Rel: 9/27/13
Rel: 1/24/14 as modified on denial of rehearing

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2013

1111494

Ex parte Alabama Educational Television Commission et al.

PETITION FOR WRIT OF MANDAMUS

(In re: Allan Pizzato and Pauline Howland

v.

Alabama Educational Television Commission et al.)

(Jefferson Circuit Court, CV-12-0937)

BRYAN, Justice.

The Alabama Educational Television Commission ("the Commission") and Ferris W. Stephens, Rodney D. Herring, Les Barnett, J. Holland, Dannetta K. Thornton Owens, Bebe

Williams, and Gregory O. Griffin, Sr. (hereinafter collectively referred to as "the Commissioners"), have petitioned this Court for the writ of mandamus directing the Jefferson Circuit Court to dismiss claims brought against them by Allan Pizzato and Pauline Howland and to strike Pizzato and Howland's second amended complaint.[1] We grant the petition and issue the writ.

Facts and Procedural History

The purpose of the Commission is to "mak[e] the benefits of educational television available to and promot[e] its use by inhabitants of Alabama." § 16-7-5, Ala. Code 1975. The Commission is composed of seven commissioners, one from each congressional district in Alabama. During the relevant period, Stephens served as chairman of the Commission.

From 2000 until June 2012, Pizzato served as the executive director of Alabama Public Television ("APT") and Howland served as the deputy director and chief financial officer of APT. Sometime before June 2012, tension arose between Pizzato and the Commissioners. At its regular quarterly meeting on June 12, 2012, the Commission voted to go

[1]Howland was added as a plaintiff in the second amended complaint filed on August 10, 2012.

into executive session[2] to discuss Pizzato's "general reputation, character, and job performance." After the Commission returned to its regular meeting from the executive session, Barnett moved to terminate Pizzato's and Howland's employment, stating that "the Commission had decided to move APT in a new direction." The motion passed by a vote of five to two. The Commission then voted to hire Don Boomershine as interim executive director of APT. Although the Commission had voted to terminate her employment, Howland agreed to continue functioning in her position as deputy director and chief financial officer at APT until the end of July, at which time APT would submit its budget for the 2013 fiscal year.

On July 11, 2012, Pizzato requested certain materials from the Commission pursuant to the Open Records Act, § 36-12-40 et seq., Ala. Code 1975. On July 18, 2012, Pizzato sued the Commission and the Commissioners in their individual and official capacities, alleging violations of the Open Meetings Act, § 36-25A-1 et seq., Ala. Code 1975, and the Open Records

[2]"Executive session" is defined in the Open Meetings Act, § 36-25A-1 et seq., Ala. Code 1975, as "[t]hat portion of a meeting of a governmental body from which the public is excluded for one or more reasons prescribed in Section 36-25A-7(a)[, Ala. Code 1975]." § 36-25A-2(2), Ala. Code 1975.

Act and seeking compensatory and punitive damages. Pizzato also requested a judgment declaring that Stephens improperly held the office of assistant attorney general while he was serving as a commissioner.

The Commissioners moved the circuit court to dismiss Pizzato's claims against them, arguing that Pizzato did not have standing to bring an Open Meetings Act claim, that the Open Meetings Act does not provide for the recovery of compensatory or punitive damages, and that the complaint failed to state a claim under the Open Meetings Act. The Commissioners also argued that Pizzato's Open Records Act claim was moot because, they said, the requested documents had been produced[3] and that the circuit court did not have

[3]Pizzato and Howland acknowledge that, sometime after the complaint was filed, the Commission and the Commissioners produced certain documents that had been requested under the Open Records Act. They go on to argue, however, that they "question[] whether [the Commission and the Commissioners] have fully complied" with the Open Records Act. Pizzato and Howland's brief, at 6. Pizzato and Howland do not identify any records that should have been produced but, instead, suggest that there may be some records missing and that "[g]iven [the Commission's and Commissioners'] flagrant violation of their responsibilities under the Open Records Act, Pizzato [and Howland] believe[] that but for the lawsuit, [the Commission and the Commissioners] would never have complied with their legal obligations." Pizzato and Howland's brief, at 6-7.

subject-matter jurisdiction over the request for a declaratory judgment because, they asserted, the allegations supporting that count failed to state a claim upon which relief could be granted. The Commission likewise moved the circuit court to dismiss the claims against it, adopting the Commissioners' arguments and adding an argument that, as a State agency, the Commission was immune from suit.

