

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

CIVIL ACTION NO.: 2:25-cv-00352-ECM-JTA

HONORABLE MAYOR RANDALL L. WOODFIN, officially as Mayor of the City of Birmingham and individually as a citizen and ratepayer for water services provided by the Birmingham Water Works Board; CLINTON P. WOODS, officially as a Birmingham City Council member and individually as a citizen and ratepayer for water services provided by the Birmingham Water Works Board; HUNTER WILLIAMS, officially as a Birmingham City Council member; VALERIE A. ABBOTT, officially as a Birmingham City Council member and individually as a citizen and ratepayer for water services provided by the Birmingham Water Works Board; JONATHAN T. (“J.T.”) MOORE, officially as a Birmingham City Council member and individually as a citizen and ratepayer for water services provided by the Birmingham Water Works Board; DARRELL O’QUINN, officially as a Birmingham City Council member and individually as a citizen and ratepayer for water services provided by the Birmingham Water Works Board; CRYSTAL SMITHERMAN, officially as a Birmingham City Council member; WARDINE T. ALEXANDER, officially as a Birmingham City Council member; CAROL E. CLARKE, officially as a Birmingham City Council member; LATONYA A. TATE, officially as a Birmingham City Council member and individually as a citizen and ratepayer for water services provided by the Birmingham Water Works Board and THE CITY OF BIRMINGHAM, a municipal corporation,

Plaintiffs,

vs.

GOVERNOR KAY IVEY, officially as Governor of the State of Alabama; LT. GOVERNOR WILL AINSWORTH, officially as Lieutenant Governor of the State of Alabama; STEVE MARSHALL, officially as Alabama Attorney General; JAMES A. (JIMMIE) STEPHENS, officially as President of the Jefferson County Commission; JEFFERSON COUNTY COMMISSION, a governmental entity; SHELBY COUNTY COMMISSION, a governmental entity; BLOUNT COUNTY COMMISSION, a governmental entity; WALKER COUNTY COMMISSION, a governmental entity; ST. CLAIR COUNTY COMMISSION, a governmental entity; BILL MORRIS, officially as a member

of the Regional Water Board; PHILIP WIEDMEYER, officially as a member of the Regional Water Board; DAVID STANDRIDGE, officially as a member of the Regional Water Board; JEFFERY BRUMLOW, officially as a member of the Regional Water Board; THOMAS HUDSON, JR., officially as a member of the Regional Water Board,

Defendants.

JURY TRIAL REQUESTED

**FIRST AMENDED COMPLAINT FOR PRELIMINARY INJUNCTION,
PERMANENT INJUNCTION, AND DECLARATORY RELIEF**

INTRODUCTION

1. This is an action for legal, equitable, and declaratory relief. This action is brought to seek a declaration that Senate Bill 330, now Act 2025-297, violated the United States Constitution and the Constitution of the State of Alabama. This action is also to enjoin, restrain, and otherwise prevent the Defendants from implementing and enforcing Act 2025-297. This action is to stay the operation, enforcement, execution, and application of Act 2025-297. The Plaintiffs request a trial by jury of all triable issues.

PARTIES

2. Plaintiff, the Honorable Mayor Randall L. Woodfin, is Mayor of the City of Birmingham, citizen, and ratepayer for water services provided by the Birmingham Water Works Board.

3. Plaintiff, Clinton P. Woods, is a Birmingham City Council member, citizen, and ratepayer for water services provided by the Birmingham Water Works Board.

4. Plaintiff, Hunter Williams, is a Birmingham City Council member, citizen.

5. Plaintiff, Valerie A. Abbott, is a Birmingham City Council member, citizen, and ratepayer for water services provided by the Birmingham Water Works Board.

6. Plaintiff, Jonathan T. (“J.T.”) Moore, is a Birmingham City Council member, citizen, and ratepayer for water services provided by the Birmingham Water Works Board.

7. Plaintiff, Darrell O’Quinn, is a Birmingham City Council member, citizen, and ratepayer for water services provided by the Birmingham Water Works Board.

8. Plaintiff, Crystal Smitherman, is a Birmingham City Council member and citizen.

9. Plaintiff, Wardine T. Alexander, is a Birmingham City Council member and citizen.

10. Plaintiff, Carol E. Clarke, is a Birmingham City Council member, citizen and ratepayer for water services provided by the Birmingham Water Works

Board.

11. Plaintiff, LaTonya A. Tate, is a Birmingham City Council member, citizen, and ratepayer for water services provided by the Birmingham Water Works Board.

12. The City of Birmingham is an Alabama municipal corporation.

13. Defendant, Kay Ivey, is over the age of nineteen and is the Governor of the State of Alabama.

14. Defendant, William Ainsworth, is over the age of nineteen and is the Lieutenant Governor of the State of Alabama.

15. Defendant, Steven Marshall, is over the age of nineteen and is the Attorney General of the State of Alabama.

16. Defendant, James A. Stephens, is over the age of nineteen and is the President of the Jefferson County Commission.

17. Defendant, Jefferson County Commission, is a governmental entity within Jefferson County, Alabama, that is a body corporate under Ala. Code § 11-1-2.

