IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

BEVERLY FUQUA, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No.: 1:12-CV-93(WLS)
	:	
JOHN PRIDGEN, et al.,	:	
	:	
Defendants.	:	
	:	

ORDER

Pending before the Court are Defendants Judge Robert Charsteen, Jr., Judge T. Christopher Hughes, and Chief Judge John Pridgen's Motion to Dismiss (Doc. 9); Defendant Sheriff Donnie Haralson's Motion to Dismiss (Doc. 15); and Plaintiffs' Motion to Amend/Correct Complaint (Doc. 33). For the reasons that follow, Defendants Charsteen, Hughes, and Pridgen's Motion to Dismiss and Defendant Haralson's Motion to Dismiss are **GRANTED in part** and **DENIED in part**. Plaintiffs' Motion for Leave to Amend is **GRANTED**.

PROCEDURAL BACKGROUND

This is a Section 1983 class action against judges and sheriffs in Ben Hill County and Crisp County. Plaintiffs allege that Defendants routinely prevented them from observing criminal court proceedings at the county Law Enforcement Center courtrooms, in violation of the First Amendment to the United States Constitution and Article I, Section I, of the Georgia Constitution. (Doc. 1 ¶ 2.) Plaintiffs seek declaratory and injunctive relief against future closures, nominal damages against the sheriffs, and litigation expenses. (*Id.* ¶ 1.)

Defendants have filed three motions to dismiss. Defendants Charsteen, Hughes, and Pridgen—Superior Court judges of Georgia's Cordele Judicial Circuit—moved for dismissal for

failure to state a claim on July 24, 2012. (Doc. 9.) Defendant-Judges argue that equitable relief is unavailable because Plaintiffs have an adequate remedy at law—namely, a state writ of mandamus. (*Id.* at 5.) They also contend they did not "close" the court proceedings in a way that implicates the First Amendment, and, in any event, the public has no right to access an arraignment during which a defendant pleads not guilty. (*Id.* at 9–17.) They also raise various defenses to the state-law claim. (*Id.* at 29–31.) Plaintiffs responded on August 22 (Doc. 23), and Defendants replied to the response September 4 (Doc. 26.)

On August 17, 2012, Defendant Haralson, the Crisp County sheriff, also moved to dismiss for failure to state a claim. (Doc. 16.) In addition to raising many of the same claims in Defendant-Judges' motion, Haralson argues that he is entitled to qualified immunity. (*Id.* at 3.) Plaintiffs responded on September 17 (Doc. 29), and Defendants replied on September 28 (Doc. 35.)

On August 20, 2012, Defendant McLemore, the Ben Hill County Sheriff, moved to dismiss for failure to state a claim. (Doc. 19.) Plaintiffs did not respond to McLemore's Motion to Dismiss. (*See* Docket.) The Parties, however, entered a joint stipulation agreeing to dismiss McLemore. (Doc. 31.) Plaintiffs also moved to amend their complaint to dismiss McLemore and add various bailiffs because McLemore did not control who entered the courtrooms. (Doc. 33.) Defendants Pridgen, Chasteen, and Hughes oppose the motion to amend because they claim it would be futile. (Doc. 36.)

The briefing stage has concluded on Defendants' Motions to Dismiss and Plaintiff's Motion to Amend. Accordingly, said motions are now ripe for the Court's review.

FACTUAL SUMMARY

The following facts are derived from Plaintiffs' complaint: Ben Hill and Crisp County operate Law Enforcement Centers [hereinafter "LECs"]. LECs contain each county's jail and a courtroom to hold Superior Court criminal and juvenile delinquency proceedings. Pretrial detainees in the LEC jails appear in the LEC courtrooms for pretrial hearings, which include bond hearings, arraignments, calendar calls, and other criminal matters. Because many of the LEC pretrial detainees plead guilty and are sentenced at the LECs, the LEC courtrooms are often the only courtrooms they see.

