FILED
2026 Mar-27 PM 04:11
U.S. DISTRICT COURT
N.D. OF ALABAMA

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

WILLIAM MUHAMMED, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No: 2:26-cv-00292-AMM
JABO WAGGONER, et al.,	)	
	)	
Defendants.	)	

STATE DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR TRO AND PRELIMINARY INJUNCTION

Senator Jabo Waggoner, Senator Dan Roberts, Governor Kay Ivey, Lieutenant Governor Will Ainsworth, and former Governor Robert Bentley ("the State Defendants") respond as follows in opposition to Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction (doc. 12):

I. INTRODUCTION

Plaintiffs' shotgun complaint is difficult to understand, but the crux seems to be that they believe that the City of Birmingham should forever have all the appointments to the Central Alabama Water Board ("the Board," formerly known as the Birmingham Water Works Board). The Alabama Legislature disagreed. In 2015 and 2016, the Legislature provided that for certain water boards (such as the one at issue here) serving customers in multiple counties, the other counties served should have

a voice. For the Board, that meant that three of the nine seats would be appointed by Shelby County, Blount County, and the Jefferson County Mayors' Association, respectively. Ala. Act Nos. 2015-164, 2016-276. In 2025, the Legislature again amended the operative law, with a result that the Board now has 7 members, with one member each appointed by the Mayor of Birmingham, the Birmingham City Council, the Governor, the Lieutenant Governor, the President of the Jefferson County Commission, and the County Commissions of Blount and Shelby Counties. Ala. Act No. 2025-297.

In the Complaint, Plaintiffs argue that providing appointment powers to entities other than the Birmingham City Council violates the Due Process Clause, Takings Clause, Contract Clause, and Equal Protection Clause of the U.S. Constitution. They appear to ask for injunctive relief "prohibiting the rights described" in the Complaint and enforcing a purported Buy–Sell Agreement with the City of Birmingham. They also purport to seek $1.6 billion, the alleged value of the Board's assets, as compensation. Plaintiffs' claims are all about the structure of the Board and the Legislature's power to change it.

Now, ten years after other jurisdictions were first given a portion of the appointment power and ten months after the 2025 law went into effect, Plaintiffs seek "emergency" relief. They ask the Court to change the status quo and to order a variety of actions that seem removed from the claims in the Complaint: prohibiting

layoffs and reinstating employees, reinstating an employees' association, and prohibiting raises in compensation to Board members. Doc. 12 at 14-16.

There are more problems with the Complaint and Motion than State Defendants can address on this necessarily abbreviated schedule. Plaintiffs' Motion should be denied for at least the following reasons:

1. The allegations and claims in the Complaint (concerning the makeup of the Board) differ from the relief sought in the Motion (concerning specific decisions about employees and spending).
2. There is no emergency because Plaintiffs waited ten years to challenge the 2015/16 laws and ten months to challenge the 2025 law.
3. Plaintiffs' Motion is not supported by any evidence, neither signed declarations nor verified allegations.
4. None of the State Defendants (appointing authorities to the Board, governors who signed legislation, or legislators who sponsored bills) can provide the relief Plaintiffs seek. None of them can rehire a laid-off employee or reduce salaries. None of them can change the makeup of the Board or alter who has the power to appoint.
5. The State Defendants are immune: legislative immunity for sponsoring legislation or signing it into law, qualified immunity for money damages, and

sovereign immunity because the State Defendants do not enforce the challenged law.

6. Claims related to 2015-2016 legislation are barred by the statute of limitations.

7. Plaintiffs' claims fail on the merits. The Legislature has plenary authority to restructure public corporations like the Board. Plaintiffs as former directors who served their terms were due no process. The State took no private property because a public corporation's property is public. The Contract Clause does not apply to a public corporation's charter. And legitimate, non-racial reasons explain the Legislature's decision to restructure the Board.

8. The equities do not favor granting Plaintiffs emergency relief.

For each and all of these reasons, Plaintiffs' requested emergency relief should be denied.[1]

II. LEGAL STANDARD

The Plaintiffs' burden to obtain emergency injunctive relief is well settled:

> A district court may grant injunctive relief only if the moving party shows that: (1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.

[1] State Defendants also adopt and incorporate any applicable arguments and evidence submitted by any other Defendant in opposition.

Siegel v. LePore, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc) (citations and internal quotation marks omitted). A preliminary injunction is "an extraordinary and drastic remedy"—"the exception rather than the rule." *Id.* Plaintiffs' burden is even higher here because they seek to change the status quo. *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976).[2] The facts and law must "clearly favor" Plaintiffs. *Id.*

III. ARGUMENT

A. Plaintiffs' Motion Is Procedurally Improper.

1. The relief sought in the Motion is too far removed from the claims in the Complaint.

In their Complaint, Plaintiffs seem to claim injury because the City of Birmingham once appointed all the Board members but now appoint only some. Their Motion, however, seems to be about other things: specific Board decisions that Plaintiffs dislike. While the TRO they seek has elements arguably related to the Complaint—enforcing a buy–sell agreement and "preserving the status quo of the Corporation as it existed on June 26, 2025"—much of the relief they seek has nothing to do with the claims in the Complaint. Doc. 12 at 14-16. They want an emergency injunction prohibiting layoffs, reinstating employees, reinstating an employee association, and prohibiting expenditures on rebranding, for example. *Id.* But there

[2] Decisions of the United States Court of Appeals for the Fifth Circuit issued on or prior to September 30, 1981, are binding as precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

are zero allegations in the Complaint about any employment matter or why a layoff was allegedly unlawful.