18. Defendant, Shelby County Commission, is a governmental entity within Shelby County, Alabama, that is a body corporate under Ala. Code § 11-1-2.

19. Defendant, Blount County Commission, is a governmental entity within Blount County, Alabama, that is a body corporate under Ala. Code § 11-1-2.

20. Defendant, Walker County Commission, is a governmental entity within Walker County, Alabama, that is a body corporate under Ala. Code § 11-1-2.

21. Defendant, St. Clair County Commission, is a governmental entity within St. Clair County, Alabama, that is a body corporate under Ala. Code § 11-1-2.

22. Defendant, Philip Wiedmeyer, is over the age of 19, is a member of the Regional Water Board, and is a resident of Vestavia Hills in Jefferson County, Alabama.

23. Defendant, Bill Morris, is over the age of 19, is a member of the Regional Water Board, and, based upon information and belief, is a resident of Jefferson County.

24. Defendant, Tommy Hudson, is over the age of 19, is a member of the Regional Water Board, and is a resident of Mountain Brook in Jefferson County, Alabama.

25. Defendant, Jeffery Brumlow, is over the age of 19, is a member of the Regional Water Board, and is a resident of Shelby County, Alabama.

26. Defendant, David Standridge, is over the age of 19, is a member of the Regional Water Board, and is a resident of Blount County, Alabama.

JURISDICTION AND VENUE

27. Jurisdiction is proper in the United States District Court for the Middle District of Alabama, pursuant to 28 U.S.C.A. §§ 2201, 1331, 1343, 1343(a)(3), (a)(4), supplemental jurisdiction under §1367(a), and Federal Rule of Civil Procedure 65. “Pendent jurisdiction exists whenever there is a claim ““arising under [the] Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority,” and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional “case.””” *Transcontinental Leasing, Inc. v. Michigan Nat’l Bank of Detroit*, 738 F.2d 163 165 (6th Cir. 1984) (quoting United States Const., Art. III, § 2; other internal citation omitted). A state claim “is part of the same case or controversy as a federal claim if it arises out of the same transaction or occurrence as the federal claim. *Barnett v. Sylacauga Autoplex*, 973 F. 3d 1358, 1368 (N.D. Ala. 1997).

28. Jurisdiction is also proper under 42 U.S.C. § 1983.

29. Venue proper is under U.S.C.A. § 1391.

I. FACTUAL BACKGROUND

A. The Formation of Birmingham Water Works

30. Seventy-five years ago, on or about November 21, 1950, three individual electors and property owners of the City of Birmingham -- N. Cooper

Green, J.W. Morgan and C.E. Armstrong (the “Incorporators”) -- incorporated a company named “The Water Works Board of the City of Birmingham” (hereinafter the “Water Works”) to acquire and operate the privately owned Birmingham Waterworks Company.

31. This planned acquisition and operation is outlined in the first four paragraphs of Article IV of the Articles of Incorporation (“Articles” or “Charter”). (See Exh. A, the “Original Articles”).

32. The Incorporators formed, organized and incorporated the Water Works as “electors” and “property owners” of the City, called “natural persons” in the enabling statute --Act 686 of 1949.

B. The Water Works’ Corporate Structure

33. Public corporations like the Water Works are distinct legal entities or “persons” for the 14th Amendment. *See Water Works Bd. of Leeds v. Huffstutler*, 292 Ala. 669, 677, 299 So.2d 268, 275-76 (1974) (adopting the order of the trial court, which stated that a water board was “an entity separate and independent from the city which it serves”).

34. Subject to the Mayor’s and the Birmingham City Council’s appointment of all board members and approval of all amendments to the articles, the City authorized the Water Works to supply potable water to Birmingham and adjacent areas.

35. Exhibit A sets forth the original articles of incorporation.

36. The primary purpose of creating public water utility companies is to be free from constitutional restrictions that are imposed on municipalities. *See Water Works Bd. of City of Arab v. City of Arab*, 231 So. 3d 265, 273 (Ala. 2016) (holding that public corporations like Water Works cannot fulfill their purpose to finance large scale capital improvements required by municipal water and sewer systems without the protection of the contracts clauses from interference with their internal governance as if they were municipal corporations).

37. The Water Works is an independent, nonmunicipal public corporation.

C. 1999 Articles of Incorporation

38. On or about June 1, 1999, the Water Works amended and restated its original Articles of Incorporation (hereinafter the “1999 Articles”), thereby reforming its corporate structure under Ala. Code § 11-50-230 et seq. (Exh. B, the “1999 Articles”).

39. The 1999 Articles also mandated that the Water Works had the power to enter into contracts, set rates, and issue bonds backed by revenues from ratepayers in the City of Birmingham and in adjacent areas. (Exh. B).

40. The 1999 Articles expressly authorized the City of Birmingham to appoint all directors to the Water Works. (Exh. B).

41. The Mayor’s and the Birmingham City Council’s appointment

authority does not affect the Water Works' status as an independent, non-municipal public company.

42. The 1999 Articles, because they authorized the City to appoint all five members of the Water Works, became a contract between the City and the Water Works.