Pizzato amended his complaint on August 4, 2012. On August 6 and 7, the circuit court held a preliminary hearing on the claims in the amended complaint and heard oral argument on the motions to dismiss. On August 8, the circuit court granted the Commission's and the Commissioners' motions in part, dismissing the claims against the Commissioners in their individual capacities and all claims seeking compensatory and punitive damages. The circuit court denied the motions to dismiss to the extent that Pizzato sought the civil fines provided for in the Open Meetings Act, to the extent that Pizzato sought declaratory and/or injunctive relief against the Commission, and to the extent that Pizzato sought declaratory and/or injunctive relief against the Commissioners in their official capacities. The circuit court "reserve[d]

its ruling" with regard to the Open Records Act claim and the request for a declaratory judgment as it related to Stephens.

On August 10, Pizzato filed a second amended complaint, adding Howland as a plaintiff and alleging an additional claim, pursuant to § 36-25A-7(b)(3), Ala. Code 1975, based on the alleged discussion of Howland during the executive session at the June 12 meeting. On August 13, the Commission and the Commissioners moved the circuit court to certify three questions for an immediate permissive appeal: (1) whether § 36-25A-9(a), Ala. Code 1975, gave Pizzato and Howland standing to bring their claims; (2) whether § 36-25A-7(a)(1), Ala. Code 1975, prohibits the discussion in an executive session of the Commissioners' personal knowledge regarding the job performance of certain employees; and (3) whether the Commission, as a State agency, was immune from suit for declaratory or injunctive relief. The Commission and the Commissioners moved to stay the proceedings in the circuit court pending the interlocutory appeal. The Commission and the Commissioners also moved the circuit court to strike the second amended complaint and to amend or reconsider its order denying in part their motions to dismiss. The Commission and

the Commissioners argued that Pizzato and Howland had not complied with Rule 15(a), Ala. R. Civ. P., in filing the second amended complaint and that the Commission and the Commissioners would be prejudiced if the second amended complaint were allowed to be considered.

After a hearing, the circuit court denied the Commission and the Commissioners' motions, including the motion for a permissive appeal under Rule 5, Ala. R. App. P. The Commission and the Commissioners then petitioned this Court for mandamus relief and moved for an emergency stay of the circuit court's orders. After the mandamus petition had been filed, this Court granted the motion to stay and ordered that discovery and other proceedings be stayed pending further order of this Court. The Commission and the Commissioners supplemented their mandamus petition, adding a request that the circuit court be directed to strike the second amended complaint.

Analysis

> "'"Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so;

> (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court." Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). The question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus. Ex parte Flint Constr. Co., 775 So. 2d 805 (Ala. 2000).'
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> "Ex parte Liberty Nat'l Life Ins. Co., 888 So. 2d 478, 480 (Ala. 2003) (emphasis added). 'When a party without standing purports to commence an action, the trial court acquires no subject-matter jurisdiction.' State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1028 (Ala. 1999). Under such a circumstance, the trial court has 'no alternative but to dismiss the action.' 740 So. 2d at 1029."

Ex parte Chemical Waste Mgmt., Inc., 929 So. 2d 1007, 1010 (Ala. 2005).

The Commission and the Commissioners argue that they have a clear legal right to have the Open Meetings Act claims against them dismissed and to have the second amended complaint stricken on the ground that "[t]he circuit court lacks jurisdiction over [those] claim[s] because Pizzato [and Howland] lack[] standing and § [36-25A-]9(a) of the [Open Meetings] Act cannot supply it." Petition, at 11.

