

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**

**ROBERT B. SANSOME and JOHN** )  
**BENJAMIN HILLEY,** )  
 )  
**Plaintiffs,** )  
 )  
**v.** )  
 )  
**HOAR CONSTRUCTION, LLC;** )  
**LAKESHORE DATA CENTER, LLC;** )  
**NEBIUS, INC.; THE CITY OF** )  
**BIRMINGHAM, ALABAMA; and** )  
**FICTITIOUS DEFENDANTS A-E,** )  
 )  
**Defendants.** )

**CIVIL ACTION NUMBER:  
CV-2026-902889**

**DEFENDANTS’ BRIEF REGARDING THRESHOLD REQUIREMENT OF A BOND UNDER ALABAMA RULE OF CIVIL PROCEDURE 65(c)**

Defendants Hoar Construction, LLC, Lakeshore Data Center, LLC, Nebius, Inc., and the City of Birmingham, Alabama (together, “Defendants”) respectfully request that as an initial matter the Court assess Plaintiffs’ capacity to provide a bond for the preliminary injunction that they seek prior to moving forward with a preliminary injunction hearing, as was done in the case of *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Engineers*, 297 F.R.D. 633, 634–35. (N.D. Ala. 2014), recently relied upon by the Supreme Court of Alabama in *DeVos v. Cunningham Group, LLC*, 297 So. 3d 1176, 1185 (Ala. 2019). Unless Plaintiffs demonstrate their willingness and ability to post an adequate bond, there is no reason to hold a hearing on Plaintiffs’ request for a preliminary injunction because no injunction can issue without a bond, and such a hearing would be a waste of judicial resources. The purpose of this brief is not to argue any specifics about a particular bond amount—that issue would be for another day. Instead, because Plaintiffs apparently will not post *any* meaningful bond, a further hearing is not necessary.

## FACTS

### I. The Project

1. This case is about a construction project in an area zoned MXD (Planned Mixed-Use District). Doc. 2 at ¶ 2.

2. Hoar Construction is the general contractor for the construction of the data center at issue here (the “Project”). Aff. of W. Watson, attached hereto as Ex. A at ¶ 3.

3. At least eight subcontractors have mobilized on site and are currently working on the Project. Many of these subcontractors are small, family-owned Alabama businesses. *Id.*

4. Approximately 150 workers, most of whom are employed by these subcontractors, are currently working on site. There are many additional workers working off site to support the work being performed on the Project. *Id.*

5. If the Project were enjoined by Court order, Hoar and its subcontractors would have to stop working on the Project, begin to implement measures to protect completed work, either demobilize or secure all of the construction equipment currently being used to construct the Project, and the current workers would ultimately lose their ability to work on the Project. *Id.* at ¶ 4.

6. Taking these steps would be very expensive. Shutting down the project would result in economic losses of approximately \$500,000.00 per day to Hoar and its subcontractors. *Id.*

7. The other Defendants<sup>1</sup> would suffer detrimental financial impacts that are different from and in addition these amounts. *Id.* at ¶ 5.

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<sup>1</sup> Lakeshore Data Center has no involvement or stake in any ongoing operations at the site; instead, it merely acquired and sold one parcel of land (“Lot 1-A”) to 201 Milan Birmingham, LLC on October 1, 2025, and later dissolved on December 30, 2025, making it an improper subject of this action.

## II. The Plaintiffs and their requested relief.

8. The Plaintiffs are two individual property owners. Doc. 2 at ¶¶ 1, 9-10.

9. They live around 900 feet away from the nearest point of the Project. *Id.* Between their properties and the Project are a strip of trees several hundred feet deep and Lakeshore Parkway, a four-lane divided highway. The Project is located across Lakeshore Parkway through another stretch of woods.

10. The Plaintiffs ask the Court to stop all construction on the Project. *Id.* at ¶ 119.

## ARGUMENT

### I. The Court should assess Plaintiffs' capacity to bond the relief they seek as a threshold matter.

Plaintiffs, two private landowners, are seeking to shut down a large commercial construction project on an area zoned for commercial activity. Wholly apart from the merits of this request, Alabama law requires Plaintiffs to post a bond to protect Defendants from the consequences of being wrongfully enjoined. Per the affidavit of W. Watson, Hoar Construction's daily losses from an injunction would approximate \$500,000. It is reasonable to ask—as a threshold matter—whether Plaintiffs are willing and able to post any meaningful bond whatsoever before proceeding with a hearing.