43. Under Alabama law, the Birmingham City Council must consent to any amendments to the Water Works' articles of incorporation.

44. The City did not consent to the amendments to the Water Works' 1999 Articles of Incorporation that are proposed by Act 2025-297. (Exh. C).

45. The 1999 Articles of the Water Works are still enforceable because no ex post facto law can change the charter of a public non-municipal corporation.

46. In 2015, the Alabama Legislature passed Act 2015-164, which illegally changed the composition board of the Water Works to add members appointed by the Jefferson County Mayors' Association, Shelby Count, and Blount County.

D. Legislative History

47. On or about April 17, 2025, the Alabama State Senate introduced Senate Bill 330 ("SB330").

48. On or about May 1, 2025, SB330 obtained final passage in the Alabama House of Representatives.

49. SB330, however, did not pass the House with the two-thirds vote

requirement under Article IV § 111.05 (b)(5) of the Alabama of Constitution.

50. Despite the lack of a two-thirds vote from the House, on or about May 7, 2025, Governor Ivey signed SB330, hereinafter “Act 2025-297.”

51. Thus, Act 2025-297 rushed through both houses of the Alabama Legislature in only five legislative days, making it the fastest piece of legislation to pass both houses in the 2025 session.

52. Prior to Act 2025-297’s introduction in the Alabama State Senate on or about April 17, 2025, it was not advertised in compliance with Article IV, § 104, 106, and 110 of the Alabama Constitution.

E. Legislative Findings in Act 2025-297

53. The Water Works is the only water utility in the State of Alabama that fits the criteria stated in Act 2025-297.

54. Act 2025-297’s “findings” for the takeover of the Water Works’ governing body are based on false allegations of incompetence and mismanagement.

They read as follows:

“Section 1. (a) The Legislature finds and declares, as the basis of this act, all of the following:

(1) Competent and efficient management of municipal water works boards’ potable and raw water systems is strategically important to the health, safety, and economic viability of this state and local governments and the well-being of residents thereof.

(2) Failures in the management of water systems lead to unreasonably high rates that oppress residents and are a barrier to economic development that is vital to improving job opportunities.

(3) Failures in the management of water systems may lead to catastrophic events such as those that have occurred in California; Jackson, Mississippi; Richmond, Virginia; and Detroit, Michigan. Such events may prevent hospitals, fire departments, and other emergency services from operating effectively and result in catastrophic loss of life, property damage, and adverse financial consequences.

(4) Failures of management are more likely to occur in water works boards described in Section 11-50-300, Code of Alabama 1975, 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 individuals served by the municipally controlled water works board.

(5) Transfers of substantial funds by Alabama municipal water works boards to municipalities appointing all or a majority of their board of directors have been approved by the Alabama Supreme Court in defiance of a founding principle of the United States of America that there should be no taxation without representation.”

55. These “findings” are false.

56. According to Moody’s Ratings, S&P Global Ratings, and Fitch Ratings, Water Works has an “AA” credit rating, which is the second highest rating level of the five investment grade ratings: “AAA,” “AA,” “A,” “BBB,” and “BB.” Each rating category has three different sublevels.

57. For comparison, the State of Alabama, the Tuscaloosa Water Board, and the Huntsville Water Board each possess an “AA” credit rating.

58. For contrast, the Water Works carries a higher credit rating than Helena Utilities Board’s water and sewer, which serves portions of Shelby County, and which debt rating was recently downgraded to a BBB rating.

59. Jefferson County Sewer Board also has a BBB credit rating.

60. It is universally accepted in the financial industry that companies with an “AA” rating have strong management.

61. Act 2025-297 then vaguely alleges that mismanagement can lead to higher rates for citizens.

62. However, the legislation does not specify any objective evidence that the Water Works is less well managed than any other water system in Alabama and how that alleged mismanagement leads to higher rates.

63. Before filing for bankruptcy, Jefferson County financed over \$3 billion in losses relating to its sewer management.

64. In the Bankruptcy Plan of Adjustment, the Court confirmed total sewer rate increases for debt service on this \$1.78 billion in losses (accreting to almost \$3 billion in principle) of \$6.6 billion in principal and interest to repay the \$1.78 billion in losses later agreed to be collected by Water Works on the water bill.

65. Currently, the Water Works' water bills include Jefferson County debt service repayments for the billions of dollars in losses and interest attributable to Jefferson County's mismanagement of its sewer system.

66. The State has not taken any action to take over the Jefferson County Sewer system.

67. Moreover, none of the catastrophic natural disasters referenced in Act 2025-297's "findings" justify the termination of Black board members in favor of replacing them with White ones.

68. The disasters cited by the Alabama legislature include California wildfires burning with alleged insufficient water pressure to fight the fires; Jackson, Mississippi, where in late August 2022, severe storms and flooding caused the Water Treatment Plant in Jackson, Mississippi, to fail, leaving over 150,000 people without safe drinking water; Richmond, Virginia, where a power outage caused a shutdown of major pumps; and Detroit, Michigan, or, more than likely, Flint, Michigan.

