ALABAMA STATE CONFERENCE OF THE NATIONAL ASS'N FOR THE ADVANCEMENT OF COLORED PEOPLE V. STATE OF ALABAMA: ELEVENTH CIRCUIT FINDS THAT A PRIVATE CITIZEN CAN BRING SUIT AGAINST THE STATE OF ALABAMA UNDER THE VOTING RIGHTS ACT

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In *Alabama State Conference of the NAACP v. State of Alabama*, the United States Court of Appeals for the Eleventh Circuit addressed a private citizen's ability to sue a state in federal court.[1] Generally, suits against a state by its own citizens are prohibited under the Eleventh Amendment, but there are exceptions to this general rule.[2] In this case, the appeals court found that the Voting Rights Act gives private citizens a right of action against states.[3] The court agreed with its sister circuits which had already ruled on this issue, concluding it is "difficult to conceive of any reasonable interpretation . . . that does not involve abrogation of the state's immunity."[4]

In 2016, the NAACP filed a voting rights lawsuit challenging the way judges are elected.[5] In Alabama, judges for all three of Alabama's appellate courts are elected at-large.[6] The suit alleges at-large elections are racially discriminatory towards African Americans in Alabama and violate the Voting Rights Act of 1965 ("VRA").[7] The lawsuit bases its allegations on the fact that no African American has ever served on the Alabama Court of Criminal Appeals, Alabama Court of Civil Appeals, and only three African Americans have ever served on the Alabama Supreme Court.[8] The complaint alleges that, as a result of at-large voting, no African American has won election to the highest courts in Alabama in over twenty years despite the fact that one-quarter of Alabama's population is African American.[9] The lawsuit

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[1] Ala. State Conf. of the NAACP v. Alabama, 949 F.3d 647, 649 (11th Cir. 2020).

[2] *Id.*; *see generally* Hans v. Louisiana, 134 U.S. 1, 10 (1890).

[3] *NAACP*, 949 F.3d at 649.

[4] *Id.* at 652 (internal quotation marks omitted). Two days after the Eleventh Circuit ruled that Alabama could be sued by private citizens, a District Judge in the Middle District of Alabama ruled that the at-large election method does not violate Section 2 of the VRA. Ala. State Conf. of the NAACP v. Alabama, 2020 WL 583803 at *72–73 (M.D. Ala. Feb. 5, 2020).

[5] Kent Faulk, *Lawsuit: Current Election System of Alabama Appellate Judges Discriminates Against Blacks*, AL.COM (Sept. 7, 2016), https://www.al.com/news/birmingham/2016/09/voting_rights_lawsuit_seeks_to.html.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

claims that at-large elections "unlawfully dilute[] the voting strength of African Americans and prevents them from electing candidates of their choice."[10]

The NAACP filed suit in the District Court for the Middle District of Alabama.[11] Alabama moved to dismiss the lawsuit, arguing the state was immune under the Eleventh Amendment.[12] The district judge refused to dismiss the suit saying, "states may not hide behind the Eleventh Amendment in defending themselves in suits by private plaintiffs for alleged violations of the VRA."[13] A district court's denial of a motion to dismiss on sovereign immunity grounds is immediately appealable.[14]

The Eleventh Amendment has been interpreted by the Supreme Court as a prohibition against suits brought by citizens against a state in federal court.[15] However, this prohibition is not absolute.[16] The Supreme Court has found that "Congress can abrogate state sovereign immunity pursuant to its Fourteenth Amendment enforcement powers to redress discriminatory state action."[17] To determine whether Congress abrogated sovereign immunity, a court must look at whether Congress "(1) expressed its unequivocal intent to do so and (2) acted pursuant to a valid grant of constitutional authority."[18] In this case, the court of appeals found that, in passing the VRA, Congress did both of these things.[19]

To satisfy the first prong, Congress must make it "unmistakably clear" in the statute its intention to abrogate sovereign immunity.[20] The intent must be textual, but an abrogation clause is not necessary—the courts may look to the entire statute and its amendments but courts cannot consider the legislative history.[21] The court of appeals found that, when read in completeness, the VRA clearly intends to abrogate sovereign immunity.[22] When initially passed, Section 3 of the VRA only gave enforcement power to the attorney general.[23] But, after being amended in 1975, the VRA explicitly grants enforcement power to "the Attorney General or an aggrieved

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[10] *Id.*
[11] *NAACP*, 949 F.3d at 647.
[12] Ala. State Conf. of the NAACP v. Alabama, 264 F. Supp. 3d 1280, 1291 (M.D. Ala. 2017).
[13] *Id.* at 1293.
[14] *NAACP*, 949 F.3d at 649.
[15] *Id.*
[16] *Id.*
[17] *Id.*; *see generally* Fitzpatrick v. Bitzer, 427 U.S. 445, 448 (1976).
[18] *NAACP*, 949 F.3d at 650 (internal quotation marks omitted).
[19] *Id.* at 652.
[20] *Id.* at 650.
[21] *Id.*
[22] *Id.* at 652.
[23] *Id.* at 651.

person."[24] The appeals court found that Sections 2 and 3 of the VRA "read together, impose[] direct liability on States for discrimination in voting and explicitly provides remedies to private parties to address violations under the statute."[25]

The second prong requires that Congress acted pursuant to a valid grant of power when abrogating state sovereign immunity.[26] The VRA was implemented to enforce provisions of the Fifteenth Amendment.[27] Although the Supreme Court has found that Congress may abrogate a state's immunity when acting under its enforcement powers of the Fourteenth Amendment, the Court has never determined if sovereign immunity can be abrogated under the Fifteenth Amendment.[28] Section Five of the Fourteenth Amendment and Section Two of the Fifteenth Amendment "using identical language, authorize Congress to enforce their respective provisions by appropriate legislation."[29] The court of appeals reasoned that, if the Fourteenth Amendment allows Congress to abrogate immunity, the Fifteenth Amendment must provide a similar power.[30] The identical enforcement provisions of both the Fourteenth and Fifteenth Amendments lend themselves to identical interpretations which allows for sovereign immunity to be abrogated.[31]

The Supreme Court has repeatedly recognized that the Civil War Amendments allow Congress to intrude into "spheres of autonomy previously reserved to the states."[32] Similarly, the VRA was intended "to intrude on state sovereignty to eradicate state-sponsored racial discrimination in voting."[33] Because the VRA unequivocally abrogates state sovereign immunity and the Fifteenth Amendment permits this intrusion, the Eleventh Circuit Court of Appeals found that Alabama is not immune from suit under the VRA and can be sued by private citizens.[34]

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[24] *NAACP*, 949 F.3d at 651.
[25] *Id.*at 652.
[26] *Id.* at 654.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *NAACP*, 949 F.3d at 654; *see generally* Mixon v. Ohio, 193 F.3d 389, 399 (6th Cir. 1999); OCA-Greater Hous. v. Texas, 867 F.3d 604, 614 (5th Cir. 2017).
[31] *NAACP*, 949 F.3d at 655 (quoting *Fitzpatrick*, 427 U.S. at 455) (internal quotation marks omitted).
[32] *Id.* at 654.
[33] *Id.* at 655.
[34] *Id.*