosses over this obvious language. The Opinion therefore violates well-settled rules of statutory construction, which requires Courts to give effect to all words in a statute. More importantly the Court's baseless statement that the term nomination has no VRA significance, not only violates a cardinal principal of statutory construction that courts must give effect, if possible, to every clause and word of a statute, and courts are obliged to give effect, if possible, to every word Congress used. See, U.S.. McPherson, 81-MJ-371 (CAAF 2021), the Court has manufactured from whole cloth an argument that may be used without any basis as precedent to defeat VRA cases in the future. Here Congress included the word "nominate" in the text of the VRA. The Court's July 1, 2024 Order ignores the fact §2 states specifically a violation occurs where the processes leading to nomination or election are not equally open. The Court's groundless disregard for Congress' specific inclusion of the term "nomination" within Section 2 has the unfortunate potential to be relied in other VRA actions as a correct statement of law, when this Honorable Court has cited no authority from any Court, including the United States Supreme Court, for the statement that "nomination" has no §2 significance. Instead this Court challenges the Undersigned to cite authority for the proposition that the term "nomination" has Section 2 significance. My authority is the specific textual reference to and inclusion of the word "nomination" in the VRA. The Court's July 1, 2024, cites no contrary authority because none known to the Undersigned exists. The Court's cavalier rejection of the term portends future misuse of the statement in VRA litigation as a correct statement of the law, which it is not, because it violates well-settled rules of statutory construction in order to overcome Plaintiffs' nomination argument without any authority unless Plaintiffs' claim is recast as an influence or crossover claim in order to render the

claim subject to existing US Supreme Court precedent rather than an issue of first impression, which it is

A memorandum in support of this motion is attached.

/s/ Percy Squire

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MEMORANDUM

A. MOTION TO ALTER OR AMEND STANDARDS

It was stated in Intera Corp v. Henderson, 428 F.3d 605 (6th Cir. 2005):

A court may grant a Rule 59(e) motion to alter or amend if there is: (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice. GenCorp, Inc. v. Am. Int'l Underwriters, 178 F.3d 804, 834 (6th Cir. 1999) citations omitted).

Likewise in Washington v. Riverview Hotel, Inc., 2022 U.S. App. LEXIS 6303, a Panel which included Judge Thapar stated:

A district may grant a Rule 59(e) motion “if there is: (1) a clear error of law; (2) newly discovered evidence; [*14] (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.” *Intera*, 428 F.3d at 620.

In this case the Court should correct its erroneous statement that ability to nominate a candidate is of not §2 significance. The Court’s statement ignores the plain language of 2.¹

The Voting Rights Act states in Section 2:

Section 2, as amended, 96 Stat. 134, reads as follows:

“(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(t)(2), as provided in subsection (b).”

“(b) A violation of subsection (a) is established if based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a)

¹ Rule 59(e) does not enumerate the bases for seeking relief, but courts have traditionally granted relief on one of four grounds: (1) “manifest errors of law or fact upon which the judgment is based”; (2) “newly discovered or previously unavailable evidence”; (3) “manifest injustice”; and (4) “an intervening change in controlling law.” 11 C. *Wright, A. Miller & M. Kane, Federal Practice and Procedure* § 2810.1, pp. 158-162 (3d ed.. 2003) (Wright & Miller).

in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.”

(Emphasis added.)

B. STATUTORY CONSTRUCTION OF §2

The district court's treatment of Appellants' §2 redistricting claim predicated on the inability to “nominate” a representative of choice as nothing more than a redundancy of a §2 claim that alleges inability to “elect,” violated settled rules of statutory construction. Specifically, the Supreme Court has stated it will avoid a [statute's] reading which renders some words altogether redundant.” Gustufson v. Alloyd, Co., 513 U.S. 561 (1995). “A word is known by the company it keeps.” (the doctrine of *noscitur sociis*)...we...avoid ascribing to one word a meaning so broad then it is inconsistent with its accompanying words.” Jarecki v. G.D. Searle & Co., 367 U.S. 303 (1961). Words must be understood against the background of what Congress was attempting to accomplish. See, Reves v. Ernst & Young, 494 U.S. 56 (1990) In §2 Congress used two distinct terms, “nomination” and “election.” This suggests Congress wanted to protect both processes, not just the election process discussed in Gingles, Allen or Bartlett or within the other election cases relied upon by the district Court, none of which addressed “nomination.” Accordingly, the Gingles prerequisite conditions applicable to an “election” claim, while relevant to the requirement to show potential for political success in the absence of the challenged structure, should not be foisted onto a claim that alleges inability to “nominate” especially where as here, neither logic, state law no Gingles or Allen v. Milligan compel that result,

because under Ohio law nomination and election entail entirely separate political strategies and processes.

Under these circumstances, when engaged in the “business of interpreting statutes...differences in language...convey differences in meaning.” Henson v. Santander Consumer USA, Inc., 582 U.S. ____ (2017). The district Court's application of the same numerosity standard to Appellants' nomination claim that is applied to an election claim renders Congress' distinct use of both terms separately, superfluous. In other words the term “nomination,” according to the district Court, could have been left out of §2 because according to the district court the same standard applies whether it's a nomination or an election. However, there is no authority in either Gingles, Allen, or Bartlett to support that proposition relied upon by the district court.

C. CONCLUSION

Accordingly, it is respectfully requested the July 1, 2024 Order be vacated to the extent it ignores settled rules of statutory construction and portends further erosion of the protection provided by the VRA because it states the inability to nominate a candidate alone is not of §2 significance, despite the absence of any judicial authority for that proposition and express language in the VRA to the contrary.

The Court should not allow its erroneous dicta to stand. It may be cited by others in the future, who also desire to undermine the VRA. Moreover, it was used to defeat Plaintiffs' claim without a citation to any authority for the proposition that “nomination” is without Section 2 significance.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by operation of the United States District Court, Northern District of Ohio electronic filing system, on July 5, 2024.

s/Percy Squire, Esq.
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