> "A ruling on a motion to dismiss is reviewed without a presumption of correctness. This Court must accept the allegations of the complaint as true. Furthermore, in reviewing a ruling on a motion to dismiss we will not consider whether the pleader

> will ultimately prevail but whether the pleader may possibly prevail."

Newman v. Savas, 878 So. 2d 1147, 1148-49 (Ala. 2003) (citations omitted).

Section 36-25A-9(a) provides, in pertinent part: "Enforcement of this chapter may be sought by civil action brought in the county where the governmental body's primary office is located by ... any Alabama citizen." The Commission and the Commissioners argue that although § 36-25A-9(a) allows for enforcement by "any Alabama citizen," a plaintiff must still satisfy the three requirements for standing set forth in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).

In Lujan, the United States Supreme Court stated:

> "Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an 'injury in fact' -- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not "conjectural" or "hypothetical."' Second, there must be a causal connection between the injury and the conduct complained of -- the injury has to be 'fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.' Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 41-42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). Third, it must be 'likely,' as opposed to merely 'speculative,' that

> the injury will be 'redressed by a favorable decision.'"

504 U.S. at 560-61 (citations omitted).

This Court has adopted the Lujan test as the means of determining standing in Alabama. See Ex parte King, 50 So. 3d 1056, 1059 (2010) ("Traditionally, Alabama courts have focused primarily on the injury claimed by the aggrieved party to determine whether that party has standing; however, in 2003 this Court adopted the following, more precise, rule regarding standing based upon the test used by the Supreme Court of the United States: 'A party establishes standing to bring a ... challenge ... when it demonstrates the existence of (1) an actual, concrete and particularized "injury in fact"--"an invasion of a legally protected interest"; (2) a "causal connection between the injury and the conduct complained of"; and (3) a likelihood that the injury will be "redressed by a favorable decision."'" (quoting Alabama Alcoholic Beverage Control Bd. v. Henri-Duval Winery, L.L.C., 890 So. 2d 70, 74 (Ala. 2003), quoting in turn Lujan, 504 U.S. at 560-61)). See also Muhammad v. Ford, 986 So. 2d 1158, 1162 (Ala. 2007) (stating that, "[i]n [Henri-Duval], this Court adopted a more precise rule regarding standing articulated by the United

States Supreme Court" in Lujan); Town of Cedar Bluff v. Citizens Caring for Children, 904 So. 2d 1253, 1256 (Ala. 2004) (stating that the Court in Henri-Duval had "effectively restated" the standard for standing, using the three-pronged test from Lujan).

Applying the Lujan test here, we conclude that Pizzato and Howland do not have standing to bring this action because they have failed to demonstrate "a likelihood that [their alleged] injury will be 'redressed by a favorable decision.'" Henri-Duval, supra. Pizzato and Howland argue that they were injured by the Commission's termination of their employment and that that "termination was the direct result and consequence of the Commissioners' violation of the Open Meetings Act." Pizzato and Howland's brief, at 21. They also argue:

> "Pizzato amended his complaint to seek the relief mandated by statute and by the Circuit Court. Pizzato is both a citizen and the former Executive Director of APT, and his termination resulted directly from a violation of the Open Meetings Act. As such, he has every right to demand the civil fines specified in Ala. Code § 36-25A-9(g)[4] in

[4]Section 36-25A-9(g) provides, in pertinent part: "For each meeting proven to be held in violation of this chapter for one or more reasons, the court shall impose a civil penalty. The maximum penalty for each meeting shall not

> addition to whatever other relief the Circuit Court deems appropriate."

Pizzato and Howland's brief, at 23.

In Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 186 (2000), the Supreme Court held that civil penalties can serve as redress for standing purposes "[t]o the extent that they encourage defendants to discontinue current violations and deter them from committing future ones." The Supreme Court distinguished Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 106 (1998), stating:

> "Steel Co. established that citizen suitors lack standing to seek civil penalties for violations that have abated by the time of suit. We specifically noted in that case that there was no allegation in the complaint of any continuing or imminent violation, and that no basis for such an allegation appeared to exist."

Friends of the Earth, 528 U.S. at 187 (citation omitted).