69. All of these catastrophes are fact specific and unrelated to Alabama.

70. Those catastrophes do not demonstrate that the Water Works is mismanaged.

71. No facts support the "finding" that Birmingham's expansion of its water system to service surrounding areas has been mismanaged.

72. In fact, the expansion of the Water Works is indicative of the quality of services provided and the active market for its services.

73. The legislative “finding” in Act 2025-297 that the Water Works is more likely to be mismanaged 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 individuals served by the municipally controlled water works board” is pure speculation with no data supporting it.

74. Act 2025-297 also claims that the Water Works has transferred excess money to the City.

75. That claim is patently false.

76. The legislative findings in Act 2025-297 simply do not “hold water.”

F. Impact of Act 2025-297

77. Water is a critical component of economic development, and Birmingham is the economic engine of the state, contributing about 30% of the entire state’s gross domestic product.

78. Act 2025-297 converts the Birmingham Water Works Board into a regional water board.

79. Act 2025-297 also restructures the Birmingham Water Works Board and diminishes the oversight and appointing authority of the City of Birmingham, leading to consequential decisions that do not align with the needs of City residents.

80. Birmingham built the water utility and is more invested than any other community in its success.

81. The start-up costs and the bulk of the ongoing costs of maintaining and upgrading the Water Works throughout the years have fallen on the customers in the City of Birmingham.

82. The valid Water Works has nine members, six of whom are appointed by City officials.

83. The Water Works currently includes directors appointed by the Jefferson County Mayors Association and both Shelby County and Blount County.

84. The City of Birmingham has 90,411 Water Works customers.

85. Jefferson County has 202,316 Water Works customers, and Shelby County has 13,694 Water Works customers. However, those figures include the 90,411 Water Works in the City of Birmingham, which is located in both Jefferson County and Shelby County.

86. Blount County has only 592 Water Works customers; and Walker County has only 73 Water Works customers.

87. Approximately 67% of Birmingham residents identify as Black, as compared to approximately 43.4% of Jefferson County residents and 14.7% of Shelby County residents.

88. Only 2.0% of Blount County residents are Black, and only 6.3% of

Walker County residents are Black.

89. Act 2025-297 reduces the power to appoint board members only for the predominantly Black City of Birmingham, reducing its appointment power by 67%.

90. Act 2025-297 reduces the predominantly Black City of Birmingham's appointment power from six members to two, awards appointing authority to the predominantly White counties, and awards appointment authority to Alabama government officials, all of whom are White.

91. The implication that any perceived problems with the Water Works Board's management are due to the majority of Board members being appointed by Birmingham is wholly unsupported, is based strictly on the racial makeup of Birmingham being more than 60% Black, presents issues of constitutionality and fundamental fairness, constitutes blatant racial discrimination, and is an affront to Birmingham's elected leadership and its citizens.

92. Act 2025-297 substantially dilutes (by 67%) the ability of Plaintiffs Woodfin, Clarke, O'Quinn, Woods, Moore, Abbott, and Tate in their individual capacities (hereinafter the "Ratepayer Plaintiffs") to select their representation to the Birmingham Water Works Board.

93. This dilution treats the Ratepayer Plaintiffs in the predominately Black City of Birmingham differently than ratepayers in predominately White counties without establishing a compelling government interest.

94. Further, the City of Birmingham has granted certain franchise rights to the Birmingham Water Works Board to operate in the public rights of way of the City; these franchises include payment of franchise fees to the City for those rights.

95. Franchise fees are not payments for goods and services and, thus, are prohibited by Act 2025-297.

96. There is no legitimate basis for the apparent assumption that management of the Water Works will be improved if Birmingham has fewer appointments.

**COUNT I-- ACT 2025-297 VIOLATES THE
CONTRACTS CLAUSE OF THE UNITED STATES CONSTITUTION**

97. The Plaintiffs hereby incorporate by reference the allegations and averments contained in paragraphs thirty (30) through ninety-six (96) as if fully set forth herein.

98. This count is being brought by the City of Birmingham, Mayor Woodin, City Councilors Clarke, Abbott, Smitherman, Tate, O'Quinn, Williams, Woods, Moore, and Alexander in their official capacities (hereinafter referred to as the "City Plaintiffs").

99. This count is being brought against all Defendants.

100. Act 2025-297 violates the Contracts Clause of the United States Constitution.

101. The Contract Clause provides that “[n]o state shall...pass any...Law impairing the Obligation of Contracts...” U.S.C.A. Const. Art. 1, § 10, cl.

102. A similarly worded provision in the Alabama Constitution states that “no ex post facto law, nor any law, impairing the obligations of contracts...shall be passed by the legislature...” Ala. Const. Art. 1, § 22.

103. Pursuant to the 1999 Articles, the City Plaintiffs have the express contractual right to appoint and fill vacancies of board members of the Water Works.

104. The County Commission defendants and Defendant Stephens appointed members to the new, invalid regional board, which interferes with the City Plaintiffs’ contractual rights.

105. Defendant Ivey enacted and appointed members to the new, invalid regional board, which interferes with the City Plaintiffs’ contractual rights.