This Court lacks a case or controversy before it to adjudicate the Board's employment decisions (even if it had the right parties before it to do so, *see infra* § III.B.1.b). Courts deny TRO/preliminary injunction motions where the relief sought in the motion strays from what Plaintiffs might obtain if they prevail on the claims in the complaint. *See Kaimowitz v. Orlando*, 122 F.3d 41, 43 (11th Cir. 1997), *opinion amended on reh'g*, 131 F.3d 950 (11th Cir. 1997) ("A district court should not issue an injunction when the injunction in question is not of the same character, and deals with a matter lying wholly outside the issues in the suit."); *see also De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945); *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 635-36 (9th Cir. 2015) ("The district court's denial of PRO's motion was not an abuse of discretion because the motion for relief was unrelated to the underlying complaint.").

Plaintiffs may not obtain emergency relief that is unrelated to the claims in the complaint.

2. Plaintiffs' motion is unsupported by evidence.

"The burden of persuasion in all of the four requirements is at all times upon the plaintiff." *United States v. Jefferson County*, 720 F.2d 1511, 1519 (11th Cir.1983). Plaintiffs are not entitled to a TRO unless "specific facts in an affidavit

or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." FED. R. CIV. P. 65(b)(1)(A). Likewise, "a plaintiff seeking a preliminary injunction must offer proof beyond unverified allegations in the pleadings." *Palmer v. Braun*, 155 F. Supp. 2d 1327, 1331 (M.D. Fla. 2001).

Plaintiffs here present no admissible evidence to support their motion. The Complaint is unverified. They submit only two conspicuously unsigned declarations that purport to have personal knowledge of events dating back to the 1950s. *See* Docs. 11-1, 11-2. But even those materials contain no statements about layoffs, director salaries, and the like. Plaintiffs cannot meet their burden with unverified allegations or unsigned declarations. Even if signed, those declarations could not provide evidence supporting most (if not all) of the relief Plaintiffs seek in their TRO motion.

B. Plaintiffs Are Not Likely To Succeed On The Merits.

The Complaint presents four claims. Count I is a Fourteenth Amendment claim based on procedural due process related to Plaintiffs' entitlement to their old seats on the Board. Doc. 1 at 1; doc. 11 at 13-14. Count II is a claim under the Takings Clause alleging a taking of the property rights of Plaintiffs as voters and property owners in the City of Birmingham. Doc. 1 at 2. Count III is a claim under the Contract Clause alleging interference with contract rights under the 1999 Amended

Charter and the 2025 Buy–Sell Agreement. *Id.* at 3. And Count IV is a Fourteenth Amendment class-of-one claim that Act 2025-297 represented unconstitutional discrimination. *Id.* at 3-4; doc. 11 at 20-21.

Plaintiffs are unlikely to succeed on the merits for many reasons. *First*, Plaintiffs lack standing to sue the State Defendants. *Second*, the State Defendants are immune. *Third*, the statute of limitations bars Plaintiffs' claims related to the 2015 and 2016 legislation. *Fourth*, the State has plenary authority over public corporations like the Board. And *fifth*, each of the four claims fails to state a claim.

1. Standing

For the Court to have jurisdiction, Plaintiffs must allege facts sufficient to show that they have enough stake in the outcome to confer standing. Standing is the "threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). "[T]he question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Id.* Interested plaintiffs are not enough. There must also be the right defendants: those who caused the Plaintiffs' injuries by enforcing the challenged law and whom the court might enjoin in such a way to redress those injuries.

Plaintiffs here lack standing because they have not suffered a cognizable injury and because State Defendants neither caused Plaintiffs' alleged injuries nor

could redress them. *See City of S. Miami v. Governor of Fla.*, 65 F.4th 631, 636 (11th Cir. 2023).

a. Plaintiffs have suffered no injury in fact.

An injury in fact must be "an invasion of a legally protected interest which is (a) concrete and particularized, (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (citation modified). Moreover, "generalized grievances" that a plaintiff's "and every citizen's interest in proper application of the Constitution and laws" is somehow injured in a way "common to all members of the public" does not support standing. *Id.* at 575-76.

Plaintiffs make no attempt to demonstrate an injury connected to most of the relief sought in the TRO motion. They do not allege that they were laid off by the Board, so how could they be injured by the reduction in force? They are not employees, so how are they injured by an employee handbook or changes to the employee association?

Plaintiffs also have not demonstrated an injury to a legally protected interest related to the Board's structure. Plaintiffs seem to argue injury because (1) they elect Birmingham officials and (2) those officials now appoint fewer members to the Board. The Fifth Circuit has rejected a similar argument. *See Stallworth v. Bryant*, 936 F.3d 224 (5th Cir. 2019). In *Stallworth*, Jackson, Mississippi residents sued when the Mississippi Legislature restructured the Jackson Municipal Airport

Authority by reducing the City of Jackson's appointments from five to two and adding members appointed by state and neighboring-county officials. *Id.* at 226. The Fifth Circuit held that the Mississippi citizens lacked standing because they had no "legally protected interest" in electing city officials with any degree of appointment powers. *Id.* at 230-31. A change in the appointment structure "does not mean that plaintiffs, as residents and taxpayers of Jackson, have suffered a concrete and particularized, actual and imminent injury to interests protected by the Equal Protection Clause." *Id.* at 231. The same applies for Plaintiffs here. Their alleged injuries are no more than generalized grievances that do not give rise to standing.