Here, the only specific relief Pizzato and Howland requested was the civil fines provided for in § 36-25A-9(g).[5]

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exceed one thousand dollars ($1,000) or one half of the defendant's monthly salary for service on the governmental body, whichever is less."

[5]As noted, Pizzato and Howland also request "whatever other relief the Circuit Court deems appropriate." Pizzato and Howland's brief, at 23. We need not speculate as to other

Like the injury in Steel Co., however, the alleged injury here was caused by an alleged one-time violation of the Open Meetings Act that was wholly past when Pizzato and Howland's action was filed. Pizzato and Howland have not alleged any "continuing or imminent violation," nor does any "basis for such an allegation appear to exist." Friends of the Earth, 528 U.S. at 187. Thus, as in Steel Co., Pizzato and Howland's request for civil fines "seeks not remediation of [their] injury ... but vindication of the rule of law." Steel Co., 523 U.S. at 106. In fact, Pizzato and Howland argue:

> "To argue as [the Commission and the Commissioners] have argued that Pizzato has suffered no redressable injury is to argue that there is no public policy interest or value to an injured party in seeing wrongdoers held accountable for failing to follow the law. Hearing such an argument advanced by [the Commission and the Commissioners] is offensive to those who believe their government can -- and should -- do better. This callous and nonchalant attitude towards a clear violation of the law is indicative of the very reason this action must be maintained. Even if such a judgment will not make Pizzato whole, the value of enforcing the law cannot be viewed through the narrow lens of costs and benefits to those wronged by the

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forms of relief that may or may not be available to Pizzato and Howland. See Allsopp v. Bolding, 86 So. 3d 952, 960 (Ala. 2011) ("This Court will not 'create legal arguments for a party based on undelineated general propositions unsupported by authority or argument.'" (quoting Spradlin v. Spradlin, 601 So. 2d 76, 79 (Ala. 1992))).

> violation. The significance and value of requiring Commissioners to comply with the Open Meetings Act includes the significance and value to Pizzato, but encompasses the general public as well. The fact that such value evades easy quantification by [the Commission and the Commissioners] does not diminish its importance."

Pizzato and Howland's brief, at 23-24. Fines sought for such purposes do not satisfy the redressability prong of the Lujan test. See Steel Co., 523 U.S. at 107 ("Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement."). Thus, Pizzato and Howland have failed to establish standing under the Lujan test for their claims against the Commission and the Commissioners.

Conclusion

Because Pizzato and Howland have not established standing to bring their action against the Commission and the Commissioners under the Open Meetings Act, the claims asserted in both the first amended and second amended complaints are due to be dismissed. Our decision in this regard pretermits consideration of the remaining arguments raised in the mandamus petition. Therefore, we grant the petition for mandamus relief and issue the writ, instructing the circuit

court to dismiss Pizzato's and Howland's claims against the Commission and the Commissioners.

PETITION GRANTED; WRIT ISSUED.

Stuart and Wise, JJ., concur.

Murdock, J., concurs specially.

Bolin, J., concurs in the result.

Parker, Shaw, and Main, JJ., dissent.

Moore, C.J., recuses himself.

MURDOCK, Justice (concurring specially, as substituted on denial of application for rehearing on January 24, 2013).

I have struggled mightily to reason my way past the redressability barrier cited in the main opinion. Having failed in that endeavor, I am compelled to concur.

The redressability barrier before us is, as the main opinion indicates, the same redressability barrier that has been referred to by the United States Supreme Court as part of "the irreducible constitutional minimum of standing":

> "The 'irreducible constitutional minimum of standing' contains three requirements. Lujan v. Defenders of Wildlife, [504 U.S. 555] at 560 [(1992)]. First and foremost, there must be alleged (and ultimately proved) an 'injury in fact' -- a harm suffered by the plaintiff that is 'concrete' and 'actual or imminent, not "conjectural" or "hypothetical."' Whitmore v. Arkansas, [495 U.S. 149] at 155 [(1990)] (quoting Los Angeles v. Lyons, 461 U.S. 95, 101–102 (1983)). Second, there must be causation -- a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant. Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 41–42 (1976). And third, there must be redressability -- a likelihood that the requested relief will redress the alleged injury. Id., at 45–46; see also Warth v. Seldin, 422 U.S. 490, 505 (1975). This triad of injury in fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement, and the party invoking federal jurisdiction bears the burden of establishing its existence. See FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990)."

Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 102-03 (1998) (footnote omitted).[6]

Justice Scalia wrote for the majority in Steel that it was not necessary to decide "whether being deprived of information that is supposed to be disclosed" under the public-information law at issue there was "a concrete injury in fact that satisfies Article III ... because, [even] assuming injury in fact, the complaint fails the third test of

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[6]The terminology of the Alabama Constitution limiting jurisdiction to cases and controversies is not unlike the language of the United States Constitution upon which the so-called "case-or-controversy requirement" noted in Steel is based. Indeed, no clause of the United States Constitution groups the words "case or controversy" into a single phrase. Article II, § 2, of the United States Constitution provides that the judicial power "shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States, and Treaties made." The terms "case" and "controversy" are dispersed throughout other clauses of Article III to grant judicial power as to specific subjects. Article VI, § 142 of the Alabama Constitution grants circuit courts power over "cases," and § 140 of the same article provides this Court power over "cases and controversies as provided by this Constitution." We have construed Article VI, § 139, Ala. Const. of 1901 (as amended by Amend. No. 328, § 6.01), to vest this Court "with a limited judicial power that entails the special competence to decide discrete cases and controversies involving particular parties and specific facts." Alabama Power Co. v. Citizens of Alabama, 740 So. 2d 371, 381 (Ala. 1999). See also Copeland v. Jefferson Cnty., 284 Ala. 558, 226 So. 2d 385 (1969) (holding that our courts decide only "concrete controversies" between adverse parties).

standing, redressability."[7] 523 U.S. at 105. Similarly in the present case, we may assume for the sake of discussion that the plaintiffs have suffered a concrete injury and that there is a sufficient causal link between this injury and the Commissioners' violation of the statute. See also note 9, infra. Nonetheless, given the absence of a claim for reinstatement, the plaintiffs are in no better position vis-à-vis the requirement of redressability than was the plaintiff in Steel, about whose claim the Supreme Court noted as follows:

> "The complaint asks for (1) a declaratory judgment that petitioner violated EPCRA [Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq.]; (2) authorization to inspect periodically petitioner's facility and records (with costs borne by petitioner); (3) an order requiring petitioner to provide respondent copies of all compliance reports submitted to the [Environmental Protection Agency]; (4) an order requiring petitioner to pay civil penalties of $25,000 per day for each violation of §§ 11022 and 11023; (5) an award of all respondent's 'costs, in connection with the investigation and prosecution of this matter, including reasonable attorney and

[7]The notion of concrete injury has in fact been applied more liberally in so-called "public-information" cases. See, e.g., Public Citizen v. United States Dep't of Justice, 491 U.S. 440, 449 (1989) ("Our decisions interpreting the Freedom of Information Act have never suggested that those requesting information under it need show more than that they sought and were denied specific agency records.").

> expert witness fees, as authorized by Section 326(f) of [EPCRA]'; and (6) any such further relief as the court deems appropriate. None of the specific items of relief sought, and none that we can envision as 'appropriate' under the general request, would serve to reimburse respondent for losses caused by the late reporting, or to eliminate any effects of that late reporting upon respondent."

523 U.S. at 105-06 (emphasis added).

As Justice Connor stated in her special concurrence in Steel:

> "I agree that our precedent supports the Court's holding that respondent lacks Article III standing because its injuries cannot be redressed by a judgment that would, in effect, require only the payment of penalties to the United States Treasury."