Relatively speaking, the LEC courtrooms are not large. The Ben Hill County LEC courtroom has about thirty seats. The court reserves four to six seats for criminal defendants who appear before the court. A partition separates those seats from the remaining twenty-four seats. The Crisp County LEC courtroom has about twenty-five seats. Sheriff deputies place pretrial detainees in two rows of those seats, which apparently leaves about five seats available to the public.

The Ben Hill and Crisp County courts and sheriffs place deputies or bailiffs at the entrance of the LEC courtrooms. These officers require each member of the public to explain why he or she wishes to enter the courtroom. Plaintiffs, who are interested members of the public or relatives of pretrial detainees, have experienced difficulty entering the courtrooms. In fact, the NAACP challenged a similar alleged practice in 2003. In August 2004, it dismissed the access-to-courts claim because officials in Ben Hill County and Crisp County maintained they would leave the courtrooms open and unobstructed. Members of the public, however, continue to experience difficulty gaining entrance.

For example, Ammerine Hall, who is 72, went to the Ben Hill County LEC to see her grandson's arraignment on January 31, 2012. When she arrived, a sheriff's deputy told her she

could not enter the courtroom until the judge called her grandson's case. Ultimately, the deputy never allowed Hall to enter any of her grandson's hearings, despite available seating.

Likewise, Plaintiff Beverly Fuqua tried, on three occasions in early 2012, to attend her son's court appearances at the Ben Hill County LEC. Each time, the bailiff prevented her entry because her son did not plead guilty. She was not allowed to see any hearings.

On March 15, 2011, Plaintiff Joy Scales and her sister drove two and a half hours to see her nephew's arraignment at the Crisp County LEC. After waiting in the lobby for several hours, she was prevented from watching her nephew's hearing because he did not enter a guilty plea. Jessica Simonds went to Ben Hill County LEC on January 31, 2012, to watch her brother's arraignment. A bailiff told her that "family members would only be allowed in [the jail courtroom] during their loved one's hearings." While she was there, Simonds heard that her close friend Clifford Jackson would also be appearing before the court, but she did not attempt to see his hearing because of the bailiff's admonition. Virginia Stillwell Goodman went with her daughter and niece to the Crisp County LEC on March 13, 2012, to see her nephew's arraignment. After three hours, the bailiffs allowed her to enter the courtroom, where she saw that six of eight seats for the public were empty.

On June 14, 2012, Plaintiff Reverend James W. Davis, a pastor at Salem AME Church, tried to attend criminal calendar call at Ben Hill County LEC. Davis attends criminal proceedings to support parishioners who become involved in the criminal justice system. When he arrived, he told the bailiff he wanted to see the entire calendar call. The bailiff told him he would not be allowed to see any of the hearing because the seats were reserved for family members.

On February 25, 2011, Carl Ringgold, a twenty-one-year-old senior at Morehouse College, went to the Crisp County LEC to see calendar call. At his arrival, a receptionist told him

that prior approval from a "superior officer" was required before he entered the courtroom. The receptionist took Ringgold's driver's license and student ID while Ringgold waited in the lobby for an hour and a half. The "superior officer" then went to the Superior Court judge for further authorization. After that, officers allowed Ringgold to enter the courtroom, where he saw that three of the four available seats were empty.

DISCUSSION

I. Standard of Review

Federal Rule of Civil Procedure 12(b)(6) permits a party to assert by motion the defense of failure to state a claim upon which relief can be granted. A Motion to Dismiss a Plaintiff's complaint under Rule 12(b)(6) should not be granted unless the Plaintiff fails to plead enough facts to state a claim to relief that is plausible, and not merely just conceivable, on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "Dismissal for failure to state a claim is proper if the factual allegations are not 'enough to raise a right to relief above the speculative level.'" *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1291 (11th Cir. 2010) (quoting *Rivell v. Private Health Care Sys., Inc.*, 520 F.3d 1308, 1309 (11th Cir. 2008)). "Stated differently, the factual allegations in the complaint must 'possess enough heft' to set forth 'a plausible entitlement to relief.'" *Edwards*, 602 F.3d at 1291 (quoting *Fin. Sec. Assurance, Inc. v. Stephens, Inc.*, 500 F.3d 1276, 1282 (11th Cir. 2007)).