In a similar case, a plaintiff asked the United States District Court for the Northern District of Alabama to enjoin a project in which the defendants stated prospective damages of an injunction of \$780 million. *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Engineers*, 297 F.R.D. 633, 634. (N.D. Ala. 2014). The court addressed the issue of a bond proactively as a threshold issue: “The court pointed out to the parties the obvious, namely, that it would be a futile act and a total waste of judicial resources to conduct a two or three day hearing in order to afford plaintiffs the opportunity to [establish the preliminary injunction elements] if they cannot meet the other

essential, the posting of the bond required by Rule 65(c).” *Id.* at 634. When the plaintiffs “made it quite clear they could not and would not post a bond of \$300,000 or any amount other than a nominal amount,” the court cancelled the hearing and denied the injunction. *Id.* at 635.

While this case is a federal case, it was cited approvingly in the controlling Supreme Court of Alabama precedent on the issue of adequacy of injunctions for bonds, *DeVos*, 297 So. 3d at 1185. Further, the nearly identical language of the federal and Alabama rules makes this federal case particularly persuasive. See *First Baptist Church of Citronelle v. Citronelle–Mobile Gathering, Inc.*, 409 So. 2d 727, 729 (Ala. 1981) (noting that federal authorities are persuasive when the relevant rule of civil procedure is identical). And other courts have followed the same procedure: “[A] court considering a request for a TRO or preliminary injunction may decide the issue of security as a threshold matter without taking up the elements for the requested relief.” *Solomon v. PennyMac Loan Servs., LLC*, 2025 WL 3909354 at \*1 (N.D. Ga. Oct. 21, 2025) (citing *Black Warrior Riverkeeper* and denying relief on security grounds, *inter alia*).

This Court should make the same inquiry and follow the same procedure here. Before launching into a multi-day preliminary injunction hearing, the Court should receive assurance from Plaintiffs that they can and will post a bond commensurate with the relief they seek. For example, are the Plaintiffs capable and willing to post even a \$500,000 bond representing a single Defendant’s anticipated losses from a single day of being enjoined? If Plaintiffs cannot provide security in *even that amount*, there is no reason to hold a hearing. Could they post \$3.5 million for a single week? Or \$15 million for a month? Obviously, the true amount of a bond in this case would be significantly higher than these amounts.

## II. Meaningful security under Rule 65(c) is mandatory.

Rule 65(c) of the Alabama Rules of Civil Procedure provides that “[n]o restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and reasonable attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” Ala. R. Civ. P. 65(c). This requirement is mandatory. *Spinks v. Automation Pers. Servs., Inc.*, 49 So. 3d 186, 191 (Ala. 2010) (“Alabama law . . . clearly provides that ‘[i]t is mandatory that security be given under Rule 65(c).’”); *Anders v. Fowler*, 423 So. 2d 838, 840 (Ala. 1982) (reversing preliminary injunction where trial court failed to require security and failed to make specific findings justifying an exception); *Lightsey v. Kensington Mortg. & Fin. Corp.*, 315 So. 2d 431, 434 (Ala. 1975) (“the giving of security by the applicant . . . is mandatory”). An injunction entered without a bond or without a specific, evidence-based finding invoking an exception is “defective and due to be reversed.” *Spinks*, 49 So. 3d at 191; *see also Chunchula Energy Corp. v. Ciba-Geigy Corp.*, 503 So. 2d 1211, 1215 (Ala. 1987) (stating Rule 65(c) is “mandatory” and that an injunction issued without security “is defective and due to be reversed”).

A bond should be set “in such sum as the court deems proper, for the payment of such costs, damages, and reasonable attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” Ala. R. Civ. P. 65(c). The Court can determine the specifics of a bond later, but the point now is that a bond must bear relationship to Defendants’ potential damages. The Supreme Court of Alabama has clarified that “[t]he purpose of an injunction bond is to compensate a wrongfully enjoined party for damages and attorney fees sustained as a result the imposed restriction....” *DeVos*, 297 So. 3d at 1187. Put another way, “[a] preliminary-injunction bond is a contract whereby the party providing the bond agrees to

compensate the enjoined party if it is later determined that the preliminary injunction was wrongful.” *Ex parte Cooper*, 390 So. 3d 1030, 1041 (Ala. 2023).

Preliminary injunctions reflect a trade-off: in exchange for getting immediate relief without full discovery and a trial, the plaintiff must post a bond sufficient to protect the defendants from the possibility of the accelerated proceedings reaching the wrong result. If a plaintiff cannot uphold its side of the bargain by posting an adequate bond, the trade-off breaks down. The remedy under those circumstances is not to remove or lessen the bond requirement. Instead, the remedy would be to allow the plaintiff to seek a permanent injunction after a full trial.