523 U.S. at 110 (O'Connor, J., concurring specially) (emphasis added). Likewise, the plaintiffs' loss of their jobs in the present case "cannot be redressed by a judgment that would, in effect, require only the payment of penalties to the [Alabama] treasury."[8]

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[8]I note that Steel does not involve a governmental defendant. It does however, involve a suit to require a third party to fulfill an obligation that, whatever else may be said of it, clearly was intended by Congress as an obligation to disclose information for the benefit of the public at large. In that sense, it arguably can be considered a "public-law" case. In any event, in those relatively rare cases (like Steel) in which a legislature purports to create by statute a cause of action and to legislatively prescribe elements of the same in which are not embedded all three of the components of standing (a circumstance that to my knowledge is unknown to

That said, I believe it is important to take note of what is not before us in this case. First, we do not have before us a claim by which a media organization or a citizen seeks to enjoin an anticipated future violation of the statute, or even one in which the circumstances attendant to multiple (or perhaps even one) prior violation supports an inference that such violations will continue in the future but might be deterred by the judicial declaration of one or more such prior offenses and punishment for the same. See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 185-86 (2000) (holding that in an appropriate case civil penalties can "afford redress to citizen plaintiffs who are injured or threatened with injury as a consequence of ongoing unlawful conduct"); Steel, 523 U.S. at 110 (O'Connor, J.,

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common-law causes of action and that is unknown to almost all statutorily created causes), it has attempted to give the court jurisdiction over something that it cannot, because that something is not a case or controversy. Such was the case in Steel and such is the case here, at least given the limited nature of the relief requested in this case. As the author of this Court's recent opinion in Ex parte BAC Home Loans Servicing, LP, [Ms. 1110373, September 13, 2013] ___ So. 3d ___ (Ala. 2013), I must confess that the statements in BAC suggesting a limitation of standing to public-law cases involving governmental defendants would be better understood as statements of a general rule that admits of the aforesaid exception, but only in rare instances involving inadequately formed statutory causes of action as in Steel.

concurring specially) ("[H]ad respondent alleged a continuing or imminent violation of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11046, the requested injunctive relief may well have redressed the asserted injury."). Compare also, e.g., Federal Election Comm'n v. Akin, 524 U.S. 11 (1998) (finding redressability requirement satisfied in a public-information case in which the plaintiffs sought, among other things, an injunction to require a public-interest organization to make public certain information required to be disclosed by the Federal Election Commission Act of 1971).

Nor is this a case brought as permitted by § 36-25A-9(a), Ala. Code 1975, by the attorney general or the district attorney, officials constitutionally imbued with standing to act on behalf of the public for whose benefit the law was intended.

And finally, although an argument can be made that we do have before us today a case in which the plaintiffs can draw a sufficient connection between a private meeting of a public body and some action of that body that has injured them so as

to satisfy the injury and causation elements of standing,[9] the case before us is not one in which the plaintiffs seek to be relieved of their specific injury, i.e, to be reinstated to their former positions of employment. See generally § 36-25A-9(f), Ala. Code 1975 (providing that the court may under certain circumstances invalidate an action taken during a meeting held in violation of the Open Meetings Act).[10]

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[9]See Massachusetts v. E.P.A., 549 U.S. 497, 518 (2007), citing with approval Sugar Cane Growers Cooperative of Fla. v. Veneman, 289 F.3d 89, 94-95 (D.C. Cir. 2002), for the proposition that "[a litigant] who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure the substantive result would have been altered. All that is necessary is to show that the procedural step was connected to the substantive result." As the Court in Lujan v. Defenders of Wildlife, 504 U.S. 555, 573 n. 7 (1992), noted, "[t]here is this much truth to the assertion that 'procedural rights' are special: The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy. Thus, under our case law, one living adjacent to the site for proposed construction of a federally licensed dam has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the dam will not be completed for many years." Nonetheless, there must at least be some likelihood that the relief sought will prevent, undo, or compensate the plaintiff for a threatened or past violation of rights or other injury that provides the basis for standing.