While the Court must conduct its analysis "accepting the allegations in the complaint as true and construing them in the light most favorable to the Plaintiff," *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003), in evaluating the sufficiency of a Plaintiff's pleadings the Court must "make reasonable inferences in [p]laintiff's favor, 'but [is] not required to draw Plaintiff's inference.'" *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1260 (11th Cir. 2009) (quoting *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005)),

abrogated on other grounds by Mohamad v. Palestinian Auth., 132 S. Ct. 1702 (2012). The Supreme Court instructs that while on a Motion to Dismiss "a court must accept as true all of the allegations contained in a complaint," this principle "is inapplicable to legal conclusions," which "must be supported by factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (citing *Twombly*, 550 U.S. at 555, for the proposition that courts "are not bound to accept as true a legal conclusion couched as a factual allegation" in a complaint).

I. Discussion

a. Whether equitable relief is available

Defendant-Judges first argue Plaintiffs are not entitled to injunctive and declaratory relief. (Doc. 9-1 at 5.) They argue the Federal Courts Improvement Act of 1996 amended 42 U.S.C. § 1983 to prohibit courts from granting injunctive relief against judicial officers "unless a declaratory decree was violated or declaratory relief was unavailable." (*Id.*) Defendant-Judges also claim the Eleventh Circuit prohibits equitable relief when "there is an adequate remedy at law." (*Id.*) Because Georgia law allows litigants to seek a writ of mandamus to force compliance with legal duties, Defendant-Judges contend Georgia courts provide an adequate remedy at law. (*Id.* at 6.)

In response, Plaintiffs agree that, for now, Section 1983 bars injunctive relief against the judges, but they maintain they seek only a declaratory judgment at this stage. (Doc. 23 at 2.) Plaintiffs argue a declaratory judgment is available because they have no adequate remedy at law. (*Id.* at 3.) They are neither criminal defendants nor parties to another civil action. (*Id.*) Moreover, Plaintiffs point out that Section 1983 contains no exhaustion requirement. (*Id.* at 4.)

The Eleventh Circuit has held that declaratory relief against judicial officers in § 1983 actions is unavailable when an "adequate remedy at law" exists. *Bolin v. Story*, 225 F.3d 1234, 1242–43 (11th Cir. 2000). Generally speaking, an adequate remedy "must not only be plain,

speedy and adequate, but as adequate to meet the ends of justice as that which the restraining power of equity is competent to grant." *Harris Stanley Coal & Land Co. v. Chesapeake & O. Ry.*, 154 F.2d 450, 453 (6th Cir. 1946). If damages can fully compensate the plaintiff or if she can assert the claim as a defense in another proceeding, there is generally an adequate alternative remedy. 9 Charles Alan Wright *et al*, Federal Practice and Procedure § 2944 (2d ed. 1995).

Here, Georgia's writ of mandamus is not an adequate remedy at law precluding equitable relief. A writ of mandamus is an "extraordinary remedy" to compel performance of a legal right. O.C.G.A. § 9-6-20; *R.A.F. v. Robinson*, 286 Ga. 644, 646 (2010) ("It is a discretionary remedy that courts may grant only when the petitioner has a clear legal right to the relief sought or the public official has committed a gross abuse of discretion." (citation omitted)). Because mandamus relief requires the existence of "clear legal right," it is generally "not available to compel officials to follow a general course of conduct, perform a discretionary act, or undo a past act." *R.A.F.*, 286 Ga. at 646 (quoting *Bland Farms v. Ga. Dept. of Agric.*, 281 Ga. 192, 193 (2006)). The decision to close a courtroom is a discretionary act and thus unsuitable for mandamus relief. Moreover, contrary to Defendant-Judges' position, a writ of mandamus and injunctive relief are not interchangeable. The former *compels* legal performance while the latter *prevents* an unlawful practice.