Nor can Plaintiffs base their injury on their status as former Board members. Plaintiffs were appointed to their seats "in accordance with Section 11-50-234, Code of Alabama, 1975 *as amended by Act No. 2015-164 and Act No. 2016-276.*"[3] Having not been appointed pursuant to the pre-2015 appointment system, Plaintiffs did not suffer an injury attributable to any changes to that system. At any rate, Plaintiffs' successors on the Board were still appointed by the Birmingham City Council in 2020.[4] Plaintiffs were thus appointed and replaced by the same entity that would have appointed or replaced them under either appointment system. So while

[3] Minutes of Jan. 10, 2017 Regular Meeting of the Birmingham City Council, Resolution Nos. 106-17 & 109-17, https://bhamal.granicus.com/DocumentViewer.php?file=bhamal_67f875459c80984f2a5a6a5bc722ede2.pdf&view=1 (emphasis added).

[4] *See* Recording of Dec. 29, 2020 Regular Meeting of the City Council of Birmingham, at 45:50-48:33, https://bhamal.granicus.com/player/clip/1401

Plaintiffs make much ado about the changes in appointment authority, it made no difference as to their appointment or replacement. And the appointment of any other Board member by any other appointing authority likewise did not affect their own replacement. Plaintiffs thus lack any concrete injury based on their past service on the Board or any notion that they still serve on the Board.

b. Defendants did not cause and cannot redress any of Plaintiffs' alleged injuries.

Plaintiffs lack standing to sue the State Defendants because they neither caused nor could redress Plaintiffs' alleged injuries. That is obviously true for the employment and operational matters raised in the Motion. No Defendant in this case has the power to rehire an employee who has been laid off. None can amend an employee handbook or alter a director's salary. An injunction requiring Defendants to stop the Board from buying stationery with a new logo would accomplish nothing.

Nor did Defendants cause any injury related to Board structure and appointment powers. First, consider the legislators who sponsored or supported the legislation that altered the Board's structure. To have standing to sue the legislators, Plaintiffs "must show, at the very least, that [the legislators] ha[ve] the authority to enforce" the challenged law "such that an injunction prohibiting enforcement would be effectual." *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021). But the Legislators do not enforce the law, and they are constitutionally prohibited from exercising executive functions. Ala. Const. art. III, § 42.

"Their role is limited to making law. An injunction running against them therefore would do nothing to help [the Plaintiffs]. Furthermore, even an extraordinary decree ordering the legislators to vote to repeal or amend [the legislation] would be ineffective, for the legislators, by themselves, are powerless to pass laws." *Scott v. Taylor*, 405 F.3d 1251, 1259 (11th Cir. 2005) (Jordan, J., concurring) (citation omitted). There is nothing the Court could order Senators Waggoner or Roberts to do that would redress any alleged injury. Standing is therefore lacking.

Next, consider the claims against Governor Ivey and former Governor Bentley because they signed legislation. Like the Senators, the Governors have no role in enforcing the challenged law and there is no injunction that can be entered against them that would redress any injury. *See Simon v. Ivey*, No. 2:25-cv-00067-RDP, 2025 WL 2345845, at *35 (N.D. Ala. Aug. 13, 2025) (finding that allegations that a governor signed legislation into law "are insufficient to establish that Plaintiffs' alleged injuries are in any way traceable to Governor Ivey.").

Finally, consider the claims against defendants like Governor Ivey and Lieutenant Governor Ainsworth because they are appointing authorities. The power to make an appointment does not mean that the Governor or Lieutenant Governor enforces the law that appointee is charged with carrying out. *See Council v. Ivey*, 771 F. Supp. 3d 1208, 1231-32 (N.D. Ala. 2025) (finding no standing based on governor's appointment authority where parole decisions remained at the complete

discretion of board members); *Walt Disney Parks & Resorts U.S., Inc. v. DeSantis*, 716 F. Supp. 3d 1216, 1222-23 (N.D. Fla. 2024) (no standing for injunctive relief because Disney "has not alleged facts showing that any imminent future appointments will contribute to its harm").

In short, the State Defendants did not cause Plaintiffs' alleged injury, and there is no injunction that can be entered against the State Defendants that would redress an injury. Plaintiffs therefore lack standing to sue the State Defendants and the claims against them should be dismissed.

2. Immunity

The claims against the State Defendants also fail because they are immune from suit. Eleventh Amendment immunity protects officials like the State Defendants who do not enforce the challenged law; Legislative immunity protects legislators, as well as officials in other branches who are performing legislative functions; and qualified immunity protects the State Defendants from individual-capacity claims for money damages.

a. Sovereign Immunity.

The Eleventh Amendment generally bars suits against a State by its own citizens. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984). Under the longstanding doctrine enunciated in *Ex parte Young*, however, "a suit alleging a violation of the federal constitution against a state official in his official capacity for injunctive relief on a prospective basis is not a suit against the state, and, accordingly,

does not violate the Eleventh Amendment." *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). But where the state officer lacks any responsibility to enforce the statute at issue, the foundation supporting the *Ex parte Young* "fiction" erodes. *Summit Med. Assocs., P.C. v. Pryor*, 180 F.3d 1326, 1341 (11th Cir. 1999). In that case, "the state is, in fact, the real party in interest," and the suit remains barred by the Eleventh Amendment. *Id.* at 1337. Because the State Defendants do not enforce the challenged law, the claims against them are considered claims against the State and are barred by the Eleventh Amendment.

b. Legislative immunity.

