

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

CASSANDRA SIMON, SYDNEY
TESTMAN, MIGUEL LUNA,
ISABELLA CAMPOS, DANA
PATTON, RICHARD FORDING AND
THE ALABAMA STATE
CONFERENCE OF THE NAACP,

Plaintiffs,

vs.

Case No. 2:25-cv-00067-MHH

KAY IVEY in her official capacity as
Governor of Alabama and President Ex-
Officio of the University of Alabama
Board of Trustees, SCOTT PHELPS in
his official capacity as President Pro
Tempore University of Alabama Board
of Trustees, MIKE BROCK, KAREN
BROOKS, MYLA E. CALHOUN,
RONALD GRAY, JEFF GRONBERG,
O.B. GRAYSON HALL, JR.,
BARBARA HUMPHREY, W. DAVIS
MALONE III, EVELYN VANSANT
MAULDIN, HARRIS MORRISSETTE,
J. STEVEN ROY, KENNETH SIMON,
MARIETTA URQUHART AND
KENNETH VANDERVOORT in their
official capacities as members of the
University of Alabama Board of Trustees

Defendants.

THE BOARD DEFENDANTS' MOTION TO DISMISS

Defendants Kay Ivey, in her official capacity as President Ex-Officio of The Board of Trustees of The University of Alabama, Scott Phelps, in his official capacity as President Pro Tempore of The Board of Trustees of The University of Alabama, and Mike Brock, Karen Brooks, Myla E. Calhoun, Ronald Gray, Jeff Gronberg, O.B. Grayson Hall, Jr., Barabara Humphrey, W. Davis Malone III, Evelyn VanSant Mauldin, Harris Morrissette, J. Steven Roy, Kenneth Simon, Marietta Urquhart, and Kenneth Vandervoort in their official capacities as members of The Board of Trustees of The University of Alabama (hereinafter referred to collectively as “the Board Defendants”) move the Court to dismiss all claims asserted against them in the Complaint (Doc. 1) pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of their Motion, the Board Defendants state as follows:

Counts I-V against the Board Defendants are due to be dismissed for the same reasons that Plaintiffs’ Motion for Preliminary Injunction (Doc. 12) against them is due to be denied, as set forth in the Board Defendants’ Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction (Doc. 26) and Governor Ivey’s Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction (Doc. 27). Specifically:

- Counts I and II are due to be dismissed because, under *Garcetti v. Ceballos*, the Professor Plaintiffs’ classroom speech is government speech that is not

protected by the First Amendment, and, under *Bishop v. Aronov*, the University has the final say over what is and is not taught in its classrooms.

- Count III is due to be dismissed because the Student Plaintiffs have not alleged that their organizations were excluded from the budget allocation process that most student organizations at UAB must complete to receive student organization funding.
- Count IV is due to be dismissed because the Alabama NAACP lacks standing to assert a claim on behalf of unnamed members who allegedly used the Black Student Union (“BSU”) and Safe Zone spaces, and because it has not alleged that any student group has been barred from reserving space or registering events on campus.
- Count V is due to be dismissed because, as explained in Governor Ivey’s brief (Doc. 27), SB 129 is readily understood.

The Board Defendants adopt and incorporate the arguments and authorities from both their and Governor Ivey’s opposition briefs as if set forth fully herein.

Count VI was not raised in Plaintiffs’ Motion for Preliminary Injunction (Doc. 12), and is addressed in the attached Memorandum in Support of this Motion.

WHEREFORE, the Board Defendants respectfully request that all claims asserted against them in the Complaint be dismissed.

Respectfully submitted this 25th day of March, 2025.

/s/ Jay M. Ezelle

Jay M. Ezelle (ASB-4744-Z72J)

Cole R. Gresham (ASB-8993-L74G)

Samuel A. Cochran (ASB-1354-R84D)

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