In essence, Defendant-Judges advocate for what is equivalent to an exhaustion requirement. Under their interpretation, federal equitable relief would never be available if a state remedy existed. But plaintiffs often have the option of choosing between state court and federal court when litigating federal claims. A rule requiring them to always choose the former when seeking equitable relief would cripple the federal courts' authority to "say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The Supreme Court has long held that Section 1983 does not require litigants to exhaust state remedies. *See Bd. of Regents of Univ. of State of*

N.Y. v. Tomanio, 446 U.S. 478, 481 (1980) ("This Court has not interpreted § 1983 to require a litigant to pursue state judicial remedies prior to commencing an action under this law."). The Court declines to adopt an almost identical requirement here.

Accordingly, Defendant-Judges' defenses regarding equitable relief are **DENIED in part** and **GRANTED in part.** Because both parties agree that injunctive relief is premature, Plaintiffs' claim for injunctive relief against the judges is **DISMISSED without prejudice.** Defendant-Judges' defense regarding declaratory relief as asserted is **DENIED**.

b. First Amendment Claims

The First Amendment of the United States Constitution grants the public a qualified right to attend criminal proceedings. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 7–8 (1986) [hereinafter "*Press-Enterprise II*"]; *Richmond Newspapers v. Virginia*, 448 U.S. 555, 580 (1980). Openness in criminal proceedings is favored because the public's presence "may improve the quality of testimony, induce unknown witnesses to come forward with relevant testimony, cause all trial participants to perform their duties more conscientiously, and generally give the public an opportunity to observe the judicial system." *Gannett Co. v. DePasquale*, 443 U.S. 368, 393 (1979). Because of a national preference for transparency, courts or litigants who seek to justify closure "carr[y] a heavy burden." *Douglas v. Wainwright*, 714 F.2d 1532, 1539 (11th Cir. 1983), *vacated by*, 468 U.S. 1212 (1984), *reinstated by*, 739 F.2d 531 (11th Cir. 1984). But the right is not absolute. The public's right often must be weighed against a defendant's guarantee of a fair trial and a trial court's interest in preserving security and the fair administration of justice. *See Press Enterprise Co. v. Superior Court*, 464 U.S. 501, 509–10 (1984) (discussing the public's right of access and countervailing interests) [hereinafter "*Press-Enterprise I*"]. Moreover, the Supreme Court has not extended the right of access to all criminal

proceedings. *See Press-Enterprise II*, 478 U.S. at 8 (developing a test to determine a First Amendment right attaches to particular proceedings).

Defendants assert that Plaintiffs failed to state a claim for two reasons. First, Defendants argue the First Amendment is not implicated because they did not close the courtrooms in a constitutional sense. (Doc. 9-1 at 9.) Instead, the courtrooms simply could not accommodate every member of the public. (*Id.* at 12–16.) Second, they argue that the First Amendment is not implicated in the type of proceedings alleged in Plaintiffs' complaint. (*Id.* at 18.) Defendants, for example, suggest the right of access does not attach to arraignments because they are not sufficiently trial-like. (*Id.* at 22.)

In response, Plaintiffs aver that "[t]he reality is that members of the public are regularly and routinely denied access when seating is available." (Doc. 23 at 7.) Furthermore, Plaintiffs claim that Defendants' closure is "systemic," and the trial court failed to make any findings that support closure. (*Id.* at 6.) They also maintain that the First Amendment is implicated at the LEC proceedings—which include appearance hearings, bond hearings, arraignments, guilty pleas, calendar calls, and probation revocations—and that courts routinely extend First Amendment rights to pretrial hearings. (*Id.* at 10.)

