

IN THE SUPREME COURT OF ALABAMA

THE STATE OF ALABAMA, et al.,

Appellants,

v.

RICHARD GOODEN, et al.,

Appellees.

On Appeal from the
Circuit Court of
Jefferson County (CV-2005-5778)

BRIEF *AMICUS CURIAE* OF REV. ROBERT M. ALEXANDER, JR., REV. MARY BENDALL, REV. HERBERT BENSON, REV. JERRY E. BLEDSOE, REV. JAMES FRANCIS BROOKS, REV. DOUGLAS CADDELL, REV. REGINALD W. CALVERT, REV. ROBERT L. COOK, REV. SOLOMON CRENSHAW, REV. J.W. CROOM, JR., MR. SCOTT DOUGLAS, REV. G. THOMAS DULEY, REV. JAMES L. EVANS, REV. WILSON FALLIN, JR., REV. K.C. FINK, REV. EDGAR FISHER, REV. THOMAS EARL GILMORE, SR., REV. WILLIE J. GILMORE, JR., REV. PERRY GOINS, REV. CHRIS HAMLIN, REV. TOMMY HAGLER, REV. P. BANNEKER HATCHERSON, REV. DR. LAWTON HIGGS, REV. ALBERT L. HYCHE, IMMANUEL PRESBYTERIAN CHURCH, REV. EDWARD O. JACKSON, DR. STEWART JACKSON, REV. DAVID C. JAMISON, REV. ALFONZA JANUARY, SR., REV. FRED JEMISON, REV. J. STEPHEN JONES, REV. W. J. LUSTER, REV. PERRY MACON, REV. L. P. MCADORY, MOUNT ZION BAPTIST CHURCH, REV. ELIZABETH O'NEILL, REV. RICK OWEN, REV. WILLIAM PERRY, JR., REV. MARION RUSSELL, SR., SAINT JOHN MISSIONARY BAPTIST CHURCH, REV. PATRICK SELLERS, REV. WALTER SIMS, REV. STEVE SMALL, JR., REV. ANDRA D. SPARKS, THE ORDINARY PEOPLE SOCIETY (T.O.P.S.), PASTOR VALLIE THOMAS, III, REV. CHARLES W. THOMPSON, REV. MORRELL TODD, REV. S. WILLIAM, REV. CARLOS D. WILLIAMS, REV. CLASCO P. WILLIAMS, REV. H.L. WILLIAMS, REV. TIMOTHY D. WILLIAMS, AND REV. GREGORY D. WOODS

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Statement Regarding Oral Argument

Amici curiae support Appellees' request for oral argument
in this case.

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Statement of Interest

Individual clergy members, churches, and a religiously affiliated service organization unite here as *Amici Curiae* in support of Plaintiffs-Appellees ("Plaintiffs"). The issue presented in this case is of great importance to us, as people of faith, and we write to urge this Court to reach the merits. Short descriptions of each *Amicus* are provided in the Appendix to this brief.

While *Amici* reflect different Christian traditions, *Amici* share the belief that a person can be redeemed through Jesus Christ. *Amici* believe that Christ denies no one the opportunity to enjoy the blessings of redemptive grace—even people with criminal records. In fact, *Hebrews* 12:15 warns: "Be careful that no one is deprived of the grace of God and that no root of bitterness should begin to grow and make trouble; this can poison a whole community." Alabama's disenfranchisement law and the Secretary of State's disenfranchisement practices impede opportunities for redemption and offend Christian principles in at least three ways.

First, Alabama's disenfranchisement law, especially as applied by the Secretary of State, forsakes persons convicted of felonies and has the effect of ostracizing them from the community that they seek to re-enter. This policy is offensive to Christian morality because Christians are called to welcome others into our communities, including outcasts, such as former prisoners. Jesus himself is the exemplar of this ideal, as Christ identifies personally with the prisoner. In addressing His disciples on the Mount of Olives in Chapters 24 and 25 of *Matthew*, Christ explained that "He will sit on His glorious throne" in judgment, and will consider how those standing in judgment before him treated the imprisoned, stating "Truly I say to you, to the extent that you did it to one of these brothers of Mine, even the least of them, you did it to Me." Later, as Jesus hung on the cross, he offered redemption to the penitent thief who hung beside him. *Luke 23:39-43*. It is clear that Christ's treatment of the imprisoned and identification with the prisoner compel us as followers of Christ to seek the full restoration into society of people with felony convictions.

Further, Christ called "not the righteous, but the sinners," *Matthew* 9:13, and bestowed upon even the "worst of sinners" patience, *1 Timothy* 1:16, fellowship, *Mark* 2:15, and the opportunity for righteousness, *Matthew* 21:31-32. Christians are given explicit instructions to "[w]elcome one another, therefore, just as Christ has welcomed you, for the glory of God," *Romans* 15:7, and to remember the plight of prisoners, *Hebrews* 13:3. Christ specifically did not abandon those who spent some time in prison. *Luke* 4:18.

We oppose ostracization through felony disenfranchisement not only because it deprives people with felony convictions of much needed community and fellowship, *cf. Proverbs* 31:9, 14:31, 21:13, *Luke* 14:12-14, but also because it denies them an opportunity to honor God's direct instructions to them to improve themselves and make choices that make their community stronger, see *Ephesians* 4:28; *Luke* 10:27-28. It is the duty of Christians to give people with felony convictions this opportunity. *Galatians* 6:1 ("Brothers, if someone is caught in a sin, you who are spiritual should restore him gently."). It is also good for the community to

allow people with felony convictions the opportunity to vote because it promotes reintegration into the community. Research has shown that people with felony convictions who vote are less likely to be re-arrested than those who do not vote. See Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* 128-35 (2006).

Second, the Secretary of State's practice of permanently disenfranchising persons convicted of any felony is contrary to the principles of forgiveness and mercy. Christians are called to "forgive the wrongs that others have done to us," *Matthew* 6:12, and to "[b]e merciful, just as your Father is merciful," *Luke* 6:36. As God does not desert those who "refused to listen to him," *Nehemiah* 9:17, Christians cannot turn their backs on people with felony convictions seeking to start over.

Yet, Alabama's disenfranchising law and the Secretary of State's practice of disenfranchising any person convicted of a felony do just that. Both the law and the Secretary of State's practice continue to punish those who have already satisfied the punishment established by our criminal laws. This practice directly contradicts

the teachings of the Book of Peter to "not repay wrong with wrong, or abuse with abuse; on the contrary, retaliate with blessing, for a blessing is the inheritance to which you yourselves have been called." 1 *Peter* 3:9. Mercy and compassion are Christian obligations towards others, *Ephesians* 4:31-32, because God reminds us that "whatever you did for one of the least of these brothers of mine, you did for me," *Matthew* 25:40.

Third, race-based distinctions in punishment are anathema because all are one in Christ. The Plaintiffs' brief thoroughly sets forth the discriminatory origins of Alabama's disenfranchisement law, and *Amici* will not belabor that point here, except to note that Alabama's disenfranchisement laws and practices have resulted in one out of every seven African-American adults in Alabama being barred from voting. The Lord does not show partiality or favoritism, see *Deuteronomy* 10:17; *Acts* 10:34; *Romans* 2:11; *Ephesians* 6:9, and neither should the law, nor state actors, nor Christians. In fact, Christians are expressly commanded to "love others as I

have loved you," *John* 13:34, and reminded that hating others is inconsistent with righteousness, 1 *John* 2:9.