Absolute legislative immunity "was not abrogated by § 1983, and it applies with equal force to suits seeking damages and those seeking declaratory or injunctive relief." *Scott*, 405 F.3d at 1254. The immunity applies to legislators and members of the other branches when performing a legislative function. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998).

Senators Waggoner and Roberts were engaged in legislative functions when sponsoring or voting in favor of legislation. The claims against Governors Ivey and Bentley are likewise barred to the extent Plaintiffs rely on their acts of signing legislation into law. "Under the doctrine of absolute legislative immunity, a governor cannot be sued for signing a bill into law." *Women's Emergency Network v. Bush*,

323 F.3d 937 (11th Cir. 2003). Plaintiffs are thus unlikely to succeed on any claims premised on legislative functions.

c. Qualified Immunity.

The doctrine of qualified immunity protects government officials from liability for civil damages when their conduct does not violate clearly established rights of which a reasonable person would have known. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). It is immunity *from suit* and is effectively lost if a case is erroneously allowed to go to trial. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). It ensures that "'insubstantial claims' against government officials [will] be resolved prior to discovery." *Anderson v. Creighton*, 483 U.S. 635, 640 n.2 (1987).

Qualified immunity protects the State Defendants from Plaintiffs' individual-capacity claims unless the constitutional question is "beyond debate." *Kisela v. Hughes*, 584 U.S. 100, 104 (2018). No constitutional violation occurred here, *see infra* § III.B.4, so the Court "need not address whether the constitutional right at issue was clearly established." *See Crenshaw v. Lister*, 556 F.3d 1283, 1293 (11th Cir. 2009). Nonetheless, the law clearly establishes the State's plenary authority over public corporations. *E.g.*, *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1089 (5th Cir. 1981). The State Defendants are therefore protected by qualified immunity and the individual-capacity claims against them for money damages therefore fail as a matter of law.

3. Statute of Limitations

Plaintiffs' claims are time-barred to the extent they challenge any actions prior to February 20, 2024, including the 2015 and 2016 legislative amendments. A two-year statute of limitations governs claims brought under 42 U.S.C. § 1983 in Alabama. *McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2003); ALA. CODE § 6-2-38(*l*). "[T]he statute of limitations begins to run from the date 'the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights.'" *Brown v. Ga. Bd. of Pardons & Paroles*, 335 F.3d 1259, 1261 (11th Cir. 2003). And a plaintiff cannot rely on "a present harm from a past act" to clear this time bar. *Jimenez v. U.S. Att'y Gen.*, 146 F.4th 972, 992 (11th Cir. 2025).

Much of Plaintiffs' claims—including all those against Senator Waggoner and former Governor Bentley—are time-barred. Their complaints about the redistribution of appointments to the Board under Acts 2015-164 and 2016-276 expired (at the latest) in 2018. What's more, their claims premised on the notion that they "continued to be members of the Corporation Board" despite that legislation are likewise time-barred. Doc. 1 at 13 ¶ 28. Plaintiffs do not appear to have served as active Board members since December 2020 when their terms expired and their successors were appointed by the Birmingham City Council. *See supra* nn.3-4. At the end of the day, Plaintiffs complain of the present effects of past acts—whether construed as the

enactment of legislation a decade ago or the appointment of their successors six years ago—which does not revive their expired claims. Accordingly, they are not likely to prevail on any claim premised on either (1) the invalidity of the 2015 and 2016 legislation and any acts taken with respect to its enactment; or (2) their contentions that they are still Board members despite the appointments of their successors.

4. Merits

The Board is a creature of State law that the State "might revoke or modify … at its pleasure." *City of New Orleans v. New Orleans Waterworks Co.*, 142 U.S. 79, 91 (1891). The State's plenary authority over the Board eliminates Plaintiffs overarching theory that the 1999 Amended Charter is inviolable. Nor can Plaintiffs satisfy the elements of their claims based on the Due Process, Takings, Contract, and Equal Protection Clauses. And Plaintiffs' equal protection claims do not plausibly allege unconstitutional discrimination.

a. The State has plenary authority over public corporations like the Board.

Plaintiffs acknowledge that State- or municipality-established public utilities "may be changed or modified at will by State legislation because they are creatures of the government." Doc. 1 at 11 ¶ 21 (citing *Newton v. Se. Ala. Gas Dist.*, 708 F. Supp. 1254 (M.D. Ala. 1989); *City of New Orleans v. New Orleans Waterworks Co.*, 142 U.S. 79 (1891)); *see, e.g.*, *City of Covington v. Kentucky*, 173 U.S. 231, 242 (1899) ("A public corporation, instituted for purposes of connected with the administration of the government, may be controlled by the legislature[.]"). But Plaintiffs

claim an exception applies when the public utility—carrying out the same governmental functions—is "established by natural persons." Doc. 1 at 11 ¶ 21.