In *DeVos*, the Supreme Court of Alabama reversed a trial court’s refusal to increase a \$25,000 injunction bond where the enjoined parties demonstrated that their potential losses far exceeded that amount. 297 So. 3d 1176, 1187 (Ala. 2019). *DeVos* reaffirmed a decades-old principle: that “[j]udges issuing . . . [injunctions] should be careful to require an adequate bond.” *Id.* at 1185 (quoting *City of Birmingham v. Wilkinson*, 239 Ala. 199, 206, 194 So. 548, 554–55 (1940)). As noted above, *DeVos* relied on *Black Warrior Riverkeeper*. *DeVos* additionally recognized that “[w]hen setting the amount of security, district courts should err on the high side,” because while “[a]n error in setting the bond too high . . . is not serious,” “an error in the other direction produces irreparable injury, because the damages for an erroneous preliminary injunction cannot exceed the amount of the bond.” *DeVos*, 297 So. 3d at 1185–86 (quoting *Mead Johnson & Co. v. Abbott Labs.*, 201 F.3d 883, 888 (7th Cir. 2000)). The reason is simple: an inadequate bond generally leaves a wrongfully enjoined party without meaningful recourse. *See id.*

No case decided within the last thirty-five years endorses prescribing a nominal bond in circumstances comparable to those presented here. Plaintiffs seek to enjoin a lawfully permitted construction project on the mere accusation that the construction violated existing ordinances and

based on prospective and speculative harms of a data center that is under construction. With the substantial losses Plaintiffs may cause through an injunction, a bond is obviously necessary.

**III. A nominal bond is not appropriate and would leave defendants unprotected.**

Plaintiffs cannot reduce their obligation to pay a bond to a mere nominal amount. *Id.* Indeed, a nominal bond would not meaningfully differ from no bond at all. The bond requirement ensures that the party requesting extraordinary relief covers the risk that the relief may turn out to have been unwarranted and enjoined its opponent from doing something it was entitled to do all along. A bond that bears no relationship to the actual exposure merely creates the appearance of compliance while leaving the enjoined party without the protection Rule 65(c) is designed to provide. The Alabama Supreme Court has been very clear that the *sole* focus in setting a bond is measuring the amount of the enjoined parties' potential damages: “[T]he trial court should be concerned *only* with setting an injunction-bond amount that would adequately cover the doctors' prospective costs, damages, and attorney fees if it is later determined that the doctors were wrongfully enjoined.” *DeVos*, 297 So. 3d at 1187 (emphasis added).

Plaintiffs anchor their nominal-bond argument in *Water Works & Sewer Board of the City of Birmingham v. Anderson*, 530 So. 2d 193 (Ala. 1988). *See* Doc. 27 at 2-4. But *Anderson* does not help them. *Anderson* affirmed a \$10,000 bond—a meaningful sum in 1987—not a token or nominal bond. 530 So. 2d at 195-96, 198. As a threshold matter, *Anderson* *did not* determine that the logging operations on defendant's land and purported violation of private plaintiffs' license at issue constituted an issue of public concern warranting a “nominal” security. *See id.* at 198 (merely noting the exception). The plaintiff in *Anderson* was a municipal entity. Here, Plaintiffs are two individual property owners asserting claims about their property. *See* Doc. 2 ¶¶ 9-11.

The “no security or only nominal security” language Plaintiffs rely on (Doc. 27 at 2) originates in dicta from *Lightsey*, 315 So. 2d at 434. Notably, *Lightsey* is a 1975 decision involving a private consumer-foreclosure dispute over a privately-owned mobile home, and it holds that no exception to the bond requirement applied in that case. *Id.* at 432–34. Indeed, *Lightsey* holds that “there can be no injunction... until the bond has been given.” *Id.* (quotations and citations omitted). In any event, that foreclosure dispute has no factual resemblance to a multi-hundred-million-dollar commercial construction project.

At base, while *Anderson* suggests the possibility of an exception, neither it nor *Lightsey* suggests how to apply it in the context of private landowners suing about an alleged disturbance to their properties. *Anderson* did not apply any public interest exception while affirming a real, monetary bond in 1987 dollars. *Anderson*, 530 So. 2d at 198 (“we cannot say this amount constitutes a clear abuse of discretion,” and “consequently we will not substitute our judgment for that of the trial judge”).

One need not take the Defendants’ word for it. This limitation is conceded in the drafting notes that Plaintiffs appended with their filed memorandum. Doc. 27 at 11. These notes state that “*Anderson* . . . upheld a real \$10,000 bond, not a token bond — do not overstate it as approving nominal security,” and: “The ‘no security or only nominal security’ language is *Lightsey*’s, quoted in *Anderson* but not applied there.” *Id.* (emphasis added). When a party’s own analysis warns against overreaching with its lodestar authority, the Court should take their word for it.