[10]But see § 36-25A-9(f) (stating that an action taken at an open meeting conducted in accordance with the Act shall not

Consequently, all the plaintiffs can achieve for themselves in the case that is before us is the psychological satisfaction of knowing that those who purportedly injured them have been forced to pay a fine to the State. I agree with the main opinion that this is not enough. As our Court of Civil Appeals explained recently in Alabama Department of Environmental Management v. Friends of Hurricane Creek, 114 So. 3d 47, 54 (Ala. Civ. App. 2012):

> "Any ... injury done to [plaintiffs] resulting from the possible continued existence of turbid waters downstream from the developer's Williamsburg development will thus not be remedied; rather, [the plaintiffs] will derive only the abstract satisfaction that a perceived wrongdoer such as the developer has received what might be viewed as 'just desserts' for environmental violations. Such '[r]elief that does not remedy the injury' does not satisfy the redressability element of standing. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 107, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998)."

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be invalidated because of a violation that occurred prior to such meeting). The plaintiffs argue in this case that the decision to terminate their employment actually occurred in the noncompliant meeting of which they complain. The issues surrounding that assertion, however, are issues of the plaintiffs' ability to allege, or prove, a cause of action (as to which neither I nor this Court expresses any view today), not an issue of standing. See, e.g., Ex parte BAC Home Loans Servicing, LP, [Ms. 1110373, September 13, 2013] __ So. 3d __ (Ala. 2013).

PARKER, Justice (dissenting).

I agree with Justice Shaw: Imposing the test set forth in Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992), on the Open Meetings Act, Ala. Code 1975, § 36-25A-1 et seq., would effectively neuter the Act.

SHAW, Justice (dissenting).

I respectfully dissent. I am not convinced that the test for determining standing under federal law, set forth in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), is applicable in this case. The standing analysis in Lujan is closely tied to the "case or controversy" provision in Article III of the United States Constitution, which grants judicial power to the federal judiciary. Lujan, 504 U.S. at 560 ("[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III."). The source of the third prong of the Lujan analysis, redressability, upon which the main opinion turns, looks to whether a plaintiff has a personal stake in the litigation.

The Alabama Constitution does not have a "cases or controversy" provision, but we have followed a similar analysis:

> "[S]tanding[] goes to whether a party has a sufficient 'personal stake' in the outcome and whether there is sufficient 'adverseness' that we can say there is a 'case or controversy.'
>
> > "'Standing goes to the existence of sufficient adversariness to satisfy both Article III case-or-controversy requirements and prudential concerns. In determining standing, the nature of the

> injury asserted is relevant to determine the existence of the required personal stake and concrete adverseness.'

"13A Federal Practice & Procedure § 3531.6.

"Although the Alabama Constitution does not have the same Article III language as is found in the Federal Constitution, this Court has held that Section 139(a) of the Alabama Constitution limits the judicial power of our courts to 'cases and controversies' and to 'concrete controversies between adverse parties.' As Justice Lyons has stated:

> "'Standing is properly limited to circumstances stemming from lack of justiciability. A plaintiff must be so situated that he or she will bring the requisite adverseness to the proceeding. A plaintiff must also have a direct stake in the outcome so as to prevent litigation, initiated by an interested bystander with an agenda, having an adverse impact on those whose rights are directly implicated. See Diamond v. Charles, 476 U.S. 54, 61–62, 106 S. Ct. 1697, 90 L. Ed. 2d 48 (1986).
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> "'Much of the precedent in the area of standing comes from federal courts subject to the case-or-controversy requirement of Article III of the United States Constitution. Of course, we do not have a case-or-controversy requirement in the Alabama Constitution of 1901, but our concepts of justiciability are not substantially dissimilar. See Pharmacia Corp. v. Suggs, 932 So. 2d 95 (Ala. 2005), where this Court, after noting the absence of a case-or-controversy requirement in our Constitution, observed:

> "'"We have construed Art. VI, § 139, Ala. Const. of 1901 (as amended by amend. no. 328, § 6.01, vesting the judicial power in the Unified Judicial System), to vest this Court 'with a limited judicial power that entails the special competence to decide discrete cases and controversies involving particular parties and specific facts.' Alabama Power Co. v. Citizens of Alabama, 740 So. 2d 371, 381 (Ala. 1999). See also Copeland v. Jefferson County, 284 Ala. 558, 226 So. 2d 385 (1969) (courts decide only concrete controversies between adverse parties)."'
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> "Hamm, 52 So. 3d at 500 (Lyons, J., concurring specially)."