Alabama's disenfranchisement law and the Secretary of State's disenfranchising practice result in a disparate and adverse impact upon racial minorities that thwarts *Amici's* efforts to promote social inclusiveness. This discrimination should not stand because all human beings are created in the image and likeness of God, *Genesis* 1:26-27, and Jesus died for the sins of the whole world, 1 *John* 2:2, not just for those who have not been convicted of felonies.

Amici urge the Court to accept this brief. Religious organizations have a rich tradition of addressing secular issues involving morality and societal and legal reform. Faith-based organizations have frequently made contributions as friends of the court. See, e.g., *Furman v. Georgia*, 408 U.S. 238, 238 (1972) (West Virginia Council of Churches participating as *amicus* in death penalty case); *West Michigan Broadcasting Co. v. FCC*, 735 F.2d 601, 601 (D.C. Cir. 1984) (United Church of Christ participating as *amicus* in affirmative action case); *Alabama ex rel. James v. ACLU of Ala.*, 711 So. 2d 952,

952 (Ala. 1998) (Alabama clergy participating as amicus in Ten Commandments case before this Court); Sheff v. O'Neill, 678 A.2d 1267, 1267 (Conn. 1996) (Capitol Region Conference of Churches et al. participating as *amicus* in a school desegregation case).

Despite our diverse views with respect to religious doctrine, *Amici* in one voice condemn the disenfranchisement of people with felony convictions. Accordingly, it is very important to *Amici* that this Court reach the merits of this case. To assist the Court, *Amici* present the following brief demonstrating that this case is appropriate for judicial review.

Statement of Facts

I. Legal Background

The Alabama Constitution provides that "[n]o person convicted of a felony involving moral turpitude . . . shall be qualified to vote until restoration of civil and political rights or removal of disability." Ala. Const. art. VIII § 177(b) ("Section 177"). The Constitution does not define "moral turpitude," nor does the statute

implementing this provision, see Ala. Code § 17-3-30.²

Under certain conditions, the Alabama Code allows individuals who have been convicted of disqualifying offenses to apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote ("Certificate of Eligibility"), which restores voting rights. Id. § 15-22-36.1.

To facilitate compliance with § 15-22-36.1, and to determine which felonies require the issuance of a Certificate of Eligibility as a prerequisite to registering to vote, the Executive Director of the Board of Pardons and Paroles ("Board") sent an inquiry to the Alabama Attorney General, which, among other things, asked: "What specific felonies do not include moral turpitude? If an individual has been convicted solely of one of these crimes, does he or she remain eligible to vote?" Ala. Op. Att'y Gen. No. 2005-092 (Mar. 18, 2005) ("Attorney General's Opinion").

In response, the Attorney General explained that his "[o]ffice cannot provide an exhaustive list of every

² Effective January 1, 2007, Title 17 of the Alabama Code, governing elections, was recodified. Section 17-3-30 was previously codified as § 17-3-9.

felony involving moral turpitude." Id. However, he did proceed to specify a number of felonies that Alabama appellate courts had found to involve moral turpitude, as well as a number of felonies that Alabama courts had found *not* to involve moral turpitude. The Attorney General also explained that, if "a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply [to the Board] for a Certificate of Eligibility to Register to Vote." Id.

In contravention of § 177 and the Attorney General's Opinion, Secretary of State Nancy Worley continued publishing official registration forms stating that individuals convicted of *any* felony are prohibited from voting absent the restoration of their political rights. Moreover, the Secretary of State instructed county registrars to continue their longstanding but unlawful practice of categorically disenfranchising *all* persons convicted of *any* felony. (See *Gooden v. Worley*, No. CV-05-5778, slip op. at 7-8 (Ala. 10th Cir. Ct. Aug. 23, 2006) ("Final Order").)

II. Facts Related to Gooden and Thomas

A. Richard Gooden

Richard Gooden is a 64-year-old lifelong citizen of Alabama who was convicted of driving under the influence in 2000. (See Final Order at 5.) Driving under the influence was among the crimes that the Attorney General had found *not* to involve "moral turpitude," and thus that offense should not have resulted in the loss of voting rights. See Attorney General's Opinion (citing Finley v. State, 661 So. 2d 762 (Ala. Crim. App. 1995)).

On September 21, 2005, Gooden attempted to register to vote with Defendant Jefferson County Registrar. (Fourth Am. Compl. ¶ 58.) His application was refused, and the Registrar instructed Gooden to obtain a Certificate of Eligibility from the Board of Pardons and Paroles. Gooden applied for the Certificate but was denied. An employee of the Board informed Gooden that, because driving under the influence did not involve moral turpitude and thus Gooden had never lost his right to vote, he was not eligible for a Certificate of Eligibility. The Board telephoned the Jefferson County Registrar and explained that Gooden was not disqualified from voting since the felony of which he was convicted

did not involve moral turpitude and, therefore, a Certificate of Eligibility was not necessary for him to register to vote. (See Final Order at 8.)

The Jefferson County Registrar still refused to register Gooden. The Registrar explained that the Secretary of State had advised registrars not to register any individual with a felony conviction who had not obtained a Certificate of Eligibility, regardless of whether the felony involved moral turpitude. Id.

B. Angela Thomas

Angela Thomas was subjected to similarly arbitrary disenfranchisement. Having been registered to vote since the 1990s, Thomas was removed from the voter rolls by the Jefferson County Registrar in August 2003 because of a 2003 conviction for felony possession of marijuana. Felony possession of marijuana, absent intent to distribute, is an offense that the Attorney General had identified as non-disqualifying. See Attorney General's Opinion (citing Neary v. State, 469 So. 2d 1321 (Ala. Crim. App. 1985)). In 2005, trying to restore her right to vote, Thomas applied to the Board of Pardons and Paroles for a Certificate of Eligibility. The Board

denied her application because her conviction was for a felony found not to involve moral turpitude. (See Final Order at 12.)

III. Proceedings Below

In September 2005, Gooden filed suit on his own behalf and on behalf of similarly situated Alabama citizens. On September 30, 2005, the Circuit Court issued an order based on a stipulation of the parties, requiring Defendant Hunter to register Gooden to vote. The Circuit Court's order explicitly provided "interim relief only" and did "not constitute final relief in this case." (*Gooden v. Worley*, No. CV-05-5778 (Ala. 10th Cir. Ct. Sept. 30, 2005) (order granting preliminary injunction) ("Interim Order").) Thomas joined the suit as a named plaintiff on May 26, 2006 in the Fourth Amended Complaint.

After the suit was filed, and after Thomas joined as a plaintiff, Defendant Hunter asserted that she would register Thomas if Thomas completed a registration form. (Appellants' Br. Ex. C ¶ 5.) Also, after the lawsuit was filed, Secretary Worley amended Alabama's voter registration form to state that to register to vote, an

applicant must "[n]ot have been convicted of a disqualifying felony." (Appellants' Br. 14.)

On August 23, 2006, after receiving cross motions for summary judgment and convening an evidentiary hearing, the Circuit Court issued a Class Certification Order and Final Order on All Pending Issues. The Order certified a plaintiff class composed of "[e]very citizen of the United States, currently residing in this State and 18 years of age or older, who has at any time been convicted of a felony in any jurisdiction and who is not, as of the date of this order, registered to vote in this State."

(Final Order at 17.) The class that Plaintiffs had proposed consisted of "[a]ll unregistered persons otherwise eligible to vote in Alabama who have been convicted of one or more felonies, but who have not been convicted of any felonies involving moral turpitude."

(Fourth Am. Compl. ¶ 9.) The Court certified the broader class upon concluding that Alabama lacked a constitutionally valid definition of "moral turpitude" that would permit lawful application of Section 177 to the narrower class.

