

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

<b>RICHARD GOODEN, <i>et al.</i>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 2:05-CV-02562-WMA</b>
	)	
<b>NANCY WORLEY, <i>et al.</i>,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER**

Plaintiffs Richard Gooden, Andrew Jones, and Ekeysto Doss have sued defendants Nancy Worley, in her official capacity as Alabama Secretary of State; Nell Hunter, in her official capacity as Jefferson County Voter Registrar; and Anita Gibson, Walter Long, and Molly Meadows, in their official capacities as Houston County Voter Registrars. The plaintiffs seek a declaratory judgment that the defendants are violating Section V of the Voting Rights Act of 1965, 42 U.S.C. § 1973c<sup>1</sup> by denying the plaintiffs the right to vote because of their felony

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<sup>1</sup>Section V of the Voting Rights Act states, in relevant part:  
Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate

convictions. Plaintiffs have also requested an award of reasonable attorneys' fees, expenses, and costs under 42 U.S.C. §§ 19731(e) and 1988. The parties have stipulated to the relevant facts in this case and both sides have moved for the court to enter a judgment as a matter of law.

“Summary judgment is appropriate if the record shows no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. When deciding whether summary judgment is appropriate, all evidence and reasonable factual inferences drawn therefrom are reviewed in a light most favorable to the non-moving party.” *Korman v. HBC Fla., Inc.*, 182 F.3d 1291, 1293 (11th Cir. 1999) (internal quotations and citations omitted).

Article VIII, section 177(b) of the Alabama Constitution provides that a person who has been convicted of a felony “involving moral turpitude” shall not have the right to vote until their civil rights have been restored. Normally, a convicted felon proves that his civil rights have been restored with a Certificate of Eligibility to Register to Vote (“Certificate of Eligibility”) from the Board of Pardons and Paroles. When Alabama adopted this provision to its constitution, it received appropriate preclearance from the U.S. Attorney General pursuant to Section V of the

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official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made.

(emphasis in original). “To determine whether there have been changes with respect to voting, we must compare the challenged practices with those in existence before they were adopted. Absent relevant intervening changes, the Act requires us to use practices in existence on November 1, 1964, as our standard of comparison.” *Presley v. Etowah County Comm'n*, 502 U.S. 491, 495, 112 S. Ct. 820, 825, 117 L. Ed. 2d 51 (1992).

## Voting Rights Act.

The Alabama Attorney General clarified in Op. Ala. Att’y Gen. 2005-092 (2005) which felonies would require a Certificate of Eligibility (i.e., which involved moral turpitude) as a prerequisite for felons registering to vote. While the Attorney General did not provide an exhaustive list of felonies involving moral turpitude, he did provide some examples and specifically stated that felony possession of drugs and driving under the influence were not felonies involving moral turpitude. Furthermore, the Attorney General stated that if a felon had been convicted of a crime not involving moral turpitude, that individual remained eligible to vote and therefore ineligible to apply for a Certificate of Eligibility. Nevertheless, the plaintiffs contend that the Secretary of State directed registrars in twenty counties to not register any felon to vote without a Certificate of Eligibility, regardless of whether the felons had committed felonies involving moral turpitude. The plaintiffs all allege that they were not permitted to register to vote without Certificates of Eligibility because of felony convictions that did not involve moral turpitude.<sup>2</sup> The plaintiffs allege that the defendants, in refusing to apply the moral turpitude qualification to when a Certificate of Eligibility is required, are employing a procedure that violates the Voting Rights Act because the U.S. Attorney General has not precleared the procedure pursuant to 42 U.S.C. § 1973c. Plaintiffs contend that such preclearance is required because the defendants’ refusal to apply the moral turpitude qualification constitutes a change from Alabama’s status quo reflected in article VIII, section 177.

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<sup>2</sup> The parties have stipulated that the plaintiffs were convicted of the following: Gooden was convicted of driving under the influence of alcohol (DUI), Jones was convicted of felony possession of drugs, and Doss was convicted of felony possession of marijuana and theft of property in the second degree.

The defendants dispute plaintiffs' claims. Worley argues that, as the Secretary of State, she merely provided advice and had no authority to direct the registrars, and thus such advice could not constitute a change in voting practices. Furthermore, her advice was merely to maintain, not change, the status quo. Gibson, Long, and Meadows adopt this argument and additionally argue that the federal court should abstain from exercising jurisdiction over Doss's claim because Doss had an effective means of redress through state courts. They also point out that Doss's request for relief is moot because the Houston County Board of Registrars has already adopted Doss's requested changes. We do not need to address these arguments' merits, however, because we agree with all of the defendants in their assertion that the plaintiffs lack standing to bring this cause of action.

In the context of redistricting litigation, the Supreme Court has explained standing requirements as follows:

It is by now well settled that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of. . . . Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

*United States v. Hays*, 515 U.S. 737, 742-43, 115 S. Ct. 2431, 2435, 132 L. Ed. 2d 635 (1995) (internal quotations and citations omitted). A “generalized grievance against allegedly illegal government conduct” cannot support standing. *Id.* Furthermore, declaratory relief is not available to remedy past conduct, when there is no claim that an ongoing violation of law is harming the plaintiffs. *See Green v. Mansour*, 474 U.S. 64, 73, 108 S. Ct. 423, 428, 88 L. Ed. 2d 371 (1985). The party claiming standing has the burden of establishing it. *Hayes*, 515 U.S. at

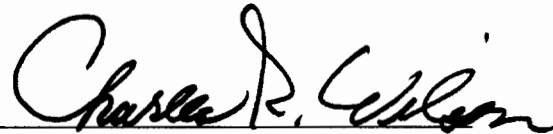
743, 115 S. Ct. at 2435.

None of the plaintiffs have standing in this case because they are either currently registered to vote or would not have been eligible to vote had they obtained their requested relief. Doss has no standing because one of his felony convictions was for theft of property in the second degree, which is a crime involving moral turpitude. *See Ex parte Bankhead*, 585 So. 2d 112, 122 (Ala. 1991) (“Larceny (now known in our Code as theft), petit or grand, is a crime of moral turpitude . . .”). Therefore, even if Doss obtained the relief requested, he would still be ineligible to vote because he was convicted of a crime of moral turpitude and has not obtained a Certificate of Eligibility. Gooden and Jones also do not have standing because they were both extended the right to vote prior to filing their action in this case. When the complaint was filed on December 19, 2005, the Circuit Court of Jefferson County had already entered an order compelling the Jefferson County Registrar to permit Gooden to register to vote. The Jefferson County Registrar had already registered Jones to vote.

None of the plaintiffs have a current injury that a favorable decision could remedy. Because the plaintiffs are basically complaining of past conduct at this point in the litigation, they do not have standing.

Accordingly, plaintiffs request for declaratory relief is DENIED; plaintiffs’ request for reasonable attorneys’ fees, expenses, and costs is DENIED; all other relief that the plaintiffs have requested is DENIED; and the defendants’ motions for summary judgment are GRANTED. Costs are taxed against the plaintiffs.

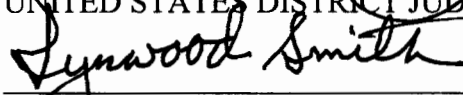
DONE this 26<sup>th</sup> day of May, 2006.



CHARLES R. WILSON  
UNITED STATES CIRCUIT JUDGE



WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE



C. LYNWOOD SMITH  
UNITED STATES DISTRICT JUDGE