Ex parte McKinney, 87 So. 3d 502, 513 (Ala. 2011) (Murdock, J., dissenting).[11] The focus of Alabama law regarding

[11]Our previous decisions applying Lujan that are cited in the main opinion involve general challenges to whether certain elections or legislative acts were constitutional. See Ex parte King, 50 So. 3d 1056, 1059 (2010) (holding that there was "no injury" under Lujan to the plaintiffs in an action challenging the propriety and constitutionality of an election occurring over 100 years before the suit was filed); Muhammad v. Ford, 986 So. 2d 1158, 1162 (Ala. 2007) (holding in a case challenging the constitutionality of a constitutional amendment providing for "bingo" gaming that there was no actual, concrete, and particularized injury where the plaintiffs alleged that they were injured because they were denied the opportunity to live in a county in which a valid law on bingo-game operations existed); Town of Cedar Bluff v. Citizens Caring for Children, 904 So. 2d 1253, 1256 (Ala.

standing, generally, is on whether the parties have a "sufficient personal stake in the outcome" in the case, whether their interests are sufficiently "adverse," and whether the plaintiff is "so situated" that he or she will bring "the requisite adverseness" to the proceeding.

It is well settled that the legislature may provide for a cause of action and may supply subject-matter jurisdiction to the courts of this State. Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006) ("The jurisdiction of Alabama courts is derived from the Alabama Constitution and the Alabama Code."). Here, the legislature, through the Open Meetings Act, Ala. Code 1975, § 36-25A-1 et seq. ("the Act"), has provided a

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2004) (holding that an elector presenting a constitutional challenge to an election legalizing the sale of alcohol had failed to show a particularized injury); and Alabama Alcoholic Beverage Control Bd. v. Henri-Duval Winery, L.L.C., 890 So. 2d 70, 74 (Ala. 2003) (holding that there was no injury where the plaintiff challenged the constitutionality of, and sought a refund for, a tax that it was not required to pay). I believe that in such general challenges to government action, the Lujan analysis is helpful. In the instant case, however, we do not have a general constitutional challenge. Instead, we have a very specific cause of action provided by Alabama law, which provides a very limited form of relief. Further, we have not strictly followed the three Lujan factors. See, e.g., Avis Rent A Car Sys., Inc. v. Heilman, 876 So. 2d 1111 (Ala. 2003) (holding that a plaintiff who suffered no damage had standing despite Lujan, because she had suffered a "legal wrong" and an "invasion of a legally protected interest").

cause of action, has designated who may file the action, and has designated the remedies. Specifically, the Act provides, among other things, that certain meetings by certain governmental bodies must be open to the public. A "civil action" may be brought by "any Alabama citizen" to enforce the Act. Ala. Code 1975, § 36-25A-9(a) ("Enforcement of this chapter may be sought by civil action brought ... by ... any Alabama citizen...."). The trial court may provide relief in various forms, including the imposition of civil penalties. § 36-25A-9(g).

Pizzato and Howland allege in their complaint that certain members of the Alabama Educational Television Commission were motivated by personal, political, and religious views and that they made "threats" against Pizzato and others. They allege that Pizzato's "general reputation, character, and job performance," as well as Howland's "job performance," were discussed in a closed meeting in violation of the Act and that, immediately after the meeting, their employment was terminated. They seek the imposition of civil penalties under Ala. Code 1975, § 36-25A-9(g)--the only relief apparently available to them--for the commissioners' alleged

violation of the Act in a meeting where the apparent decision to terminate Pizzato's and Howland's employment was made. This action is not pursued by a disinterested third party or stranger to the incident, but rather by the parties who were allegedly wronged by a procedure that purportedly did not comply with Alabama law. It seems to me that the allegations in Pizzato and Howland's complaint indicate that their interests are sufficiently "adverse" to those of the petitioners and that they are "so situated" that they bring "the requisite adverseness" to the proceeding. For all that appears, this fulfills the requirements of standing.