The Circuit Court held that Alabama could not constitutionally enforce Section 177, disqualifying citizens convicted of felonies involving "moral turpitude," for two reasons: (1) The enforcement system violates Alabama's constitutional separation of powers by allowing election officials to usurp the Legislature's power to define "moral turpitude." (2) Enforcement of Section 177 violates federal due process guarantees because the term "moral turpitude" is vague, and there is no constitutionally adequate process for ensuring that only properly disqualified individuals are denied the right to vote. (Final Order at 24-42.)

To remedy these violations, the Circuit Court ordered several forms of relief, including: (1) a declaratory judgment "that the policy and practice previously promulgated or employed by the defendants of denying voter registration to an individual otherwise qualified to vote, but who had been convicted of *any* felony, violated [Section 177] of the Alabama Constitution"; and (2) an injunction enjoining Defendants, "[u]nless and until the Alabama Legislature passes, and the Governor signs into law, legislation specifically identifying

which felonies involve moral turpitude . . . from refusing to register any individual, otherwise qualified to vote, on the ground that the individual has previously been convicted of a felony." (Final Order at 48-49.) The Circuit Court stayed its order pending review by this Court, except insofar as it declared Defendants' longstanding conduct unlawful. (*Gooden v. Worley*, No. CV-05-5778 (Ala. 10th Cir. Ct. Sept. 1, 2006) (order denying in part and granting in part motion for stay).)

Defendants asked this Court to stay even that limited relief. In an order issued on October 25, 2006, this Court denied that motion. This Court's order interpreted the Circuit Court's declaratory relief as "mean[ing] only that pursuant to [Section 177] the voter registrars cannot deny voter registration to an individual otherwise qualified to vote simply because he or she has been convicted of *some* felony; denial of voter registration based on a felony conviction is appropriate only if the felony involved moral turpitude." (*Gooden v. Worley*, CV-05-5778, at 2 (Ala. Sup. Ct. Oct. 25, 2006) (order denying stay).) Three Justices dissented from that

Order, expressing concerns about the justiciability of this case.

Summary of Argument

This case is about the conduct of Alabama's chief election official, who arbitrarily, and in contravention of the Alabama Constitution, instructed county registrars to disenfranchise Alabama citizens who are eligible to vote. Defendants-Appellants ("Defendants") have suggested that this case is non-justiciable, and that this Court should refrain from reaching the merits. That argument is misplaced. Plaintiffs challenge systematically unlawful behavior by State officials, which resulted in deprivation of their voting rights and other legal injuries. Judicial intervention is necessary to halt the ongoing violations of Plaintiffs' rights, and to ensure that State actors are enjoined from future unlawful action. This is precisely the sort of controversy that courts are singularly competent to resolve.

Justiciability doctrine traditionally encompasses a number of strands, including standing, mootness, ripeness, true adversity, and political questions.

Defendants challenge this Court's jurisdiction to hear this case by invoking all but the last strand.

Notwithstanding Defendants' arguments, this lawsuit was a justiciable controversy at the time it was commenced and at every subsequent step.

Standing. It is well settled that plaintiffs must show standing at the time the complaint is filed. In this case, Plaintiffs had standing when they commenced this litigation because they experienced an injury to their voting rights, caused by the Defendants, which could be redressed by the requested relief. The Circuit Court's modification of the proposed class and its injunction against enforcement of Section 177 had no effect on Plaintiffs' standing. The certified class also experienced numerous voting rights injuries, including due process injuries, caused by Defendants, and those injuries were remedied by the relief ordered by the Circuit Court.

Mootness. This case is not rendered moot by the interim relief granted to Plaintiff Gooden pursuant to the parties' stipulation or Defendants' non-binding assertion in litigation papers that Thomas "may

register." (Appellants' Br. 36.) At the time Plaintiffs initiated their claims, Defendants had denied Plaintiffs the right to vote, and by the time of trial, the named Plaintiffs had obtained only "interim relief" for those denials. This case presents a live controversy because judicial resolution will have a significant impact on the security of Plaintiffs' rights. Restoring the *status quo ante* would leave Defendants free to revert to their unlawful practices.

Even if the named Plaintiffs' voting rights were now secure, this Court should still exercise jurisdiction under two exceptions to the mootness doctrine. First, voluntary cessation of activity will not moot a case unless it is *absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur. Second, a class action lawsuit remains justiciable when any class members have a live case or controversy. Judicial intervention is needed to settle the matters raised here, which remain live, contested, and urgent.

True Adversity. Defendants' selective concessions in litigation that they acted improperly does not deprive this Court of jurisdiction to issue much needed

declaratory relief. Defendants' willingness to concede indisputable legal premises does not sap this lawsuit of adversity because, throughout the course of litigation, Defendants have vigorously opposed Plaintiffs' efforts to secure an effective legal remedy. A declaration of the parties' respective legal rights will settle the ongoing controversy, and is necessary to stave off future injury.

Ripeness. Defendants renew their vague assertion that Plaintiff Thomas's claim under Alabama Code § 17-4-124, appealing rejection of her registration application, is unripe because she never submitted a registration application. But the Circuit Court did not even grant relief on that claim, and no assertion has been made that her other claims, which succeeded below, are unripe. Because this Court need not consider future or contingent events when assessing the legality of Defendants' actions, Thomas's injuries were ripe for judicial remedy.

Because this case is plainly justiciable, *Amici* respectfully request that this Court exercise its jurisdiction and decide the merits.

Argument

I. Alabama Courts Have a Duty to Resolve the Merits of Any Case That Presents a Live, Adversarial Contest.

As Justice See noted in *Dunlop Tire Corporation v. Allen*: "The Constitution of the United States and the Constitution of Alabama of 1901 impose on judges the duty to decide cases." 725 So. 2d 960, 976 (Ala. 1998) (See, J., statement of nonrecusal) (citing, *inter alia*, U.S. Const. art. III, § 1; Ala. Const. 1901 amend. 328, § 6.01(a)). Notwithstanding this broad and robust duty, there are some constitutional and prudential limits to judicial review. However, none of those limits preclude judicial disposition of the merits of this case.

Alabama law limits the judiciary to resolving live, adversarial contests susceptible to judicial resolution. Although the Alabama Constitution does not expressly confine judicial action to proceedings that involve a "case or controversy," this Court has interpreted the state constitutional separation of powers mandate, embodied in Article VI, § 139, to vest courts "'with a limited judicial power that entails the special competence to decide discrete cases and controversies involving particular parties and specific facts.'"

Pharmacia Corp. v. Suggs, 932 So. 2d 95, 98 n.4 (Ala. 2005) (quoting *Ala. Power Co. v. Citizens of Ala.*, 740

So. 2d 371, 381 (Ala. 1999)). Determining whether that limited judicial power permits adjudication of a specific dispute requires application of principles of standing, mootness, true adversity, and ripeness. This brief addresses each of those principles in turn.

II. Plaintiffs Had Standing Because They Suffered Invasions of Their Legal Rights and Faced Future Continuing Deprivations of those Rights.

Plaintiffs have established their standing to bring this lawsuit. Defendants never questioned Plaintiffs' standing before the Circuit Court, but on appeal they have manufactured such a challenge. Defendants contend that, because Plaintiffs Gooden and Thomas were convicted of felonies deemed non-disqualifying under Alabama case law, they were not suitable parties to "raise the issues that the trial court addressed." (Appellants' Br. 63.) Defendants' argument fundamentally misunderstands the law of standing. At the time litigation commenced, Plaintiffs showed that: (1) they suffered the injury of disenfranchisement; (2) Defendants caused that injury through their arbitrary administration of the State's voter registration law; and (3) the relief Plaintiffs sought would redress their injuries by preventing

Defendants from interfering with their rights going forward. By focusing entirely on what the Circuit Court did in its Final Order, Defendants have failed to articulate a colorable challenge to Plaintiffs' standing.