Plaintiffs' theory rests on a flawed understanding of *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819).[5] *See* Doc. 1 at 11 ¶¶ 21-22; doc. 11 at 4-5, 18. *Woodward* concerned Dartmouth College: an "eleemosynary" institution (a nonprofit organization established for charitable purposes) "endowed by private individuals, who have bestowed their funds for the propagation of the Christian religion among the Indians, and for the promotion of piety and learning generally." 17 U.S. at 633-34. The Supreme Court repeatedly emphasizes that Dartmouth College is privately founded, privately endowed, and privately governed. *E.g.*, *id.* at 634 ("It is … so far as respects its funds, a private corporation (citation omitted)); *id.* at 641 (noting that Dartmouth's trustees or governors "are not public officers"). Nor was Dartmouth "a civil institution, participating in the administration of government." *Id.*; *accord id.* at 630 ("objects unconnected with government"). *Woodward*'s holding doesn't apply to "other business entities" exercising governmental functions. *Contra* doc. 1 at 11 ¶ 22.

Woodward did not base its decision about New Hampshire's ability to regulate on merely whether Dartmouth was "established by natural persons." *Contra id.* at

[5] The majority opinion in *Woodward* is by Chief Justice Marshall; it begins on page 624 and ends on page 654 of the U.S. reporter pagination.

11 ¶¶ 21, 22. Rather, New Hampshire could act "according to its own judgment, unrestrained by any limitation of its power" if any of the following were true about the act of incorporation: (1) it was "a grant of political power"; (2) it "create[d] a civil institution, to be employed in the administration of the government"; (3) the funds were public property; or (4) "New Hampshire, as a government, be alone interested in [the corporation's] transactions." *Woodward*, 17 U.S. at 629-30. The States' "right to change [corporations] is not founded on their being incorporated, but on their being the instruments of government, created for its purposes." *Id.* at 638; *accord id.* ("[T]he objects for which [civil institutions] are created" determines their character.); *id.* at 638 ("The incorporating act neither gives nor prevents this control.").

The Board here is far from an eleemosynary corporation uninvolved in public administration. It's explicitly "a public corporation." ALA. CODE § 11-50-231. Providing water and sewer services isn't charity; it's an essential governmental function. *See Water Works & Sewer Bd. of Talladega v. Consol. Pub., Inc.*, 892 So. 2d 859, 863 (Ala. 2004). The statutes authorizing municipally established water and sewer boards deem them "to be a public agency or instrumentality exercising public and governmental functions to provide for the public health and welfare." ALA. CODE § 11-50-343(a). And *Woodward* says that corporate status doesn't matter: "[t]he same institutions, created for the same objects" are "controllable by the

legislature." 17 U.S. at 638. When a water works and sewer board is established under § 11-50-230 *et seq.*,[6] the Legislature limits a municipality's authority to "preserve the health" "as it relates to the waterworks system and g[ives] that authority to the [b]oard." *See Water Works Bd. of Arab v. City of Arab*, 231 So. 3d 265, 270 (Ala. 2016) (quoting ALA. CODE § 11-45-1).

The Board exercises governmental powers and shares characteristics with other governmental entities. The Board can "exercise all powers of eminent domain now or hereafter conferred on municipalities in this state." ALA. CODE § 11-50-235(a)(11). The Board is "exempt from all taxation in the State of Alabama." ALA. CODE § 11-50-235(c). It is subject to competitive bidding requirements. ALA. CODE § 41-16-50(a); Op. Ala. Att'y Gen. 2002-152, 2002 WL 735586 (Feb. 27, 2002). And its directors are subject to for-cause removal by their governmental appointing authorities. ALA. CODE § 11-50-300.03. The Board is nothing like Dartmouth College.

The Board's independence from its authorizing municipality does not affect the State's ability to restructure the Board. The Complaint cites *Water Works Board of the City of Leeds v. Huffstutler*, 299 So. 2d 268, 276, 279 (Ala. 1974), to argue that the Board can be restructured "only with a resolution of the existing Board."

[6] Act 2025-297 restructured the Board under § 11-50-300 *et seq.*, but the Board generally retains "any powers and rights pursuant to the enabling statute" (§ 11-50-230 *et seq*). ALA. CODE § 11-50-300(b).

Doc. 1 at 9 ¶ 17; *accord* Doc. 11 at 9, 11, 14. But *Huffstetler* was about municipalities' ability to restructure water works boards—not the State's. *See* 299 So. 2d at 273 ("The central issue in this case concerns the independence of … the water works board … and their right to manage their affairs free of control by the governing bodies of the cit[i]es they serve." (quoting the trial court with approval)). And *Huffstetler* referenced amendments to the water works board's charter "by operation of law result[ing] from acts of the Legislature of Alabama mandating changes in the powers or organizational structure of corporations organized under the Water Board Statute." *Id.* at 271. *Huffstetler* does not undermine the State Defendants' argument, it confirms it.

Because the Board is a statutory creature, notwithstanding being formed by natural persons, Plaintiffs "may not hide behind the [charter] …—which itself is a creature arising from legislation—as a means of avoiding subsequent legislative directives." *Water Works & Sewer Bd. of Birmingham v. City of Birmingham*, No. CV-2016-902336, Doc. 160 at 14 (Ala. Cir. Ct. Jefferson Cnty. Dec. 12, 2016), *aff'd sub nom., Abbott v. Bell*, 272 So. 3d 613 (Ala. 2017) (table) (rejecting a similar challenge to Acts 2015-164 and 2016-276). The State's ability to alter its public corporations has been "reiterated and enforced so often [in case law] that the matter is no longer debatable." *City of Pawhuska v. Pawhuska Oil & Gas Co.*, 250 U.S. 394, 399 (1919).

b. Plaintiffs' Due Process, Takings, and Contract Clause claims individually fail on the merits.

