

*LEWIS V. GOVERNOR OF ALABAMA: ELEVENTH CIRCUIT FINDS PLAINTIFFS  
LACK STANDING IN EQUAL PROTECTION CHALLENGE*

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In *Lewis v. Governor of Alabama*,<sup>1</sup> the U.S. Court of Appeals for the Eleventh Circuit addressed a city-versus-state conflict over minimum wage in Alabama.<sup>2</sup> This debate over minimum wage is a topical one, both in the state and across the country, and proponents on both sides of the issue followed the case closely. However, rather than entering the minimum wage debate and addressing the issue on its merits, the court dismissed the case for a lack of standing and left the door open for continued discussion.<sup>3</sup>

In August 2015, after the Alabama Legislature declined the Birmingham City Council’s (the “Council”) petition to increase the state-wide minimum wage, the Council announced plans to gradually increase the city’s minimum wage from \$7.25 per hour to \$10.10 per hour.<sup>4</sup> Before the increase went into effect, the Alabama House of Representatives introduced House Bill 174, which prohibited local directives on employee benefits and made the federal minimum wage rate the statewide standard, provisions which would effectively nullify the Birmingham ordinance.<sup>5</sup> In response, the Council introduced an ordinance which immediately raised the minimum wage to \$10.10 and imposed a daily penalty on employers for noncompliance.<sup>6</sup> The Alabama Attorney General responded in a press release, writing that the Council “cannot impose [such] an unreasonable restriction on the conduct of business . . . without providing a reasonable period of time to comply.”<sup>7</sup> The Birmingham Mayor signed the ordinance into law, effectively raising the minimum wage in the city.<sup>8</sup> One day later, Alabama enacted HB 174 as Act. No. 2016-18 (the “Act”), voiding the ordinance and effectuating a statewide minimum wage of \$7.25.<sup>9</sup>

Marina Lewis and Antoin Adams (the “Plaintiffs”) are African-American employees in Birmingham who made less than \$10.10 per hour.<sup>10</sup>

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<sup>1</sup> *Lewis v. Governor of Alabama*, 944 F.3d 1287 (11th Cir. 2019).

<sup>2</sup> *Id.* at 1292.

<sup>3</sup> *See id.*

<sup>4</sup> *Id.* at 1292.

<sup>5</sup> *Id.* at 1292–93. *See also* H.B. 174, Reg. Sess. (Ala. 2016).

<sup>6</sup> *Lewis*, 944 F.3d at 1293.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1293–94.

<sup>9</sup> *Id.* at 1294.

<sup>10</sup> *Id.*

The Plaintiffs filed a civil rights action in federal court against the State of Alabama, the City of Birmingham, the Attorney General of Alabama, and the Mayor of Birmingham.<sup>11</sup> Their suit alleged that the Act “was enacted with the intent to discriminate against them on account of their race in violation of the Equal Protection Clause of the Fourteenth Amendment.”<sup>12</sup> Citing statistics indicating that African Americans would be disproportionately affected as well as Alabama’s civil rights history, the Plaintiffs argued the Act “perpetuate[d] Alabama’s *de jure* policy of white supremacy . . . .”<sup>13</sup>

The district court dismissed the Plaintiffs’ complaint.<sup>14</sup> On appeal, the Eleventh Circuit *en banc* was set to consider whether (1) the Plaintiffs had standing, (2) the Attorney General was a proper defendant, and (3) the Plaintiffs’ claims of racial discrimination under the Equal Protection Clause were plausible.<sup>15</sup> The court considered the three requirements for standing— injury in fact, traceability, and redressability<sup>16</sup>—and concluded that the Plaintiffs did not have standing under Article III of the U.S. Constitution.<sup>17</sup>

To satisfy the injury-in-fact element of standing, Plaintiffs must prove that the harm suffered was both “concrete and particularized” and “actual or imminent.”<sup>18</sup> The Plaintiffs’ harm here was the economic loss caused by their employers’ failure to pay a minimum wage of \$10.10.<sup>19</sup> The court applied the well-established precedent that economic loss satisfies the injury-in-fact requirement of standing and concluded that the Plaintiffs had satisfied that particular element.<sup>20</sup>

To satisfy the traceability element of standing, Plaintiffs must show that their injury can be traced to the defendants’ conduct.<sup>21</sup> The Plaintiffs argued that the Alabama Attorney General caused their injuries by “refusing to perform his statutory duty to inform the Legislature and the Governor” that the Act was unconstitutional and by telling employers in the press release that they did not have to comply with the city ordinance.<sup>22</sup> The court disagreed, stating that the Attorney General had no affirmative legal duty “to inform anyone of anything under these circumstances,” because his authority to

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<sup>11</sup> *Id.* at 1294. Lewis and Adams were joined as plaintiffs by the Alabama NAACP, Greater Birmingham Ministries, and African American members of Alabama’s House of Representatives and Senate. *Lewis*, 944 F.3d at 1294.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 1294–95 (internal quotations omitted).