A. To Establish Standing, Plaintiffs Must Show Injury, Causation, and Redressability.

To establish standing, a complainant must demonstrate that he is a "'proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers.'" Ala. Alcoholic Beverage Control Bd. v. Henri-Duval Winery, L.L.C., 890 So. 2d 70, 74 (Ala. 2003) (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)). To determine whether a party is proper, Alabama courts employ the three-part test enunciated by the United States Supreme Court in Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Plaintiffs must demonstrate the existence of:

(1) an actual, concrete, and particularized "injury in fact"—"an invasion of a legally protected interest"; (2) a "causal connection between the injury and the conduct complained of"; and (3) a likelihood that the injury will be "redressed by a favorable decision."

Henri-Duval Winery, 890 So. 2d at 74 (quoting *Lujan*, 504 U.S. at 560-61). Because a requested remedy must be an

appropriate response to the proven harm, "a plaintiff must demonstrate standing separately for each form of relief sought." Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs., Inc., 528 U.S. 167, 185 (2000).

In applying this test, courts ask whether the *Lujan* conditions were satisfied at the time the litigation was commenced. See *Town of Elmore v. Town of Coosada*, No. 1030833, 2006 WL 2458816, at *5 (Ala. Aug. 26, 2006); cf. *County of Riverside v. McLaughlin*, 500 U.S. 44, 51 (1991) (holding that arrestees had standing to sue for "prompt" probable cause determination based on their injury at time of filing of complaint). In a case filed on behalf of a potential plaintiff class, the jurisdictional requirements of standing are satisfied as long as the court finds *one named plaintiff* who has standing. See *Wooden v. Bd. of Regents of the Univ. Sys.*, 247 F.3d 1262, 1288 (11th Cir. 2001). Applying these standards, Plaintiffs have clearly established standing.

B. Plaintiffs Had Standing to Litigate the Allegations Contained in Their Complaint.

Plaintiffs had standing to bring this case. They alleged a concrete injury—the loss of their voting rights—which was directly caused by Defendants' arbitrary

decision to disenfranchise Alabama citizens on the basis of non-disqualifying crimes. To redress these injuries, Plaintiffs asked the court to enjoin Defendants' practice of disenfranchising people with non-disqualifying felony convictions, and to declare that Defendants' practices violated Alabama law.

First, Plaintiffs suffered an immediate and concrete injury: the denial of the right to vote. Both Gooden and Thomas possessed all of the qualifications required of eligible voters under Alabama law. Indeed, Thomas was a registered voter before Defendant Hunter arbitrarily purged her from the rolls. Because their only criminal convictions were for offenses deemed non-disqualifying by Alabama courts, Plaintiffs had a right to vote. Arbitrary denial of the franchise—"perhaps the most basic and cherished right of our democratic system," Waltman v. Rowell, 913 So. 2d 1083, 1090 (Ala. 2005)—plainly constitutes a legal injury for purposes of standing. See Gray v. Sanders, 372 U.S. 368, 375 (1963).

Second, Defendants caused Plaintiffs' injuries. Defendant Hunter both rejected Gooden's registration application and purged Thomas from the voter rolls, in

violation of Alabama law. Hunter said that Secretary Worley explicitly instructed her to continue disenfranchising all individuals with felony convictions, notwithstanding Section 177 of the Alabama Constitution and contrary advice from the Attorney General. Thus, there is a clear causal connection between Defendants' unlawful behavior and Plaintiffs' injuries.

Third, the prayer for relief in Plaintiffs' Fourth Amended Complaint would have redressed Plaintiffs' injuries. The injunctive relief Plaintiffs requested would have halted Defendants' failure to comply with Alabama law by requiring Secretary Worley to ensure that the State's registrars observe the voting rights of eligible citizens who are convicted of non-disqualifying crimes. (See Fourth Am. Compl. ¶¶ 101-05.) Indeed, Defendants have never challenged Plaintiffs' standing to seek the injunctive relief requested in their Complaint.

Similarly, the requested declaratory relief would have served to redress Plaintiffs' injuries. A declaratory judgment stating that "individuals convicted of felonies not involving moral turpitude, as enumerated by the Attorney General and grounded in Alabama case law,

are eligible to register and vote under Alabama law," (*id.* ¶ 100), would have eliminated any basis for claiming that Defendants' disenfranchisement of everyone convicted of a felony could lawfully be continued, thereby forestalling prospective "repudiation of obligations, invasion of rights, and the commission of wrongs," Harper v. Brown, Stagner, Richardson, Inc., 873 So. 2d 220, 224 (Ala. 2003).

In assessing the justiciability of suits for declaratory judgment, this Court has emphasized that "controversies touching the legality of acts of public officials or public agencies challenged by parties whose interests are adversely affected is one of the favored fields for declaratory judgments." Gibbs v. Cochran, 198 So. 2d 607, 608 (Ala. 1967). When they filed this lawsuit, Plaintiffs Gooden and Thomas were actually disenfranchised; it is hard to imagine parties better suited to seek a judicial declaration to stop Defendants' unlawful conduct. Absent judicial intervention, nothing prevents Defendants from continuing to disenfranchise all people with felony convictions, in contravention of the Alabama Constitution.

To satisfy threshold standing requirements, Plaintiffs needed to demonstrate that, when litigation commenced, they suffered an injury which was fairly traceable to Defendants' conduct and which would be redressed by each form of requested relief. They have satisfied this burden. Plaintiffs' standing to press this litigation is therefore secure.

C. Defendants' Focus on the Circuit Court's Final Order Misconceives the Law of Standing.

The argument Defendants make on appeal relies on the misguided premise that the relief granted by the Circuit Court could somehow retroactively defeat Plaintiffs' standing, even though Plaintiffs had standing when the litigation began. That premise is erroneous. However, even if Plaintiffs have to show standing with respect to the relief ordered by the Circuit Court, they easily meet that burden.

Apparently conceding Plaintiffs' standing to receive the relief requested in the Complaint, Defendants argue on appeal that Plaintiffs lacked standing to "raise the issues that the trial court addressed." (Appellants' Br. 63.) Defendants' argument is a red herring. There is no legal authority supporting the proposition that litigants

who have established standing to receive their requested relief somehow lose their standing because the trial court determined that an alternative form of relief was appropriate. As noted above, the salient time frame for purposes of determining standing is the moment at which a complaint is filed. See *Town of Elmore*, 2006 WL 2458816, at *5; McLaughlin, 500 U.S. at 51. Given these sound legal principles, it simply makes no sense to wait until a final judgment is rendered to assess standing.

Moreover, trial courts contemplating injunctive relief have a "duty to grant whatever relief is appropriate in a case on the basis of the facts proved, regardless of whether the party specifically demanded such relief in his pleadings." Johnson v. City of Mobile, 475 So. 2d 517, 519 (Ala. 1985). It would be unprecedented to find that Plaintiffs' standing somehow evaporated because the Circuit Court exercised its broad discretion to order the relief it deemed appropriate.

Even if Plaintiffs did have to establish standing to seek the relief granted by the Circuit Court's Final Order, they would be able to satisfy that burden. With respect to the first two elements of standing, nothing

changes: Plaintiffs suffered an injury (deprivation of the right to vote), which Defendants caused (by unlawfully disenfranchising them). As to the third element, Plaintiffs' injuries are redressed by the Circuit Court's order. As long as Defendants remain enjoined from disenfranchising anyone on the basis of a felony conviction, Plaintiffs' injuries are remedied: they will be permitted to exercise their right to vote. Consequently, the relief ordered by the Circuit Court will redress Plaintiffs' injuries and the Court properly exercised jurisdiction over this case.