Accepting Plaintiffs' allegations as true, as it must, the Court agrees with Plaintiffs.

i. Whether the LEC proceedings were "closed"

Defendants move to dismiss the complaint on the ground that they never "closed" the LEC courtrooms. (Doc. 9-1 at 9.) They claim that cases finding a violation of the First Amendment right of access "necessarily involve a court order resulting in the complete exclusion of all members of the press and public from the proceeding at issue." (*Id.*) In the absence of a complete "closure," Defendants maintain that a First Amendment claim fails. Unfortunately, there is little Eleventh Circuit jurisprudence on the First Amendment right of access. In a parallel

line of cases, however, the court has analyzed the effect of partial closures on a criminal defendant's Sixth Amendment right to a public trial. *See, e.g.*, *Douglas v. Wainwright*, 739 F.2d 531, 532 (11th Cir. 1984) (discussing partial closure). What emerges from these cases is the principle that varying degrees of closure implicate First and Sixth Amendment rights.

To begin with the background, the Supreme Court has developed a strict-scrutiny-type test to consider whether a closure violates the First or Sixth Amendment:

> The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.

Waller v. Georgia, 467 U.S. 39, 45 (1984) (Sixth Amendment) (quoting *Press-Enterprise I*, 464 U.S. at 510 (First Amendment)). In all of the Supreme Court's cases on the First Amendment right of access or the Sixth Amendment right to a public trial, the facts have seemingly involved a total closure of a courtroom to observers. *E.g.*, *Presley v. Georgia*, 130 S. Ct. 721, 722 (2010); *Press-Enterprise II*, 478 U.S. at 3–4. At ground level, however, restrictions on the public's access have often been more nuanced, and lower courts have been hesitant to apply *Press-Enterprise*'s stringent test to lesser closures. A number of lower courts—including the Eleventh Circuit—have held that "partial closures" also implicate constitutional rights, but they warrant a lesser degree of scrutiny. *See Bell v. Jarvis*, 236 F.3d 149, 168 n.11 (4th Cir. 2000) (collecting cases); *Douglas*, 739 F.2d at 532. For example, in *Douglas v. Wainwright*, the Eleventh Circuit held that "where neither all members of the public nor the press are excluded, the 'public' nature of the proceedings may be retained sufficiently so that a lesser justification for the partial closure will suffice to avoid constitutional deprivation." 714 F.2d at 1539–40. Stated differently, courts require a lesser justification than an "overriding interest" in the first part of the *Press-Enterprise/Waller* test to sustain a partial closure, but, in either case, "a court must 'hold a

hearing and articulate specific findings.'" *Judd v. Haley*, 250 F.3d 1308, 1314 (11th Cir. 2001) (quoting *Douglas*, 739 F.2d at 532).

This case, at the very least, presents exactly the type of partial closure contemplated by the Eleventh Circuit. *Douglas* itself, the seminal Eleventh Circuit case on partial closure, involved a court order that excluded all of the public except family and the press. 739 F.2d at 532. The court has reaffirmed that such an exclusion implicates constitutional rights. *See Judd*, 250 F.3d at 1315 ("When access to the courtroom is retained by some spectators (such as representatives of the press or the defendant's family members), we have found that the impact of the closure is not as great, and not as deserving of such a rigorous level of constitutional scrutiny."). A constitutional claim, in other words, does not disappear in the absence of a total closure.

Plaintiffs have alleged more than enough facts to make a claim for partial closure. The complaint alleges that Defendants systematically excluded the vast majority of the public from LEC criminal proceedings. The facts imply that the public is never permitted to view arraignments or other pretrial proceedings unless the Defendant pleads guilty *and* the public happens to be members of the criminal defendant's family. For some individual arraignments, then, one could argue that the courtrooms were totally closed because the defendant did not plead guilty. And, in fact, the restriction on non-relatives barred the majority of the public from watching the proceedings. Reverend Davis, for example, was precluded from seeing any of the hearings because he could not identify himself as a family member. If we take the facts in the complaint as true and the bailiffs at their word, then even *victims* would be precluded from watching the LEC court proceedings. These facts are sufficient to establish a partial closure.