Due Process Clause. To succeed on their procedural-due-process claim, Plaintiffs must show (1) deprivation of a constitutionally protected liberty or property interest, (2) state action, and (3) constitutionally inadequate process. *Ashraf v. DEA*, 153 F.4th 1161, 1168 (11th Cir. 2025). Plaintiffs assert they have a property interest in "[b]oard membership in a perpetual public benefit utility corporation." Doc. 11 at 13. They ground that interest in the 1999 Amended Charter's provisions stating that directors serve until their successors are appointed (by Birmingham). *Id.* at 14. But property interests "are defined by … state law." *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

To the extent they ever had a property interest in their Board seat in the first place,[7] that interest has long since lapsed. State law at the time Plaintiffs assumed their Board seats provided for four-year terms. Ala. Act No. 2015-164, § 3(1). Plaintiffs thus served their full terms and the Birmingham City Council then appointed their successors.[8] Their seats were not "eliminate[d] … without complying with mandatory amendatory procedures." *Contra* doc. 11 at 14. And even if they had been, Plaintiffs received all the process they were due. *See 75 Acres, LLC v. Miami-*

[7] *But see Moore v. Watson*, 429 So. 2d 1036, 1037 (Ala. 1983) ("Plaintiffs argue that appointment to the board, with its attendant fixed term of service, creates a property right in the form of an implied contract. … We disagree.").
[8] *See supra* nn.3-4.

Dade County, 338 F.3d 1288, 1294 (11th Cir. 2003) (explaining that when a law is passed affecting a general class of people, "the legislative process" is the only required process).

Takings Clause. "The Takings Clause of the Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." *Murr v. Wisconsin*, 582 U.S. 383, 392 (2017). Plaintiffs say Acts 2015-164, 2016-276, and 2025-297 effected a taking by "seiz[ing] 86% of the Plaintiffs Board appointment authority and with it, 86% of effective equity control over the Corporation without any compensation." Doc. 11 at 15. That isn't Plaintiffs' property whether as former directors or as "investor[s]/ratepayers/donors and electors" in Birmingham—it's *public* property. *Contra id.* As discussed *supra* § III.B.4.a, the Board is a public corporation. "[T]here is in reality but one party to [the 1999 Amended Charter]; the trustees or governors of the corporation being merely the trustees for the public." *New Orleans*, 142 U.S. at 89 (quoting *Woodward*, 17 U.S. at 614 (Washington, J., concurring)).

Plaintiffs cite nothing establishing that their paying fees for water and sewer services secured them a property right in the Board's assets. Case law suggests the opposite. *Cf. Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of California*, 475 U.S. 1, 23 n.1 (1986) (Marshall, J., concurring) ("However, a consumer who purchases food in a grocery store is 'paying' for the store's rent, heat, electricity, wages, etc.,

but no one would seriously argue that the consumer thereby acquires a property interest in the store."); *Taffet v. Southern Co.*, 967 F.2d 1483, 1491 (11th Cir. 1992) (en banc) ("It is settled under both Alabama and Georgia law that a consumer does not have a property right in the utility rate he pays."). As to Plaintiffs' status as former directors, *Woodward* says nothing more than that Dartmouth College's directors were the legal owners of that private entity, not that the directors of public corporations like the Board own their assets. *Contra* doc. 11 at 16. And the Board has retained 100% of its assets with each legislative restructuring. So no property was taken in the first place, let alone *private* property.

Contract Clause. Article I, Section 10 of the Constitution prohibits laws that impair the obligations of contracts. *Taylor v. City of Gadsden*, 767 F.3d 1124, 1132 (11th Cir. 2014). Plaintiffs argue that the Acts interfered with the contract rights under the 1999 Amended Charter (the appointment process and the ability to sell to Birmingham). Doc. 1 at 31-32; *accord* doc. 11 at 18. The claim fails because the Contract Clause does not restrain "the legislative power of the states" when they "grants … political or governmental authority" to a public corporation. *See Pawhuska*, 250 U.S. at 397; *accord supra* § III.B.4.a. So § 11-50-300.02(c)'s explicit statement that State law controls over conflicting provisions in the Charter is

constitutional and controls.[9] Even if the State Defendants interfered with a contract, such interference is constitutional because it was "reasonable and necessary" for the reasons stated in Act 2025-297's legislative findings. *See infra* III.B.4.c.

c. Plaintiffs have not pleaded a plausible Equal Protection claim.

Plaintiffs' allegations do not give rise to a plausible Equal Protection claim. Plaintiffs allege that (1) Alabama has a history of racial discrimination, (2) Birmingham is a majority-black city, (3) the law cannot possibly apply to any other water boards, and (4) the Board had a good credit rating when the law passed. That does not plausibly lead to a conclusion that the Legislature engaged in unconstitutional discrimination.

When the City of Birmingham passed its own minimum-wage law, the Legislature passed a law to prevent Alabama from having a patchwork of different requirements depending on which side of the city line the business is located. Birmingham residents sued and alleged that the law was passed merely because Birmingham is majority black. That claim failed because there was an obvious alternative explanation for the law:

> But an equal protection claim is not plausible where there is an "obvious alternative explanation" for the conduct other than intentional discrimination. *Jabary v. City of Allen*, 547 Fed.Appx. 600, 605 (5th Cir. 2013) (citing *Twombly*, 550 U.S. at 567). In such a circumstance,

[9] Plaintiffs' argument about the 2025 Buy–Sell agreement also fails because no contract was ever formed. The directors' terms terminated on May 7, 2025 prior to any sale, when Governor Ivey signed Act 2025-297 into law at 2:55 P.M. *See* ALA. CODE §§ 11-50-300.02(a), -300.03(a); ALA. ACTS No. 2025-297 at 19.