III. No Intervening Event Has Rendered this Case Moot.

The justiciability of the named Plaintiffs' claims is unassailable on mootness grounds. Although Defendants argue that their attempts to address Plaintiffs' injuries render this case moot, their attempts were temporary and ineffective. Indeed, the only way Plaintiffs' voting rights will be secured is through legislative action or a final judgment from this Court.

Even if this Court finds that Defendants' actions did remedy the named Plaintiffs' injuries, this case remains live because it qualifies for two important exceptions to

the mootness doctrine. First, Defendants' voluntary decision to cease their injurious activity does not strip this Court of its power to determine the illegality of the challenged conduct. Second, rendering a class representative's claims moot does not render the class action moot, as long as the representative seeks to proceed with the suit. These two exceptions preclude this case from being dismissed on mootness grounds, regardless of whether the named Plaintiffs still have live claims.

A. Because the Named Plaintiffs Still Suffer Voting Rights Injuries, this Case Is Not Moot.

Defendants argue that Plaintiffs' claims for injunctive and declaratory relief are moot because: (1) Gooden has been registered to vote, and Thomas has been told she may register; (2) the county registrars have been instructed to follow the Attorney General's Opinion with respect to registering persons convicted of crimes not involving moral turpitude; (3) all parties agree on the correct interpretation of the law; and (4) the voter registration form has been revised. (Appellants' Br. 36.) However, each one of these measures is either temporary or ineffective (or both), and none of them

resolves Plaintiffs' voting rights injuries.

Accordingly, Plaintiffs' claims are not moot.

When a mootness challenge is raised, "a court must consider 'whether decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties.'"

Hornsby v. Sessions, 703 So. 2d 932, 938 (Ala. 1997)

(quoting 13A Charles Wright & Arthur Miller, *Federal Practice and Procedure* § 3533 (1984)); see also Allen v. Bennett, 823 So. 2d 679, 682 (Ala. 2001) (finding a case not moot when its outcome could impact future elections).

This Court does not hold plaintiffs to an exacting standard, instead adjudging matters moot when "there is *nothing* to be accomplished by a decree . . . on the merits of the issue," Montgomery County v. Montgomery Traction Co., 37 So. 208, 208 (Ala. 1904) (emphasis added), or further legal proceedings "ha[ve] become useless," Chisolm v. Crook, 130 So.2d 191, 194 (Ala. 1961).

This case is still live because Defendants' attempts to correct their illegal conduct failed to provide relief at all, or provided relief that was only temporary.

First, Gooden registered to vote pursuant to the Circuit Court's Interim Order of September 30, 2005, which ratified a stipulation among the parties recognizing his voting rights. But, as the Circuit Court acknowledged in its Final Order, the September 2005 Interim Order by its terms declined to award Gooden permanent relief. (See Final Order at 15 ("Indeed, that order expressly recognizes that '[t]his relief is interim relief only, does not constitute final relief in the case, and shall be without prejudice to any other claims made in the complaint or any defenses to those claims that may be duly raised.'" (quoting Interim Order)).) The Circuit Court reaffirmed in August 2006 that the relief awarded in 2005 was "conditional in nature, subject to rescission or alteration at any time before a final judgment is ordered." (Id.) An order that explicitly offers only interim relief—leaving open the possibility that Gooden's voting rights might be rescinded even after he registered to vote—cannot provide the permanent remedy that could moot this case prior to final judgment.

Plaintiff Thomas does not even enjoy the meager protections of a stipulation. Instead, the only security

she has with respect to her voting rights is a statement from Defendant Hunter indicating she would allow Thomas to register.

The three other measures that allegedly moot this case similarly fail to remedy the injuries to Plaintiffs' voting rights. Although the county registrars have been instructed to follow the Attorney General's Opinion, and Defendants now say that they agree with the Attorney General's interpretation of the law, the Attorney General's Opinion is non-binding and without legal force. See Townson v. Stonicher, 933 So. 2d 1062, 1066 n.5 (Ala. 2005). Both the Secretary of State and the county registrars are free to ignore the Attorney General's legal advice, and in fact that is exactly what they had been doing when this suit was filed. Absent judicial relief or legislative action, there is nothing to prevent Defendants from reverting to their illegal practices. Consequently, neither the Attorney General's Opinion nor Defendants' legal concession is an adequate substitute for the injunctive relief requested by Plaintiffs.

Finally, Defendants argue that this case is moot because they revised the voter registration form to

correctly reflect Alabama's felony disenfranchisement law. But the form remains legally defective. The revised form states that any person convicted of a "disqualifying crime" may not register to vote, but the form does not explain the meaning of "disqualifying crime." Consequently, election officials continue to exercise unbridled discretion in determining whom to disenfranchise, and Alabama citizens remain in the dark as to who is eligible to vote. Accordingly, the "revised" form does nothing to remedy Plaintiffs' injuries. Without a meaningful and permanent remedy, the live injuries still suffered by the named Plaintiffs preclude a finding that their claims are moot.

B. This Case Remains Live Even If the Named Plaintiffs' Claims Are Moot.

Even if this Court finds that the claims of the named Plaintiffs are moot, the case is justiciable because:

(1) Defendants' voluntary decision to register the named Plaintiffs does not strip this Court of its power to determine the illegality of the challenged conduct; and

(2) rendering a class representative's claims moot does not render the class action moot. See Rice v. Sinkfield, 732 So. 2d 993, 994 n.1 (Ala. 1998).

1. Defendants' Voluntary Compliance with Plaintiffs' Demands Does Not Moot this Case.

A defendant's voluntary cessation of a challenged practice does not strip a court of the power to determine the legality of the challenged act, unless subsequent events make "it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., 528 U.S. 167, 189 (2000) (quoting United States v. Concentrated Phosphate Exp. Ass'n, 393 U.S. 199, 203 (1968)) (emphasis added); see also Rice, 732 So. 2d at 994 n.1. This voluntary-cessation exception to the mootness doctrine has developed because, in its absence, unlawful activity could evade review while "defendants [were] free to resume [the offending] practice at any time." Rice, 732 So. 2d at 994 n.1 (explaining United States v. W.T. Grant Co., 345 U.S. 629, 632 (1953)). The burden on defendants seeking to avoid application of this exception is a "formidable" one. Laidlaw, 528 U.S. at 190.

While this Court has not had occasion to contemplate the contours of the voluntary-cessation exception to the

mootness doctrine, the United States Supreme Court has considered this exception in numerous circumstances. See, e.g., City of Erie v. Pap's A.M., 529 U.S. 277, 288 (2000) (holding that the closing of a nude dancing bar did not moot a controversy involving a nudity ordinance); Adarand Constructors, Inc. v. Slater, 528 U.S. 216, 222 (2000) (finding a challenge to an affirmative action-influenced certification procedure not to be moot when a white plaintiff had received certification as a disadvantaged enterprise by the state); Vitek v. Jones, 445 U.S. 480, 486-87 (1980) (finding challenge to prison transfer procedures not moot as applied to prisoner who was paroled).³ These cases illustrate that the burden of

³ This Court has frequently applied, and in some cases expressly adopted, federal justiciability principles. See, e.g., Pharmacia Corp., 932 So. 2d at 98 (citing Deposit Guar. Nat'l Bank v. Roper, 445 U.S. 326 (1980), when analyzing the question of mootness in the face of settlement); Hornsby v. Sessions, 703 So. 2d 932, 938 (Ala. 1997) (citing Wright and Miller's *Federal Practice & Procedure* as authority when analyzing a claim of mootness); State ex rel. Kernells v. Ezell, 282 So. 2d 266, 270 (Ala. 1973) (adopting the standard set forth in Moore v. Ogilvie, 394 U.S. 814 (1969), for qualifying for a mootness exception.); Kid's Care, Inc. v. Ala. Dep't of Human Res., 843 So. 2d 164, 166 (Ala. 2002) (citing Jenkins v. McKeithen, 395 U.S. 411, 421 (1969), as authority when analyzing a standing issue). Nothing precludes this Court from applying the voluntary-cessation exception to the mootness doctrine in this

establishing non-justiciability on account of voluntary conduct is high indeed, and that curing the particular injury giving rise to litigation does not deprive a court of jurisdiction to remedy a systematic wrong.

