IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14443-CC

ALABAMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
SHERMAN NORFLEET,
CLARENCE MUHAMMAD,
CURTIS TRAVIS,
JOHN HARRIS,

Plaintiffs-Appellees,

versus

STATE OF ALABAMA,
SECRETARY OF STATE FOR THE STATE OF ALABAMA,

Defendants-Appellants.

On Appeal from the United States
District Court for the Middle District of Alabama

BEFORE: WILSON and BRANCH, Circuit Judges, and VINSON,* District Judge.

BY THE COURT:

Before the Court is Appellants' "Motion to Vacate Decision and Dismiss Appeal as Moot." The motion is GRANTED, IN PART, to the extent the appeal is DISMISSED as moot. The motion is DENIED, IN PART, to the extent Appellants seek vacatur of the Court's February 3, 2020 opinion.

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* Honorable C. Roger Vinson, Senior United States District Judge for the Northern District of Florida, sitting by designation.

BRANCH, Circuit Judge, concurring in part and dissenting in part:

I agree that that we should grant Appellants' motion to dismiss the appeal as moot. But I would also grant the motion to the extent it seeks to have us vacate our February 3, 2020 opinion.

The purpose of vacatur is to vacate an opinion when a case becomes moot pending appeal in order to "prevent a judgment, unreviewable because of mootness, from spawning any legal consequences." *United States v. Munsingwear, Inc.*, 340 U.S. 36, 41, 71 S.Ct. 104, 95 L.Ed. 36 (1950). Therefore, the Supreme Court's "ordinary practice in disposing of a case that has become moot on appeal is to vacate the judgment with directions to dismiss." *New York State Rifle & Pistol Ass'n, Inc. v. City of New York, New York*, No. 18–280, 590 U.S. ____ (2020) (quoting *Lewis v. Continental Bank Corp.*, 494 U. S. 472, 482–483 (1990)).

As this case is now moot, three factors weigh in favor of vacating our prior opinion. First, not vacating the panel opinion would spawn immense legal consequences for Florida, Georgia, and Alabama because they have no state sovereign immunity for any suit brought under Section 2 of the Voting Rights Act. *See Munsingwear*, 340 U.S. at 39–41; *see also Democratic Exec. Comm. of Fla. v. Nat'l Republican Senatorial Comm.*, 950 F.3d 790, 795 (11th Cir. 2020) (declining to vacate a prior stay-panel opinion because it *could not* spawn binding legal

consequences regarding the merits of the case); *see also Hand v. Desantis*, 946 F.3d 1272, 1275 n.5 (11th Cir. 2020) (same).

Second, if we do not vacate our opinion, Alabama is treated as if there has been a review when, as it stands, it cannot seek an *en banc* review or file a petition for *certiorari*. *See Camreta v. Greene*, 563 U.S. 692, 712 (2011) (reaffirming that the purpose of vacatur is to ensure that "those who have been prevented from obtaining the review to which they are entitled [are] not … treated as if there had been a review")

And, third, the constitutional ruling in this case—abrogation of state sovereign immunity—is certainly a legally consequential decision. *Id*. at 713. (noting that vacatur of the Ninth Circuit's constitutional rulings was warranted because a "constitutional ruling in a qualified immunity case is a legally consequential decision.").