> a plaintiff must "allege more by way of factual content to 'nudge' his claim of purposeful discrimination 'across the line from conceivable to plausible.'" *Iqbal*, 556 U.S. at 683 (quoting *Twombly*, 550 U.S. at 570). Without specific factual allegations of an intent to discriminate on the part of any particular legislators, Plaintiffs' equal protection claims fail.
>
> In light of the controlling *Twombly*/*Iqbal* standard, and the requirement that a Plaintiff allege intentional discrimination, Plaintiffs' allegations regarding vestiges of de jure discrimination fail to 'nudge' their equal protection claims across the line from conceivable to plausible.

Lewis v. Bentley, No. 2:16-CV-690-RDP, 2017 WL 432464, at *11 (N.D. Ala. Feb. 1, 2017), *aff'd in part sub nom. Lewis v. Governor of Alabama*, 944 F.3d 1287 (11th Cir. 2019), and *aff'd sub nom.*, 816 F. App'x 422 (11th Cir. 2020); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 680-83 (2009).

Here, the Legislature's goal of preventing Board mismanagement is an "obvious alternative explanation" that defeats Plaintiffs' claim. Act 2025-297's legislative findings explain that the "[c]ompetent and efficient management of municipal water works boards' potable and raw waters systems" is essential to the "health, safety, and economic viability" of Alabama and its cities. The findings go on to say that the management failures of these boards negatively impact the State's health and safety and stunt vital economic development by imposing upon their customers "oppress[ive]" and "unreasonably high rates." Ala. Act No. 2025-297, § 1(a)(1)-(2) (Findings). The Legislature concluded these management failures—which could cause catastrophic health and economic consequences—were "more likely to occur

in water works boards … where the power to appoint a controlling number of the members of a board of directors is vested in a municipality whose voting residents comprise a fraction" of the board's paying customers. *Id*. § 1(a)(4). And the Legislature noted specific instances in other states where such failures had already occurred. *Id*. § 1(a)(3).

It was in response to those concerns, and with the twin objectives of ensuring the health and safety of Alabamians and the State's economic prosperity, that the Legislature drafted and passed Act 2025-297. The Act achieves those goals by ensuring the bodies governing water works boards that serve sprawling territories better reflect their customer bases and by imposing certain qualifications upon some of their members. ALA. CODE § 11-50-300.03(c)(1).

The Board's credit rating is irrelevant. Even if there was no basis to criticize the Board's past management (which was hardly free from controversy), the Legislature does not have to wait for problems to occur before acting. *Ognibene v. Parkes*, 671 F.3d 174, 188 (2d Cir. 2011) (legislature didn't have to "experience the very problem it fear[ed]" and avoid enacting "prophylactic measures" until it gave "every corruptor at least one chance"); *Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, 992 F.3d 1299, 1334 (11th Cir. 2021) ("deterring voter fraud is a legitimate policy on which to enact an election law, even in the absence of any record evidence of voter fraud").

And Plaintiffs' claim that § 11-50-300 could never apply to any other board is not true. At present, it is true that the Board is the only entity that meets the triggering criteria. But those criteria would also trigger for any water utility board that "after January 1, 2015, either serves water customers or has assets in four or more counties other than the county where the authorizing municipality is principally located, and the organization and operation of the board, shall be subject to this division." ALA. CODE § 11-50-300(a). The statutory language does not require those counties to all be part of the same federally designated metropolitan area as Plaintiffs appear to believe, nor even that they share borders. There is no reason, geographic or otherwise, another water works board cannot expand to serve customers in at least four other counties.

But even if Plaintiffs could get around their threshold *Lewis/Iqbal* problems, their equal protection claim would fail on the merits for much the same reasons. Plaintiffs frame their equal protection claim as a "class of one" claim subject to only rational-basis review. Doc. 11 at 21. Under rational-basis review, "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314-15 (1993). And to show that a statute is irrational, a plaintiff must "negativ[e] every conceivable basis" that might support those choices. *Campbell v. Rainbow City*, 434 F.3d 1306, 1314 n.6 (11th Cir. 2006). Plaintiffs have not done so

for, at least, several of the reasons discussed above. That they disagree with the Legislature's reasoning does not carry their heavy burden to show that reasoning to be irrational.

Nor have Plaintiffs shown that they received differential treatment as to a similarly situated comparator. For any type of equal protection claim—including class-of-one claims—a plaintiff must show that he was treated differently than someone who is "prima facie identical in all relevant respects." *Griffin Indus. v. Irvin*, 496 F.3d 1189, 1204 (11th Cir. 2007). This requires specificity; plaintiffs may not rely on "nameless, faceless" others (even "all" such others). *Id.* at 1205. Here, Plaintiffs only identify Alabama Power by name as a comparator. But Alabama Power is neither a public corporation (it is a subsidiary of an investor-owned company traded on the stock exchange) nor a water utility. Nor are the nameless water works boards invoked by Plaintiffs alike "in all relevant respects." One alike in all relevant respects would be one that serves customers in four or more other counties. By operation of law, the Board and any other future water utilities that meet those triggering criteria will be treated exactly the same under the statute. Plaintiffs' equal protection claim thus fails.