Laidlaw is instructive here. *Laidlaw Environmental Services*, the owner of a wastewater treatment plant, was granted a limited permit to discharge treated water into a nearby river. Environmental organizations and a state agency filed separate lawsuits against the owner for exceeding the discharge limits of the permit. The state agency and *Laidlaw* reached a settlement requiring *Laidlaw* to make every effort to comply with the permit obligations and to pay civil penalties. The environmental organizations appealed to contest the amount of the fines, and the Court of Appeals concluded that the case had become moot because of substantial compliance. *Laidlaw* then announced that the treatment plant had been closed, dismantled, and put up for sale, and all discharges from the facility permanently ceased. The Supreme Court nevertheless reversed the Court of

case. Indeed, this Court has already recognized the exception in *Rice v. Sinkfield*, 732 So. 2d 993, 994 n.1 (Ala. 1998).

Appeals' judgment, holding that compliance with the permit and closing of the plant mooted the case only if either of those events made it absolutely clear that the violations could not reasonably be expected to recur. In the Court's view, "there are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness." 528 U.S. at 190.

In this case, Defendants' heavy burden is not met simply because Defendants agreed to take corrective action. Stipulating to Gooden's right to register did not make it "absolutely clear" that Defendants' wrongful behavior could not reasonably be expected to occur again. Indeed, Plaintiff Thomas's wrongful purge from the registration rolls squarely demonstrates that being registered to vote provides no security whatsoever for the voting rights of people with felony convictions. Defendants' agreement to abide by the non-binding Opinion of the Attorney General also was not a permanent resolution. Finally, revising the voter registration form did not fix the vagueness problem on even a

temporary basis, much less a permanent one. Accordingly, Defendants' attempted corrective measures do not deprive this Court of jurisdiction.

Moreover, the potential for resumption of illegal behavior is far more acute in this case than in *Laidlaw* because there are no structural factors, such as the closing, sale, and dismantling of the offending plant, discouraging Defendants from reverting back to the challenged conduct. There is no authoritative definition of disqualifying crimes, no unambiguous guidance from the Secretary of State, and no easily understood registration form. Consequently, it is far from "absolutely clear" that Defendants' wrongful behavior could not reasonably be expected to recur. Because Defendants have not satisfied their "stringent" burden in demonstrating that they will not revert to their old ways, *Laidlaw*, 528 U.S. at 189, this case is appropriate for judicial review.

2. The Class Claims Survive Even If the Named Plaintiffs' Claims Become Moot.

It is settled Alabama law that the claims of class representatives may become moot without rendering the class action moot. See *Pharmacia Corp.*, 932 So. 2d at 99 (recognizing that a class action is not moot even if a

class representative has a moot claim, so long as the class representative seeks to remain in the action and to proceed on behalf of the other class members); Jones v. S. United Life Ins. Co., 392 So. 2d 822, 823 (Ala. 1981) (holding that a class action was not moot despite mootness of named representative's individual claim because named representative had standing at the time of suit filing and class members still had live claims); see also Rice, 732 So. 2d at 994 n.1 (acknowledging the federal exception to the mootness doctrine applicable to cases involving class actions where some members of the class still have a live case or controversy). Alabama's law on this matter is consistent with that in other jurisdictions. See Sosna v. Iowa, 419 U.S. 393, 399 (1975) (holding that a moot class representative claim would not moot the entire class action provided other members of the class continued to have a live controversy); 5 James Wm. Moore et al., Moore's Federal Practice ¶ 23.64 (3d ed. 2006) ("While there may no longer be a live controversy as to the named plaintiff by the time of appellate review in a class action, the dispute remains very much alive for the class of persons

that the class representative has been certified to represent. That controversy satisfies the case or controversy requirement of Article III.").

As this Court has explained, there are sound reasons for permitting the claims of a class to move forward in the event that the named plaintiff's claims are moot:

By the very act of filing a class action, the class representatives assume responsibilities to members of the class. They may not terminate their duties by taking satisfaction; a cease-fire may not be pressed upon them by paying their claims. The Court itself has special responsibilities to ensure that the dismissal does not prejudice putative members.

Jones, 392 So. 2d at 823 (quoting *Roper v. Conserve, Inc.*, 578 F.2d 1106, 1110 (5th Cir. 1978)); see also Franks v. Bowman Transp. Co., 424 U.S. 747, 755-57 (1976) (holding that mootness in a class action turns on whether a sufficient adversary relationship remains to satisfy the case or controversy requirement, not whether the named representative has a live claim). This doctrine ensures that defendants do not evade responsibility for

widespread harms they cause simply by offering relief limited to the named plaintiffs.⁴

For these reasons, even if this Court concludes that the voting rights of the named Plaintiffs have been secured by the Interim Order, the balance of the class would remain without relief. Class members were not included in the Interim Order, and the Attorney General's Opinion and the unclear revised registration form will not serve to protect the voting rights of the certified class—only the Circuit Court's ruling or legislative action will do so. Absent an authoritative definition of "moral turpitude" that clearly identifies which crimes are disenfranchising and binds the actions of Defendants,

⁴ Whether Plaintiff Gooden's injuries had been partially remedied *at the time of the class certification* is immaterial to the Court's mootness analysis:

The prevailing view is that, when a defendant makes an offer of judgment with respect to the named plaintiff's individual claims while a class certification motion is pending, the offer does not moot the class action. After a certification motion is filed, an offer to satisfy the named plaintiff's individual claims does not actually offer all the relief requested by the plaintiff, because the plaintiff also raised class claims through the motion to certify.

Moore's Federal Practice ¶ 23.64.

the class members' voting rights injuries will continue. The class members thus have live claims that may not be dismissed on the grounds of mootness.

IV. Plaintiffs Present a Justiciable Claim for Declaratory Relief Because There Is True Adversity Between the Parties.

Defendants seek dismissal of Plaintiffs' declaratory judgment claim on the grounds that the parties are no longer adverse. Having conceded in litigation that the declaratory judgment requested by Plaintiffs accurately state the law—that Section 177 does not disqualify people convicted of felonies not involving moral turpitude and that neither Gooden nor Thomas should have been disenfranchised—Defendants now claim that there is “no dispute among the parties about the meaning of § 177.” (Appellants' Br. 40; see also *id.* at 33-35.) But Alabama law does not permit Defendants to use their late-in-the-game concession as a tool for depriving this Court of jurisdiction over any aspect of this case. While this Court has refused to extend judicial authority to a non-adversarial “sham” lawsuit, it has never suggested that legal concessions made during the course of hard-fought

litigation erase jurisdiction over a claim for declaratory relief.

