

(to the extent that they are relevant at all). They do not pertain to the issues that are currently *sub judice*.

2. Plaintiff's Response(s) ultimately prove too much about the nature of the claims that Defendants seek to dismiss. This Court only has jurisdiction to decide cases or controversies within the meaning of U.S. Const. Art. III, § 2; federal courts do not involve themselves in generalized grievances or in the alleged problems of persons who are not parties to the litigation. *See, e.g., Warth v. Seldin*, 422 U.S. 490 (1975) (discussing rules of standing). These principles mean that this case is not, and cannot, be about unrelated rulings by the United States Supreme Court (which assuredly does not make a general practice of consulting with the undersigned or with any of the Defendants prior to issuing its rulings); or the unrelated criminal trial of *City of Guntersville, Alabama v. Rhonda McCoy* – to which, again, Plaintiff and all Defendants except Ms. McCoy are legal strangers;¹ or about the outrage that occurred in Charlottesville; or about generally righting the wrongs of history. This case is, and can be, only about whether the challenged Resolution currently violates the First Amendment to the United States Constitution.

3. The gravamen of the Partial Motion to Dismiss is that the only proper parties to the suit about whether the Resolution violates the Constitution is the

¹Court records show that McCoy was ultimately acquitted of the single harassment charge because the City of Guntersville failed to introduce and prove the existence of the ordinance that she was alleged to have violated.

Commission itself and Sheriff Sims, in his official capacity, to the extent that he is charged with enforcing the same. Plaintiff's refusal to address the relevant law makes appropriately replying to his arguments virtually impossible. As to the various immunity defenses, he appears to be arguing more that they should not apply on principle than that they do not apply under the law. Both his immunity and conspiracy arguments also appear to be suffering from a kind of 'no true Scotsman' fallacy, i.e., even if Defendants were seemingly involved in the legislative process and/or acting within the line and scope of their duties, a 'true' official would not have acted in such a way, so they must be deemed to have been acting outside of the boundaries of their office. This argument would negate the entirety of the intercorporate conspiracy doctrine, and has also been rejected in various immunity analysis. *See, e.g., Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (legislative immunity analysis depends on the character of the act "stripped of all considerations of intent and motive"); *Spencer v. Benison*, 5 F.4th 1222, 1231 (11th Cir. 2021) (discretionary function analysis strips out the allegedly illegal motivations and focuses on the general nature of the action).

4. Plaintiff has clarified that his due process claim (Count IV) is focused on the alleged effects of the Resolution itself. (Doc. 21, pg. 15.) As stated in the original Motion to Dismiss and Brief, this claim is entirely subsumed in the First Amendment

claims and therefore due to be dismissed. *See, e.g., Echols v. Lawton*, 913 F.3d 1313, 1326 (11th Cir. 2019).

WHEREFORE, THESE PREMISES CONSIDERED, all Defendants hereby respectfully request that all claims except the claims against the Marshall County Commission and Sheriff Sims, in his official capacity, alleging that the Resolution is a violation of the First Amendment be dismissed with prejudice.

Respectfully submitted this the 11th day of October, 2022.

s/Jamie H. Kidd Frawley

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CERTIFICATE OF SERVICE

I hereby certify that on this the 11th day of October 2022, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have provided a copy of the same via electronic and U.S. Mail, first-class, postage pre-paid, to the following non-CM/ECF participant:

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s/Jamie H. Kidd Frawley
OF COUNSEL