The Court recognizes, again, that the Eleventh Circuit's cases on partial closure have involved the Sixth Amendment rather than the First Amendment. *But see United States v. Smith*,

426 F.3d 567, 575 (2d Cir. 2005) (applying partial closure doctrine to First Amendment claim). Both bodies of law have developed parallel to one another. The closure tests for both are basically identical. *Compare Press-Enterprise I*, 464 U.S. at 510, *with Waller v. Georgia*, 467 U.S. 39, 45–46 (1984). Moreover, the fact that the closure test requires a judge to consider alternatives to complete closures suggests that varying degrees of closure implicate First Amendment rights. And in the first *Douglas*, the Eleventh Circuit used First Amendment precedent to reach its holding on partial closure. 714 F.2d at 1538–40. Finally, for members of the public who were excluded altogether from the LEC proceedings, there is little comfort in saying, as Defendants implicitly do, that the admitted observers exercised First Amendment rights for everybody. One could even argue that the practice in the LEC courtrooms is more problematic because it allegedly applies to all cases and all proceedings without *any* finding of necessity or consideration of alternatives. *See United States v. Valenti*, 987 F.2d 708, 713 (11th Cir. 1993) ("Thus, in determining whether to close a historically open process where public access plays a significant role, a court may restrict the right of the public and the press to criminal proceedings only after (1) notice and an opportunity to be heard on a proposed closure; and (2) articulated specific 'findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'"). Defendants neither assert that such proceedings occurred or that Orders on such proceedings were entered.

It is no answer to say that there were space limitations and Defendants could not accommodate everyone. This is a motion to dismiss, so the Court takes Plaintiffs allegations as true. The complaint shows that the court and bailiffs required every member of the public to identify himself or herself and only family members were allowed in, for sole purpose of briefly watching their relatives' guilty pleas, regardless if more seats were available. Defendants make

no attempt to refute Plaintiffs' basic allegations that no one is free to enter the LEC courtrooms without permission and that many people never successfully gain entrance.

Defendant-Judges' argument that the First Amendment right of access requires a "court order" (Doc. 9-1 at 9) is also unpersuasive. The allegations state that the judges ordered the bailiffs to close all hearings to the public, except in limited circumstances. Superior Court officers, for example, prevented Carl Ringgold from entering the proceedings without approval from the presiding Superior Court judge. (Doc. 1 ¶ 27(f).) The fact that the judges did not explicitly put the order on the record does not absolve the alleged conduct of a First Amendment violation. Such a requirement would render the First Amendment's right of access a mere formality.

Moreover, the fact that the Superior Court judges did not put an Order on the record raises constitutional concerns in and of itself. The Supreme Court has been clear that a judge *must* consider alternatives to closure. *Presley*, 130 S. Ct. at 724–25 ("The conclusion that trial courts are required to consider alternatives to closure even when they are not offered by the parties is clear . . . from this Court's precedents . . . ."); *Press-Enterprise I*, 464 U.S. at 511 ("Absent consideration of alternatives to closure, the trial court could not constitutionally close the *voir dire*."). The Supreme Court's most recent pronouncement on the right to a public trial is illustrative. In *Presley v. Georgia*, a Georgia Superior Court judge excluded a lone observer from *voir dire*. 130 S. Ct. at 722. When defense counsel objected, the judge explained that there was no reason for the observer to be present and "[e]ach row will be occupied by jurors" and the observer could not "sit and intermingle with members of the jury panel." *Id.* In finding the exclusion unconstitutional, the Court reasoned that the trial court must consider alternatives to closure. *Id.* at 725. Moreover, there was nothing in the record to show that the trial court could

not have accommodated the public by, say, dividing the jury panel to reduce congestion or reserving rows for the public. *Id.*