<sup>14</sup> *Id.* at 1295.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1296 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992)).

<sup>17</sup> *Lewis*, 944 F.3d at 1295–96.

<sup>18</sup> *Id.* at 1296 (citing *Lujan*, 504 U.S. at 560).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1297.

examine the constitutionality of Alabama statutes is discretionary.<sup>23</sup> Further, the Attorney General’s press release merely permitted additional time for employers to comply with the ordinance; it did not, as Plaintiffs argued, excuse noncompliance entirely.<sup>24</sup> The court next considered Plaintiffs’ argument that the Attorney General’s enforcement of the Act prevented the City of Birmingham from implementing the ordinance.<sup>25</sup> The court noted that the Act “doesn’t require (or even contemplate) ‘enforcement’ by anyone, let alone the Attorney General.”<sup>26</sup> The Act would only be used by an employer to defend against an employee’s suit.<sup>27</sup> The court also rejected the argument that the Attorney General plays the role of enforcer simply by being the Attorney General: if that argument was upheld, “then [he] could be made a proper party defendant under innumerable provisions of the Alabama Code.”<sup>28</sup> Therefore, the Plaintiffs failed to satisfy the traceability element.<sup>29</sup>

To satisfy the redressability element of standing, the Plaintiffs “must show that it is likely, not merely speculative, that a favorable judgment will redress [their] injur[ies].”<sup>30</sup> The court easily determined that granting the Plaintiffs the relief sought would not directly force their employers to pay them \$10.10.<sup>31</sup> The Plaintiffs’ employers, who were not a party to the suit, are subject to state courts and thus would not be bound by a federal court’s invalidation of the Act.<sup>32</sup> The court then considered whether the indirect effects of a favorable judgment would likely redress the harm, but again found the arguments lacking.<sup>33</sup> The Plaintiffs argued that a favorable judgment would allow Birmingham to enforce the ordinance.<sup>34</sup> However, the court pointed to the city’s “new administration” to show that enforcement of the ordinance was not likely, and reiterated the federal court’s inability to bind the employers.<sup>35</sup> Any redress resulting from a favorable ruling in the Eleventh Circuit would be speculative and unlikely.<sup>36</sup> The court concluded that the Plaintiffs lacked standing and, as such, declined to address the other questions presented.<sup>37</sup>

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<sup>23</sup> *Lewis*, 944 F.3d at 1298.

<sup>24</sup> *Id.* at 1297.

<sup>25</sup> *Id.* at 1298.

<sup>26</sup> *Id.* at 1299.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1300.

<sup>29</sup> *Lewis*, 944 F.3d at 1301.

<sup>30</sup> *Id.* at 1296 (citing *Lujan*, 504 U.S. at 561).

<sup>31</sup> *Id.* at 1301.

<sup>32</sup> *Id.* at 1302.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Lewis*, 944 F.3d at 1302–03 (internal quotation marks omitted).

<sup>36</sup> *Id.* at 1305.

<sup>37</sup> *Id.* at 1306.

Interested parties hoping *Lewis* would encourage the minimum wage conversation were likely disappointed with the court's decision. In fact, the court itself was divided on the best approach: the case was decided on a 7-5 vote, and two dissenting opinions were filed. Judge Wilson criticized the majority for being "overly demanding" in its standing analysis<sup>38</sup> He also claimed the majority had sidestepped the key issue of whether the Act had the effect of "depriving Birmingham's black citizens of equal economic opportunities."<sup>39</sup> Judge Jordan similarly noted that the majority's framing of the issue was "too narrow," and stated that "[i]f the plaintiffs here lack standing, it may be time to rethink the causation and redressability components of Article III standing."<sup>40</sup> The Eleventh Circuit's varied perspectives in this case speaks to the issue of whether the circuit's current standing analysis should prevent plaintiffs from having their day in court—especially on contentious issues of social and economic significance.

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<sup>38</sup> *Id.* at 1321 (Wilson, J., dissenting).

<sup>39</sup> *Id.* at 1321 (Wilson, J., dissenting).

<sup>40</sup> *Id.* at 1321, 1326 (Jordan, J., dissenting).