106. On or about May 6, 2025, the City of Birmingham approved a “Buy-Sell” Agreement authorizing the sale of the Water Works assets back to the City of Birmingham. (Exh. D).

107. Act 2025-297 illegally permits the Defendants to substantially impair the Buy-Sell agreement between the City Plaintiffs and the Water Works.

108. On or about May 7, 2025, the Water Works approved the “Buy-Sell” contract.

109. On or about May 14, 2025, the Regional Board, under the alleged authority provided by Act 2025-297, voted to rescind the “Buy-Sell” contract.

110. Defendants Wiedmeyer, Morris, Hudson, Brumlow, and Standridge interfered with the City’s contractual rights.

111. Act 2025-297 illegally permits the Defendants to substantially impair the City Plaintiffs’ contractual agreements with the Water Works in that the legislation eliminates the City Plaintiffs’ right to approve amendments to the Water Works’ articles of incorporation. §11-50-232(b), Ala. Code 1975.

112. Act 2025-297 illegally allows the Defendants to eviscerate the City Plaintiffs’ reversionary property right as established under §11-50-237(c) of the Alabama Code.

113. Act 2025-297 illegally permits the Defendants to substantially and unconstitutionally impair the franchise agreements between the City of Birmingham and the Water Works, as well as any franchises granted by other municipalities to the Water Works.

114. Under Section 3 of SB330, §11-50-300.06 provides:

“(c)(1) A regional board may not make payments to any municipality, county, or other entity except for reasonable consideration in payment for goods or services required in the operation or management of the systems operated by the regional board.

“(2) The Attorney General shall enforce this subsection by filing a complaint seeking to prevent or to recoup amounts

paid by the regional board in violation of this subsection and to obtain other remedies as may be appropriate under the circumstances, in the Circuit Court of Montgomery County, which shall have exclusive jurisdiction of the matter.’”

115. The City of Birmingham has granted certain franchise agreements to the Water Works to operate in the public rights of way of the City. These agreements include payment to the City for those rights. A franchise is not “goods or services,” it is consent to and grant of a privilege granted by sovereign authority.

116. Section 11-50-300.06 (c)(1) and (2) illegally allow the Defendants to infringe on the City’s right to control the operation of public utilities and private enterprises in its rights of way under Ala. Const. Art. XII, section 220, which states:

“No person, firm, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys, or public places of any city, town, or village for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of such city, town, or village.”

117. In *City of Mobile v. Farrell*, 158 So. 539, 540-41 (Ala. 1934), the Alabama Supreme Court said:

“The right to use the public streets for hire does not exist in public or private enterprises. The privilege is a grant by sovereign authority, and is what is generally termed a franchise. ... In the United States, the state Legislature has succeeded to sovereign authority in this respect, subject to constitutional limitations. ... The effect of a legislative franchise is limited by constitutional restrictions, such as contained in sections 22, 220, and 228, Constitution of 1901. **Section 220 was not intended to divest the state of its sovereign power and invest it in cities. But it means that the right of the Legislature to grant a franchise for the use of streets in a city or town for**

a public utility or private enterprise is subject to the consent of such city or town. (Emphasis added; internal citations omitted.)”

118. Further, as utility franchises are granted through agreements that include payment for the privilege to use the public rights of way, §11-50-300.06 (c)(1) and (2)’s limiting payments from the regional board to a municipality only to goods and services impair those existing franchise agreements in violation of Ala. Const. Art. I, § 22.

Section 22 states:

“That no ex post facto law, nor any law, impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the legislature; and every grant or franchise, privilege, or immunity shall forever remain subject to revocation, alteration, or amendment.”

119. Act 2025-297 allows the Defendants to substantially and unconstitutionally impair franchise agreements between the City Plaintiffs and the Water Works, as well as any franchises granted by other municipalities to the Water Works.

120. Act 2025-297’s substantial impairment of the contractual relationship with the Water Works does not serve a reasonable and necessary important public purpose.

121. The Legislative “findings” for the enactment of Act 2025-297 are controverted by the Water Works’ strong credit rating, its expansion into neighboring counties, and the quality of water it provides to its consumers.

122. The catastrophes cited in Act 2025-297’s “findings” are unrelated to Alabama and are based on specific, severe regional events.

123. Those catastrophes do not demonstrate that the Water Works is mismanaged.

124. Act 2025-297 also claims that the Water Works has transferred excess money to the City.

125. This claim is patently false.

COUNT II--EQUAL PROTECTION

126. The Plaintiffs hereby incorporate by reference the allegations and averments contained in paragraphs t thirty (30) through ninety-six (96) as if fully set forth herein.

127. This count is being brought by the Ratepayer Plaintiffs in their individual capacities.

128. This count is being brought against all Defendants.

129. The Equal Protection Clause of the 14th Amendment to the United States Constitution requires the government to treat similarly situated persons in a

similar manner. *Gary v. City of Warner Robins, Ga.*, 311 F.3d 1334, 1337 (11th Cir.2002).