Defendant-Judges attempt to distinguish *Presley* because the facts in that case involved a total closure and the Court suggested that reserving some seats for the public was a reasonable alternative to closure, "which is exactly what is done in the LEC courtrooms." (Doc. 9-1 at 17.) This argument misses the letter and spirit of *Presley*. *Presley* applied strict scrutiny, so the closure still must be "no broader than necessary." 130 S. Ct. at 724 (quoting *Waller*, 467 U.S. at 48.) Defendants cannot shield themselves with a policy that excludes more of the public than necessary. And, here, Plaintiffs have alleged that they were excluded from the proceedings even though extra seats were available. (Doc. 1 ¶¶ 27(a), (e), (f).)

For those reasons, Defendants' arguments that the LEC courtrooms were not "closed" as a matter of fact are unpersuasive. The Court need not, at this stage, determine whether there was in fact a partial or total closure. It is sufficient to say that Plaintiffs have at least made out a claim for partial closure.

ii. Whether the First Amendment attaches to the LEC proceedings

In the alternative, Defendants claim Plaintiffs failed to state a claim because there is no First Amendment right of access to the hearings alleged in the complaint—namely, an arraignment in which a defendant pleads not guilty. (Doc. 9-1 at 18.) Plaintiffs argue in response that the LEC hearings are presumptively open to the public in other courtrooms. (Doc. 23 at 10.) Moreover, Plaintiffs maintain that the right of access applies to guilty pleas and a defendant during arraignment often does not know in advance whether he or she will plead guilty. (*Id.* at 11.) Openness in pretrial hearings also serves a number of constitutional interests, such as protecting the integrity of the judicial system. (*Id.*)

To the Court's knowledge, the Eleventh Circuit has not had an opportunity to extend a First Amendment right of access to plea agreements, arraignments, or calendar calls. The United States Supreme Court, however, has developed a two-part test to determine whether a proceeding carries a right of access: First, the Court has "considered whether the place and process have historically been open to the press and general public." *Press-Enterprise II*, 478 U.S. at 8. Second, the Court analyzes whether public access plays a significantly positive role in the particular process. *Id.* Using *Press-Enterprise* or similar analyses, courts have extended a First Amendment right of access to bench conferences, *United States v. Valenti*, 987 F.2d 708, 712–14 (11th Cir. 1993); preliminary hearings, *Press-Enterprise II*, 478 U.S. at 10; voir dire, *Press-Enterprise I*, 464 U.S. at 506–08; bail-reduction hearings, *United States v. Chagra*, 701 F.2d 354, 361–64 (5th Cir. 1983); plea hearings, *In re Wash. Post Co.*, 807 F.2d 383, 388–98 (4th Cir. 1986); plea agreements, *United States v. Haller*, 837 F.2d 84, 86–87 (2d. Cir. 1988), *United States v. Danovaro*, 877 F.2d 583, 589 (7th Cir. 1989); suppression hearings, *In re Application of The Herald Co.*, 734 F.2d 93, 99 (2nd Cir. 1984), and sentencing hearings, *In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 176 (5th Cir. 2011).

The Court concludes that a First Amendment right of access also attaches to the pretrial hearings at the LEC courtrooms. Even Defendant-Judges note that they "do not contest—and, indeed, acknowledge—that courts have found the First Amendment's public right of access applicable to various pre-trial proceedings, including preliminary hearings, guilty plea hearings, motions to suppress, and voir dire." (Doc. 26 at 7–8.) Instead, Defendant-Judges seek dismissal because "none of the cases cited by Plaintiffs . . . holds that entry of a not guilty plea at arraignment is the type of pre-trial proceeding that comes within the purview of the First Amendment." (Doc. 26 at 7–8.) But Plaintiffs have alleged that they are excluded from *all* pretrial proceedings, not just arraignments. In their complaint, Plaintiffs allege that they are

"individuals who attempt to watch Superior Court guilty plea proceedings, sentencings, arraignments, calendar calls, bond hearings, and other criminal proceedings." (Doc. 1 ¶ 3.) They further allege that "closure is the rule at *all* hearings taking place in courtrooms at the two Law Enforcement Centers." (*Id.* ¶ 6 (emphasis in original).)