To be justiciable under Alabama law, a lawsuit must "be a controversy which is definite and concrete, touching the legal relations of the parties in *adverse legal interest*, and it must be a real and substantial controversy admitting of specific relief through a decree." *MacKenzie v. First Ala. Bank*, 598 So. 2d 1367, 1370 (Ala. 1992) (emphasis added). The adversity must "exist[] when the suit is commenced." *Gulf Beach Hotel, Inc. v. State ex rel. Whetstone*, 935 So. 2d 1177, 1182 (Ala. 2006) (citation omitted).

When this action was filed, Plaintiffs requested declaratory relief because the Secretary of State was asserting an incorrect interpretation of Section 177, advising county registrars in accordance with her mistake, and causing the unlawful disenfranchisement of Plaintiffs and the members of the class they sought to represent. The parties were adverse because Defendants' administration of Alabama's election law deprived Plaintiffs of fundamental constitutional rights they dearly wished to exercise. Defendants now ask this Court

to discount that adversity, because the lawsuit forced them to admit the error of their ways. The facts of this case do not support such a ruling.

The typical case in which this Court has found a lack of adversity involves parties with converging legal interests who initiate "sham" litigation aimed at securing an advisory opinion or cementing their shared practical interest through a binding legal judgment. For example, in *Gulf Beach Hotel*, this Court dismissed an action by a county District Attorney against several state agencies as non-justiciable because "the State's declaratory-judgment action [was], in essence, nothing more than an action by the state against itself seeking an advisory opinion from this Court." 935 So. 2d at 1183. This Court found that the complaint did "not allege any controversy between parties whose legal interests are adverse" but rather "reflect[ed] only the State's own uncertainty concerning the legality of [a] proposed transaction between" state entities. Id.

Similarly, in State ex rel. Baxley v. Johnson, 300 So. 2d 106 (Ala. 1974), the Court found non-justiciable a case brought by the Attorney General against the

Superintendent of Banks, where the latter did not contest any of the Attorney General's legal claims. The Court concluded that the proceedings were "a sham, contrived to secure an advisory opinion," and dismissed the case. Id. at 109. Justice Jones's special concurrence noted "the 'sweetheart' nature of the proceedings," and stated that the "Office of the Attorney General allowed itself, wittingly or unwittingly, to be 'used' and in turn sought to 'use' this Court in order to get an advisory ruling." Id. at 111 (Jones, J. concurring specially).

The reasoning of *Baxley* guided this Court's analysis in the more recent case, Alabama ex rel. James v. ACLU of Alabama, 711 So. 2d 952 (Ala. 1998). After the ACLU of Alabama sued then Judge Moore in federal court, challenging his display of religious material, the Attorney General filed suit in state court against the ACLU and Judge Moore. Judge Moore acceded to all of the State's legal contentions, since the purpose of the suit was manifestly to ratify his behavior. The Court found that *Baxley* was a "closely analogous" case, but that in *James* there was "not even *facial* adverseness," because the parties "actually support one another" and the

complaint "extols the actions of Judge Moore and seeks a judgment declaring that his practices are *eminently correct and must be sanctioned.*" Id. at 961-62.

Accordingly, this Court found the case non-justiciable and dismissed it for lack of true adversity.

The instant case could not be more different from *Gulf Beach Hotel, Baxley, and James*. There is no suggestion that Plaintiffs colluded with Defendants to bring a lawsuit intended to ratify a shared legal position. Rather, Defendants have vigorously contested this lawsuit from the outset. Even more revealing, Defendants have invoked a number of jurisdictional doctrines and procedural devices for terminating this litigation—asserting sovereign immunity, objecting to class certification, and questioning justiciability—which is hardly the behavior of a party engaging in "sham" litigation or seeking to secure an advisory opinion consistent with Plaintiffs' claims.

To the contrary, the parties to this litigation have consistently maintained an adverse posture. Litigation commenced only after Defendants made it clear that they would not permit Gooden to register to vote. Throughout

litigation, each side has pressed sharply divergent positions. Plaintiffs sought injunctive relief forcing Defendants to comply with Section 177, while Defendants objected to the trial court's power to grant the requested relief. When the Circuit Court ruled for Plaintiffs, Defendants sought a stay of the decision and appealed the final order. More stark adversity would be hard to imagine.

V. Defendants Have Not Shown Thomas's Claims To Be Unripe.

Defendants repeat on appeal their contention that Thomas's claim under Alabama Code Section 17-4-124—which allows a prospective voter to appeal the registrar's rejection of her application—is not ripe because Thomas never submitted a registration application. (Appellants' Br. 39.) This argument is wholly irrelevant, because the Circuit Court denied Thomas's claim under Section 17-4-124, finding that she had waited too long to pursue it. (Final Order at 42.) All of Thomas's other claims—those claims that the Circuit Court decided in her favor—were clearly ripe, and no contention to the contrary has been made by Defendants.

"[T]he central concern" of the ripeness doctrine "is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." 13A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 3532 (2006) (internal quotation and citation omitted); see also Baldwin County v. Palmtree Penthouses, Ltd., 831 So. 2d 603, 605 (Ala. 2002). In this case, the injury alleged by Thomas—the purging of her name from the voter registration list—has already occurred, and there is no future, uncertain act necessary to assess her legal position. Similarly, assessing the legality of Defendants' actions in this case in no way depends on future or contingent events. Plaintiff Thomas's injury, stemming from the deletion of her name from the voter roll, is concrete, tangible, and unresolved absent judicial intervention. Accordingly, her claims are ripe for review.⁵

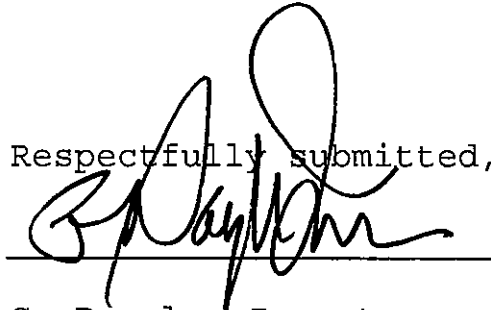
⁵ Even if Thomas's individual injuries were not ripe, however, the merits of the case should be reached because there is no dispute that Gooden's injuries are ripe for adjudication. See Tefel v. Reno, 180 F.3d 1286, 1305 (11th Cir. 1999) (reaching the merits of the case where certain members of plaintiff class had claims ripe for

Conclusion

Defendants' actions subjected the named Plaintiffs and countless other Alabamians to unlawful deprivation of their voting rights. In response, Plaintiffs initiated litigation carefully structured to settle contested legal disputes and to obtain a judicial remedy capable of securing their rights in the future. Such controversies fit squarely within the judiciary's role as an arbiter of well-defined legal contests. For these reasons, *Amici* respectfully urge this Court to resolve this case on the merits and affirm the Circuit Court's decision.

resolution, notwithstanding that the class included persons without ripe claims).

Respectfully submitted,



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Certificate of Service

I hereby certify that on 17 January 2007

- The original and twelve copies of the foregoing was mailed by **certified mail** to

Hon. Robert Esdale
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Supreme Court of Alabama
300 Dexter Avenue
Montgomery, AL 36104-3741

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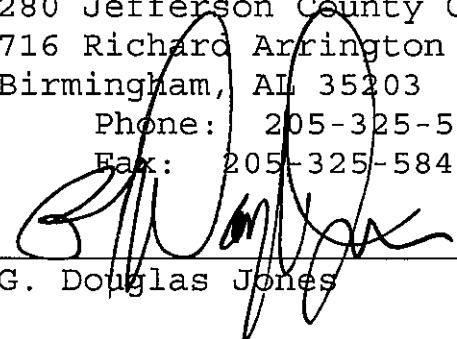
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Amici Curiae

Rev. Robert M. Alexander, Jr. presides over the First Missionary Baptist Church in Birmingham, Alabama.