130. The United States Supreme Court has recognized, as recently as 2023, that “Alabama's extensive history of repugnant racial and voting-related discrimination is undeniable and well documented.” *Allen v. Milligan*, 599 U.S. 1, 22, 143 S. Ct. 1487, 1506, 216 L. Ed. 2d 60 (2023) (quoting *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1020 (N.D. Ala. 2022)).

131. True to Alabama legislative history, the selection scheme mandated by Act 2025-297 deprives the Ratepayer Plaintiffs of the effective and meaningful participation in the affairs of the Water Works by diluting their ability to select representation to the Water Works.

132. Act 2025-297 applies exclusively to the Water Works because the Water Works is the only water utility in the State of Alabama that fits the criteria stated in Act 2025-297.

133. Act 2025-297 exclusively dilutes (by 67%) the Ratepayer Plaintiffs' ability to select their representation to the Water Works.

134. The Ratepayer Plaintiffs are residents of the majority Black City of Birmingham.

135. Act 2025-297 treats the Ratepayer Plaintiffs differently than similarly situated ratepayers in predominately White counties.

136. The Defendants have intentionally discriminated against the Ratepayer Plaintiffs, based on race, as is evidenced by the following facts:

- a. Alabama has an extensive history of repugnant racial voting-related discrimination.
- b. Act 2025-297 passed both houses of the Alabama State Legislature in only five legislative days, which is the fastest piece of legislation passed in the 2025 Legislative session.
- c. Act 2025-297 passed the House without the required two-thirds vote.
- d. Act 2025-297 only applies to the Water Works.
- e. Act 2025-297 only dilutes the Ratepayer Plaintiffs' abilities to select representation at the Water Works.
- f. The Ratepayer Plaintiffs are residents of the majority Black City of Birmingham.
- g. Act 2025-297 treats the Ratepayer Plaintiffs differently than similarly situated ratepayers in predominately White counties.
- h. The Water Works' strong "AA" credit rating (a rating that is shared by the State) contradicts Act 2025-297's "findings" of mismanagement or incompetence.
- i. It is universally accepted in the financial industry that companies

with an “AA” rating have strong management.

- j. Act 2025-297’s finding relating to mismanagement leading to unreasonable “high rates that oppress residents and that are a barrier to economic development” is pure speculation and conjecture.
- k. Act 2025-297’s legislative “findings” relating to regionally specific catastrophic events are completely unrelated to the Water Works and have no relation to its management.
- l. There is no objective evidence of the Water Works transferring substantial funds to the City of Birmingham because that “finding” is false.
- m. At least one legislator who voted for Act 2025-297 referred to the City of Montgomery, which is also a majority Black city, as “Monkey Town,” a racially pejorative phrase.
- n. Act 2025-297’s “findings” are pretextual and wholly unsupported by facts relating to the Water Works.
- o. The “findings” substantially undermine any presumption of good faith on part of the Legislature.

p. All of the new, illegal appointments by Defendants to the Regional Board are White/Caucasian, other than those appointed by Plaintiffs.

137. Thus, Act 2025-297 is discriminatory on its face and has a discriminatory purpose and intent, and all Defendants who participate in enforcement or participation related to Act 2025-297 have imputed liability and have perpetrated discriminatory acts against the Ratepayer Plaintiffs.

138. Act 2025-297 illegally allows the Defendants to violate the Equal Protection Clause of the United States Constitution.

COUNT III--EQUAL PROTECTION (CLASS OF ONE)

139. The Plaintiffs hereby incorporate by reference the allegations and averments contained in paragraphs thirty (30) through ninety-six (96) as if fully set forth herein.

140. This count is being brought by the Ratepayer Plaintiffs in their individual capacities.

141. This count is being brought against all Defendants.

142. A ‘class of one’, where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 1074, 145 L. Ed. 2d 1060 (2000).

143. The Alabama legislature has singled out the Water Works, which has been governed by a majority of members appointed by the City of Birmingham, for disparate treatment under Act 2025-297.

144. Act 2025-297 applies exclusively to the Water Works as the Water Works is the only current water utility that fits the criteria stated in the legislation.

145. The Alabama legislature has not sought to restructure or take over other public utility companies with credit ratings equal to or lower than that of the State of Alabama and the Water Works.

146. Act 2025-297 contains “findings” that purportedly justify the Alabama legislature’s actions in that Act. However, those findings are false and/or pretextual and do not constitute a rational basis for the action taken by the Alabama legislature in Act 2025-297.

147. In reducing the City’s power to appoint members to the Water Works, Act 2025-297 deprives the Ratepayer Plaintiffs of the effective and meaningful participation in the affairs of the Water Works by diluting their ability to select representation to Water Works.

148. Act 2025-297 exclusively dilutes (by 67%) the Ratepayer Plaintiffs’ ability to select their representation to the Water Works.

149. Act 2025-297 illegally allows the Defendants to discriminate against the Ratepayer Plaintiffs, impermissibly treating them differently than similarly situated ratepayers without any rational basis.

150. Thus, Act 2025-297 is discriminatory on its face and has a discriminatory purpose and intent, and all Defendants who participate in enforcement or participation related to Act 2025-297 violate the Equal Protection Clause of the United States Constitution.