Plaintiffs invite error when they contend that Defendants’ exposure from a wrongful injunction “approaches zero” because Defendants supposedly had no legal right to build. Doc. 27 at 5. This argument is circular because it assumes that Plaintiffs will win. The Supreme Court of

Alabama requires courts to ask instead what happens if Defendants are wrongly enjoined. *DeVos*, 297 So. 3d at 1187.

**IV. No exception to the bond requirement applies.**

The Alabama exceptions to the mandatory bond requirement — impecunious litigants and overriding public concern — may be invoked only upon “a specific finding based upon competent evidence that one or more of the exceptions, stating them, do exist.” *Anders*, 423 So. 2d at 840 (requiring both competent evidence and a specific judicial finding before any exception may apply); *Lightsey*, 315 So. 2d at 434 (same).

As to Plaintiffs’ means, they have submitted no affidavits, financial statements, or other competent evidence that they cannot post a bond. A bare assertion that Sansome and Hilley are “homeowners of modest means” is a conclusory characterization unsupported by any evidence of record. Doc. 27 at 7. There is no suggestion that Plaintiffs would be authorized to proceed *in forma pauperis*, for example.

Plaintiffs might suggest that a bond commensurate with the value of the Project is practically impossible for them, but that argument has several problems. For one, it runs squarely into the Alabama Supreme Court’s mandate in *DeVos* that the Court “should be concerned only with setting an injunction bond amount that would adequately cover the [enjoined parties’] prospective costs, damages, and attorney fees....” *DeVos*, 297 So. 3d at 1187. This argument also runs afoul of *Black Warrior Riverkeeper*, where the court specifically found that requiring a bond for the whole value of a \$780 million project was within its discretion, and “[i]t would more likely violate Rule 65(c) to eliminate the bond entirely (or its equivalent, the setting of a nominal bond) than to require a bond in the millions.” *Black Warrior Riverkeeper*, 297 F.R.D. at 635. And the suggestion that Plaintiffs should be excused from posting a bond because the required amount

would be large ignores the reason why the bond is large in the first place: the bond is big because the Defendants face huge losses from an injunction. The bond is a safety feature that protects Defendants. If Plaintiffs cannot afford to provide that safety, the proper response is not to issue the injunction. Proceeding without adequate safety for Defendants is improper.

Plaintiffs complain that nearby construction is affecting their houses, but many cases in the injunction context involve parties who stand to lose their house altogether. In such cases, courts routinely require bonds to halt foreclosures, even though the homeowners at issue presumably lack meaningful funds and are facing the complete loss of their home. *See, e.g., Sherman v. Bank of America Corp.*, 2014 WL 12857987 at \*7 (N.D. Ga. July 16, 2014) (refusing to enjoin foreclosure because movant did not offer to tender security); *Houchins v. McCalla Raymer, LLC*, 2015 WL 12748646 at \*7 (N.D. Ga. April 10, 2015) (same); *Solomon*, 2025 WL 3909354 at \*2 (same); *Smith v. Wells Fargo Bank, N.A.*, 2017 WL 2857723 at \*6 (M.D. Ala. April 12, 2017) (refusing to enjoin ejectment action for failure to provide security, *inter alia*). Homeowners facing the most serious impacts on their property ownership and facing the direst financial consequences have to provide bonds, so it follows that these Plaintiffs, alleging far less serious intrusions and in presumably more comfortable financial circumstances, should do the same.

Moreover, there is a serious question about whether Plaintiffs should be able to complain about their modest means when they are seeking to control what a remote property owner does with its property. Unlike the wrongful foreclosure cases—where homeowners have to post bonds—these Plaintiffs are reaching out to exert control on a parcel on the other side of the woods and across a four-lane highway. No case finds that a party voluntarily seeking to exert control on remote properties can claim that it cannot afford to post a bond.

The “overriding public concern” exception likewise does not apply here. This is a private action brought by two individual homeowners about the enjoyment of their homes. (Doc. 2 at ¶¶ 9–10). They want to stop private construction on private land situated on the other side of some woods and across a four-lane highway from their house. As such, it does not raise the kind of broad public concerns *Lightsey* and *Anders* contemplate. The Alabama Supreme Court has recently noted that a dispute concerning access to a public road was not a matter of overriding public concern. *Milton v. Haywood*, 393 So. 3d 1156, 1158 (Ala. 2023).