Rev. Mary Bendall is a 1997 graduate of Birmingham-Southern College, and a 2000 graduate of the Candler School of Theology at Emory University in Atlanta, Georgia. She is an ordained United Methodist Pastor and currently serves in Tuscaloosa, Alabama.

Rev. Herbert Benson presides over the Saint Mark Baptist Church in Birmingham, Alabama.

Rev. Jerry E. Bledsoe presides over the Mount Pleasant Missionary Baptist Church in Birmingham, Alabama.

Rev. James Francis Brooks presides over the Lily Baptist Church in Tarrant, Alabama.

Rev. Douglas Caddell presides over the Canaan Baptist Church in Bessemer, Alabama.

Rev. Reginald W. Calvert presides over the New Jerusalem Baptist Church in Birmingham, Alabama.

Rev. Robert L. Cook presides over the Calvary Missionary Baptist Church in Birmingham, Alabama.

Rev. Solomon Crenshaw presides over the Broad Street Missionary Baptist Church in Birmingham, Alabama.

Rev. J.W. Croom, Jr. presides over the First Baptist Church of Graymont in Birmingham, Alabama.

Mr. Scott Douglas is the Executive Director of Greater Birmingham Ministries, an ecumenical and interfaith organization in Birmingham, Alabama.

Rev. G. Thomas Duley is an Ordained Elder of the United Methodist Church and currently serves as the Executive Director of Urban Ministry, Inc., an urban mission agency

of the North Alabama Annual Conference of the United Methodist Church.

Rev. James L. Evans is the Pastor of Auburn First Baptist Church in Auburn, Alabama. Rev. Evans has been a Baptist minister for over thirty years and is the author of *Faith Matters*, an opinion column appearing regularly in seven Alabama newspapers.

Rev. Wilson Fallin, Jr. presides over the Oak Grove Baptist Church in Brighton, Alabama.

Rev. K.C. Fink presides over the Mount Hillard Baptist Church in Birmingham, Alabama.

Rev. Edgar Fisher is an Associate Minister at Hopewell Baptist Church in Birmingham, Alabama.

Rev. Thomas Earl Gilmore, Sr. presides over the First Baptist Church of Ensley in Birmingham, Alabama.

Rev. Willie J. Gilmore, Jr. presides over the Mount Lebanon Baptist Church in Birmingham, Alabama.

Rev. Perry Goins presides over the Saint Mark Missionary Baptist Church in Birmingham, Alabama.

Rev. Chris Hamlin presides over the Tabernacle Baptist Church in Birmingham, Alabama.

Rev. Tommy Hagler presides over the Bryant Chapel African Methodist Episcopal Church in Birmingham, Alabama.

Rev. P. Banneker Hatcherson presides over the 23rd Street Baptist Church in Birmingham, Alabama.

Rev. Dr. Lawton Higgs is a graduate of the Candler School of Theology at Emory University in Atlanta, Georgia, and Drew Theological Seminary in Madison, New Jersey. Dr. Higgs was the founding pastor, in 1993, of Church of the Reconciler, a United Methodist congregation in downtown Birmingham. Today he serves as pastor emeritus for that congregation.

Rev. Albert L. Hyche is the Presiding Elder for the Birmingham/Florence District of the African Methodist Episcopal Church, Ninth Episcopal District. As Presiding Elder, he supervises 23 churches with a combined membership of over 6,500 people in Birmingham, Decatur, Tuscumbia, Sheffield, Muscle Shoals, and Florence, Alabama.

Immanuel Presbyterian Church is a congregation in Montgomery, Alabama. Its members strive to be an inclusive community of Christian faith, embodying the redemptive life, suffering, and death of Jesus Christ by the power of his resurrection.

Rev. Edward O. Jackson presides over the Greater New Antioch Church in Trussville, Alabama.

Dr. Stewart Jackson is a 1976 graduate of the Candler School of Theology at Emory University, and has served as Dean of the Chapel at Birmingham-Southern College since 2000. Dr. Jackson has served as a minister and university chaplain in Alabama since 1984, and was named College Chaplain of the Year by the United Methodist Foundation for Christian Higher Education in 1997.

Rev. David C. Jamison is a graduate of the Princeton Theological Seminary. He recently completed an Interim Pastorate at the Green Hill Church in Enterprise, Alabama, and is a Parish Associate for Outreach at the Evergreen Presbyterian Church in Dothan, Alabama.

Rev. Alfonza January, Sr. presides over the Old Saint Paul Baptist Church in Bessemer, Alabama.

Rev. Fred Jemison presides over the Pilgrim Home Baptist Church in Birmingham, Alabama.

Rev. J. Stephen Jones presides over the Southside Baptist Church in Birmingham, Alabama.

Rev. W. J. Luster presides over the New Elam Baptist Church in Bessemer, Alabama.

Rev. Perry Macon presides over the First Baptist Church of Woodlawn in Birmingham, Alabama.

Rev. R.L. McAdory presides over the Faith Missionary Baptist Church in Irondale, Alabama.

Mount Zion Baptist Church is presided over by Rev. Mace Daniels, offers daily religious services to its members, and supports efforts to alleviate hunger in the Dothan, Alabama area.

Rev. Elizabeth O'Neill presides over the Immanuel Presbyterian Church in Montgomery, Alabama.

Rev. Rick Owen is the Senior Minister of Huffman United Methodist Church in Birmingham, Alabama.

Rev. William Perry, Jr. presides over the Sardis Missionary Baptist Church in Birmingham, Alabama.

Rev. Marion Russell, Sr. is an Associate Minister at First Baptist Church of West End in Birmingham, Alabama.

Saint John Missionary Baptist Church is presided over by Pastor Kenneth Robinson, and has offered services and counseling to Geneva, Alabama residents for over 50 years.

Rev. Patrick Sellers presides over the Cathedral of Faith Baptist Church in Birmingham, Alabama.

Rev. Walter Sims presides over the Mount Zion Baptist Church of Ishkooda in Birmingham, Alabama.

Rev. Steve Small, Jr. presides over the True Life Baptist Church in Birmingham, Alabama.

Rev. Andra D. Sparks presides over the 45th Street Baptist Church in Birmingham, Alabama.

The Ordinary People Society (T.O.P.S.) is a faith-based organization that offers spiritual guidance and social services to people with felony convictions. T.O.P.S. has

branch ministries in Anniston, Birmingham, Dothan, Enterprise, Mobile, Montgomery, and Ozark, Alabama.

Pastor Vallie Thomas, III presides over the New Salem Missionary Baptist Church in Bessemer, Alabama.

Rev. Charles W. Thompson presides over the First Missionary Baptist in Hueytown, Alabama.

Rev. Morrell Todd presides over the First Baptist Church of Acipco in Birmingham, Alabama.

Rev. S. William presides over the First Baptist Church of Alton in Birmingham, Alabama.

Rev. Carlos D. Williams presides over the Greater Grace Baptist Church in Birmingham, Alabama.

Rev. Clasco P. Williams presides over the First Baptist Rising Church in Birmingham, Alabama.

Rev. H.L. Williams presides over New Mount Olive Church in Birmingham, Alabama.

Rev. Timothy D. Williams is an Associate Minister at Oak Grove Church in Bessemer, Alabama.

Rev. Gregory D. Woods presides over the New Saint John Baptist Church in Dolomite, Alabama.