COUNT IV-- SECTION 1983

151. The Plaintiffs hereby incorporate by reference the allegations and averments contained in paragraphs thirty (30) through ninety-six (96) as if fully set forth herein.

152. This count is being brought by the Ratepayer Plaintiffs.

153. This count is being brought against Defendant Stephens, in his official capacity; Shelby County Commission; Blount County Commission; Walker County Commission; and St. Clair County Commission.

154. Defendant Stephens, Shelby County Commission, Blount County Commission, Walker County Commission, and St. Clair County Commission all acted under the color of state law when appointing members of the Water Works.

155. Defendant Stephens has actively participated in the appointment of Water Works members, or has been present for the appointment of Water Works

members and failed to intervene and prevent others from causing a violation.

156. The illegal and discriminatory appointment of the regional board members has occurred at the direction of Defendant Stephens, or with his direct knowledge and consent.

157. The County Commission Defendants have a custom or policy of racial discrimination.

158. The County Commission Defendants have appointed Water Works members through the decisions of officials with final policymaking authority.

159. The Water Works is a privately formed corporation that, through its original Articles of Incorporation, and as amended in 1999, created a property right in the form of the right to appoint board members.

160. The Ratepayer Plaintiffs have the power to appoint members to the Water Works pursuant to the terms of its articles of incorporation.

161. The power to select the Water Works board members affords property rights to the Ratepayer Plaintiffs.

162. The Ratepayer Plaintiffs have been deprived of their property interests in the Water Works.

163. Defendant Stephens and County Commission Defendants have failed to provide constitutionally adequate procedures of the Ratepayer Plaintiffs' deprivations.

164. The Ratepayer Plaintiffs' fundamental right to enter into contracts has been interfered with by Defendant Stephens and the County Commission defendants.

165. The Ratepayer Plaintiffs have a property right interest in the Water Works, of which they have been deprived by the County Commission Defendants.

166. The Ratepayer Plaintiffs have a contractual and business relationship with the Water Works, of which they have been deprived by the local government defendants.

167. The Ratepayer Plaintiffs have not been provided due process as it relates to these deprivations.

168. Further, Ratepayer Plaintiffs' deprivations, and their constituents, are because of their racial makeup of predominantly Black individuals.

169. All of the new, illegal appointments by the County Commission Defendants to the invalid regional board are White/Caucasian.

170. The Equal Protection Clause requires the government to treat similarly situated individuals the same.

171. Act 2025-297 substantially dilutes (by 67%) the ability of Ratepayer Plaintiffs to select their representation to the Water Works.

172. This dilution treats the Ratepayer Plaintiffs in the predominately Black City of Birmingham differently than ratepayers in predominately White counties

without establishing a compelling government interest.

173. Defendant Stephens and the County Commission Defendants have deprived the Ratepayer Plaintiffs of a property right for a facially discriminatory reason.

COUNT V -- DUE PROCESS

174. The Plaintiffs hereby incorporate by reference the allegations and averments contained in paragraphs thirty (30) through ninety-six (96) as if fully set forth herein.

175. This count is being brought by the City Plaintiffs in their individual capacities.

176. This count is being brought against all Defendants.

177. The Water Works is a privately formed corporation that, through its original Articles of Incorporation, and as amended in 1999, created a property right in the form of the right to appoint board members.

178. The power to select the Water Works members affords the City Plaintiffs a property right that can be enforced under the 14th amendment due process and equal protection clauses.

179. Act 2025-297 has illegally permitted the Defendants to deprive the City Plaintiffs of that property right without due process.

**COUNT VI-- ACT 2025-297 VIOLATES ARTICLE VII, SECTIONS 173
AND 175 OF THE ALABAMA CONSTITUTION**

180. The Plaintiffs hereby incorporate by reference the allegations and averments contained in paragraphs thirty (30) through ninety-six (96) as if fully set forth herein.

181. This count is being brought by all Plaintiffs.

182. This count is being brought against all Defendants.

183. Section 3 of Act 2025-297, authorizing the removal of directors by individual appointing authorities, violates the Alabama Constitution under the Alabama Supreme Court's reasoning in *Roberts v. Fredrick*, 328 So.2d 277 (Ala. 1976).

184. In *Roberts*, the Supreme Court found that the state code provision allowing a mayor, the appointing authority for a housing board, to remove a member of the housing board for cause was repugnant to the Constitution. As a public officer, the Court noted, the housing board member could only be removed pursuant to Ala. Const. Article VII, Sec. 173 and Sec. 175. *Roberts v. Fredrick*, 295 Ala. at 284, 328 So. 2d at 279.

185. Similarly, as the directors of the Birmingham Water Works Board are public officers (*see McCullough v. State ex rel. Burrell*, 352 So. 2d 1121, 1123 (Ala. 1977) (finding that members of a water and sewer board that is organized by law to perform municipal functions are public officers)), they could only be removed from

their positions by the manner and mechanism provided in Sections 173 and 175 of the Alabama Constitution. Removal by individual appointing authorities, as is impermissibly authorized in Act 2025-297, would be repugnant to the state constitution.