Plaintiffs’ theory—*i.e.*, that any private challenge to a zoning decision constitutes a matter of “overriding public concern”—would swallow Rule 65(c) and render the bond requirement a nullity in any land-use case where the validity of a permit (or any legislative act) is at issue. They cite no authority supporting that novel theory. *See* Doc. 27 at 2 (citing only *Anderson* and *Lightsey*).

**V. The requested injunction and attached evidence requires a substantial bond.**

While the precise amount of a bond need not be decided now, an injunction halting construction would inflict severe, quantifiable harm. Economic losses of approximately \$500,000 per day to Hoar and its subcontractors, along with displacement of approximately 150 workers at present, would result from halting the Project. If necessary, Defendants will offer additional testimony during the hearing regarding the extent to which Nebius has already invested and committed substantial funds to the Project in reliance on validly issued permits.

**CONCLUSION**

As a threshold matter, the Court should assess whether Plaintiffs can post a meaningful bond protecting against the massive costs such an injunction would impose on Defendants if they were to be wrongly enjoined. If not, Plaintiffs’ request for a preliminary injunction should be

denied without a hearing, as it was in *Black Warrior*. No bond can issue without security, and none of the narrow exceptions to the security requirement apply to this private-party dispute.

Respectfully submitted this 8th day of July, 2026.

*/s/Andrew B. Johnson*

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2026, I filed the foregoing using the Alacourt system.

/s/ Andrew B. Johnson  
OF COUNSEL

# **EXHIBIT A**

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ROBERT B. SANSOME and JOHN )  
BENJAMIN HILLEY, )  
 )  
Plaintiffs, )  
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HOAR CONSTRUCTION, LLC; )  
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NEBIUS, INC.; THE CITY OF )  
BIRMINGHAM, ALABAMA; and )  
FICTITIOUS DEFENDANTS A-E, )  
 )  
Defendants. )  
 )

CIVIL ACTION NUMBER:  
CV-2026-902889

AFFIDAVIT OF WILLIAM WATSON

STATE OF ALABAMA  
COUNTY OF JEFFERSON

Personally appeared before me, the undersigned, William Watson, who after being duly sworn, states as follows:

1. I am over twenty-one (21) years of age and am competent to give this affidavit. I have personal knowledge of the matters discussed in this affidavit.
2. I am the Senior Vice President of Hoar Construction, LLC ("Hoar"). Hoar was founded in 1940, Its headquarters are located in Birmingham. Hoar has completed thousands of successful construction projects, and employs more than two hundred people in the State of Alabama. I have personal knowledge of and am familiar with the 300-megawatt data center construction project (the "Project") at issue in this lawsuit.
3. Hoar is the general contractor for the Project. At least eight subcontractors have mobilized on site and are currently working on the Project. Approximately 150 workers, mostly employed by these subcontractors, are working on site, and many more people are working off site

to support the work being performed on the Project. Many of these subcontractors are small, family-owned Alabama-based businesses.

4. If the Project were enjoined by a Court Order, Hoar and its subcontractors would have to stop working on the Project, send their workers home, implement measures to protect completed work, and either demobilize or secure all the construction equipment currently being used to construct the Project. Taking these steps would be expensive. In very general terms, shutting down the Project at this time would result in economic losses of approximately \$500,000.00 per day to Hoar and its subcontractors.

5. The costs and impacts discussed above are separate from, and in addition to, the financial impact to other defendants to the case, including Nebius, Inc. and the City of Birmingham.

6. Throughout the Project, Hoar and its subcontractors have utilized the following noise and dust mitigation measures: utilization of water trucks, wheel washing stations at the exits from the project site, and performance of daily street sweeping with commercial motorized sweepers. These measures have been effective. Hoar monitors noise and dust generated by the Project, and the levels of noise and dust have been reasonable throughout the work and in conformance with the applicable city ordinance performed to date. Hoar and its subcontractors will continue to monitor and mitigate noise and dust throughout the Project.

Further affiant sayeth not.

  
\_\_\_\_\_  
William Watson

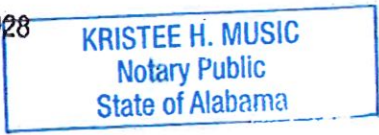
SWORN TO AND SUBSCRIBED before me this the 30<sup>th</sup> day of June, 2026.

Kristee A. Music

NOTARY PUBLIC

My Commission Expires August 16, 2028

My Commission Expires: \_\_\_\_\_.



**CERTIFICATE OF SERVICE**

Served on counsel appearing in open court on June 30, 2026.

/s/ Andrew B. Johnson

OF COUNSEL