* * *

For these reasons, Plaintiffs have not carried their heavy burden to show that they are substantially likely to succeed on the merits of their underlying claims.

C. The Equities Overwhelmingly Weigh Against Granting Injunctive Relief.

Plaintiffs cannot make the requisite showing as to the remaining elements—i.e., the equities—required to obtain a TRO or preliminary injunction.

1. Plaintiffs have not carried their burden to prove they would suffer irreparable harm without an injunction.

Plaintiffs' assertions of irreparable injury fail for multiple reasons. To start, the irreparable harm complained of must be suffered by *the movant*, not by some absent third party. *See, e.g.*, *Siegel*, 234 F.3d at 1176-77. But Plaintiffs' cited harms involve only employment and other operational decisions that do not involve them in any concrete way. *See* Doc. 12 at 11-12.[10] Plaintiffs' unsupported assertions boil down to nothing more than speculation that someone somewhere might suffer some harm someday. Such remote possibilities do not justify the extraordinary remedy that Plaintiffs seek. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

Plaintiffs' own litigation strategy further forecloses any finding of irreparable harm here. Delaying even a few months to seek a preliminary injunction "militates against a finding of irreparable harm." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016). But the underlying actions that Plaintiffs challenge in the Complaint occurred somewhere between 9 months and 11 years ago. To the extent Plaintiffs seek injunctive relief against those actions, it is long since stale. Such

[10] Regardless, adverse employment decisions usually do not give rise to irreparable harm anyway. *See Creger v. United Launch All., LLC*, 571 F. Supp. 3d 1256, 1268 (N.D. Ala. 2021); *see also Sampson v. Murray*, 415 U.S. 61, 88-92 (1974).

relief would not preserve the status quo; it instead seeks to remake it. Nor can Plaintiffs revive claims for such relief by challenging actions two (or more) steps removed like the employment actions cited in their motion. And even as to those actions, Plaintiffs' Motion asserted that the issues raised would be addressed at the Board's meeting on March 20, 2026, "making this the last opportunity for the Court to intervene." Doc. 12 at 6 ¶ 9.[11] Having failed to even seek relief until March 21, it appears that Plaintiffs have missed their "last opportunity."

Lastly, many of Plaintiffs' requests are incompatible with their claims of irreparable injury. "An injury is 'irreparable' only if it cannot be undone through monetary remedies." *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990). But "[m]ere injuries, however substantial, in terms of money, time[,] and energy necessarily expended in the absence of a stay are not enough." *Id.* (quoting *Sampson*, 415 U.S. at 90). Here, Plaintiffs' complaint asserts that they are entitled to "Economic Damages" and that Defendants must pay them "approximately $1.6 billion plus interest to reflect the time value of money." Doc. 1 at 2, 20, 23 ¶ 61; *see also id.* ¶ 58, 63, 78; Doc. 11 at 23 ¶ (f) (classifying this relief as "[i]n the [a]lternative"). To be sure, State Defendants

[11] This assertion seems to suggest that Plaintiffs believed their requests for injunctive relief would be moot if the Board ratified certain actions taken by the CEO and raised in Plaintiffs' Motion. That, in turn, further suggests that Plaintiffs are complaining about issues of policy or state law rather than constitutional rights. *See supra* § III.B.4.a.

dispute that Plaintiffs can maintain such a claim or would be entitled to any such compensation for multiple reasons. *See supra* § III.B. But Plaintiffs cannot have their cake and eat it too: they can either claim they are entitled to $1.6 billion or to injunctive relief, but not both. Having put a dollar amount on their own claims, Plaintiffs undermine their assertions of irreparable harm.

2. The equities weigh overwhelmingly against granting injunctive relief.

The last two elements of the preliminary injunction inquiry—weighing the parties' injuries and the public interest—collapse together here. "[W]here the government is the party opposing the preliminary injunction, its interest and harm merge with the public interest." *Swain v. Junior*, 958 F.3d 1081, 1091 (11th Cir. 2020) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

In stark contrast to Plaintiffs' speculative, stale, and secondhand injuries discussed above, Defendants and the public face significant harm if an injunction were to issue. Interference with the operation of state law "clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018); *see also Trump v. CASA, Inc.*, 606 U.S. 831, 860-61 (2025). Plaintiffs ask this Court to override Alabama law and effectively assume governance of a public corporation exercising public powers based on nothing more than their say-so. The public interest is much better served by allowing the Board members duly appointed under State law to address operational issues and reforms without intrusive judicial oversight.

Plaintiffs' naked assertions are particularly striking given their lack of evidence. But mandating specific construction projects would supersede professional judgments about resource allocation or project management. Reinstating terminated employees may require unplanned (or unjustified) expenditures. And commandeering the management of a public utility risks worsening the operational and financial consequences that Plaintiffs' requested relief purportedly seeks to avoid. Plaintiffs cannot carry their burden to show that the merits weigh in their favor.

IV. CONCLUSION

This is not a case that should be fast-tracked. Plaintiffs have shown no imminent irreparable harm or any need for relief on an emergency basis. And even if they had, these Defendants cannot give it to them. Plaintiffs' motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 27, 2026, 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/ Brenton M. Smith
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