186. Act 2025-297 **does not** include severability provisions. Thus, as § 11-50-300.03(i) clearly violates the Alabama Constitution, the entire bill is invalid.

**COUNT VII -- ACT 2025-297 VIOLATES ARTICLE XVII,
SECTIONS 280 OF THE ALABAMA CONSTITUTION**

187. The Plaintiffs hereby incorporate by reference the allegations and averments contained in paragraphs thirty (30) through ninety-six (96) as if fully set forth herein.

188. This count is being brought by all Plaintiffs.

189. This count is being brought against the Alabama Attorney General.

190. Section 11-50-300.03(c)(3) of Act 2025-297 illegally permits “elected public officials” to be appointed as directors on regional boards.

191. Moreover, § 11-50-300.03(j) mandates that each director “shall be entitled to receive compensation of two thousand dollars (\$2,000) per month...as well as reimbursement for necessary expenses actually incurred by him or her in connection with the performance of his or her duties.”

192. By permitting public officials to hold two offices of profit at the same time, Act 2025-297 is violative of Article XVII, § 280 of the Alabama Constitution

(stating that “[n]o person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this state; nor, unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this state, except justices of the peace, constables, notaries public, and commissioner of deeds.”).

193. Again, Act 2025-297 **does not** include severability provisions. Thus, as § 11-50-300.03 clearly violates the Alabama Constitution, the entire bill is invalid.

**COUNT VIII -- ACT 2025-297 VIOLATES ARTICLE XII, SECTION
220 OF THE ALABAMA CONSTITUTION**

194. The Plaintiffs hereby incorporate by reference the allegations and averments contained in paragraphs thirty (30) through ninety-six (96) as if fully set forth herein.

195. This count is being brought by the City Plaintiffs.

196. This count is being brought against all Defendants.

197. The City of Birmingham has granted certain franchise agreements to the Water Works to operate in the public rights of way of the City. These agreements include payment to the City for those rights. A franchise is not “goods or services,” it is consent to and grant of a privilege granted by sovereign authority.

198. §11-50-300.06 (c)(1) and (2) infringe on the City's right to control the operation of public utilities and private enterprises in its rights of way under Ala. Const. Art. XII, section 220.

199. Further, as utility franchises are granted through agreements that include payment for the privilege to use the public rights of way, §11-50-300.06 (c)(1) and (2)'s limiting payments from the regional board to a municipality only to goods and services impair those existing franchise agreements in violation of Ala. Const. Art. I, § 22.

200. Act 2025-297 substantially and unconstitutionally impairs the franchise agreements between the City of Birmingham and the Water Works, as well as any franchises granted by other municipalities to the Water Works. This substantial impairment of the contractual relationship with the Water Works does not serve a reasonable and necessary important public purpose.

COUNT XI -- ACT 2025-297 VIOLATES ARTICLE IV, SECTIONS 104, 106 , and 110 OF THE ALABAMA CONSTITUTION

201. The Plaintiffs hereby incorporate by reference the allegations and averments contained in paragraphs thirty (30) through ninety-six (96) as if fully set forth herein.

202. This count is being brought by all Plaintiffs.

203. This count is being brought against the Alabama Attorney General.

204. Section 104 of Article IV of the Alabama Constitution prohibits the legislature from passing a special, private, or local law which changes the name of any corporation, or amends, confirms, or extends the charter of any private or municipal corporation. Ala. Const. Art. IV, § 104.

205. Any legislation which has application to only one municipality must be advertised prior to introduction according to the provisions of Section 106. Ala. Const. Art. IV, § 110.

206. Pursuant to Section 110, no general law which at the time of its enactment applies to only one municipality of the state shall be enacted, unless notice of the intention to apply therefor shall have been given and shown as provided in Section 106 of this Constitution for special, private or local laws; provided, that such notice shall not be deemed to constitute such law a local law.

207. Act No. 2025-297 has application only to the Municipal Water Board of the City of Birmingham at the time of its passage and there was no advertisement of the local law prior to introduction of SB330.

208. Section 106, Alabama Constitution of 2022 states, “The courts shall pronounce void every special, private, or local law which the journals do not affirmatively show was passed in accordance with the provisions of this section.”

209. Therefore, Act 2025-297 has illegally permitted the Defendants to violate Article IV, Sections 104, 106, and 110 of the Alabama Constitution.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the City Plaintiffs pray that this Honorable Court issues an order granting the following relief:

1. That this Honorable Court would declare that Act 2025-297 violates both the United States and Alabama Constitutions and the Defendants' actions in compliance therewith has violated the Constitutional rights of the Plaintiffs.

2. That this Honorable Court sets a hearing for the consideration of the City Plaintiffs' motion to enjoin, restrain, and otherwise prevent the Defendants from enforcing and/or implementing Act 2025-297.

3. That this Honorable Court would stay the Defendants from enforcing, executing, and applying Act 2025-297.

4. That this Honorable Court awards any other relief it deems appropriate.

Respectfully Submitted,

/s/ Nicole E. King

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2025, the undersigned served a copy of the forgoing on the following by electronically filing same using the CM/ECF system, which will send notification to the following:

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