Prohibiting the majority of the public from these proceedings often bars them from observing the entire justice system. Criminal defendants engage in plea agreements and accept guilty pleas throughout the pretrial process at the LECs. "In many respects, the plea agreement takes the place of the criminal trial. Just as there exists a first amendment right of access in the context of criminal trials . . . it should exist in the context of the means by which most criminal prosecutions are resolved, the plea agreement." *Oregonian Pub. Co. v. U.S. Dist. Court for Dist. of Or.*, 920 F.2d 1462, 1465 (9th Cir. 1990) (internal citations omitted). Today, 94 percent of state convictions are the result of guilty pleas. *Missouri v. Frye*, 132 S. Ct. 1399, 1407 (2012). "[C]riminal justice today is for the most part a system of pleas, not a system of trials." *Lafler v. Cooper*, 132 S. Ct. 1376, 1388 (2012).[1] To deprive the public the right to attend proceedings during which that process occurs could undermine the public's faith in the modern criminal justice system.

Even in the absence of a guilty plea, Defendants' arguments that no First Amendment protection should extend to arraignments is unavailing. In the detailed accounts available of pre-modern arraignments, the process appeared to be a public affair and often immediately preceded a public trial. For example, the Supreme Court in *Press-Enterprise I* described a 1565 jury selection that included a public plea inquiry. 464 U.S. at 501. The process took place "[i]n the towne house, or in some open or common place." *Id.* (quoting T. Smith, De Republica Anglorum

[1] The Supreme Court's opinions in *Frye* and *Lafler* followed a functional, rather than formalistic, approach to the Sixth Amendment. In acknowledging the modern realities of the criminal-justice system, they cast doubt on Defendant's position that a hearing must be trial-like, or a trial substitute, to receive constitutional protection.

96 (Alston ed. 1906)). "Before calling the jurors, the judge 'telleth the cause of their coming, *and* [thereby] *giveth a good lesson to the people*. The indictment was then read; if the accused pleaded not guilty, the jurors were called forward, one by one, at which time the defendant was allowed to make his challenges." *Id.* Similarly, Edward Coke, one of the greatest jurists of his time, provided a description of an arraignment that immediately preceded a public trial.[2] William Blackstone also described a similar process in which it was usual to try felons "immediately or soon after their arraignment." Sir William Blackstone, 2 Commentaries on the Laws of England in Four Books 350–51 (1893).

The arraignment is not as trivial as Defendants suggest, and the public's participation plays a positive role. The right that a defendant should know the nature and cause of his accusation was so significant to the founders that they memorialized the right in the Sixth Amendment. U.S. Const. amend. VI. A number of state constitutions prior to the adoption of the U.S. Constitution contained a similar provision. *E.g.*, Va. Const. of 1776, § 8. This history reflects the longstanding distrust of the secret Star Chamber-type of justice, where "prosecutors prepared the evidence for unspecified charges in advance of trial, giving defendants little opportunity to reply or defend." *United States v. Queen*, 132 F.3d 991, 996 (4th Cir. 1997).

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[2] Then another Oyes is made, a commandement given in the name of the High Steward of England, to all Justices and Commissioners to certifie all Indictments and Records, &c. Which being delivered into Court, the Clerk of the Crown readeth the return. Another Oyes is made, that the Lieutenant of the Tower, &c. returne his Writ and Precept, and to bring the prisoner to the Bar: which being done, the Clerk reads the retorne. Another Oyes is made, that the Serjeant at armes return his precept with names of the Barons and Peers by him summoned, and the return of that is also read. Another Oyes is made, that all Earles, Barons and Peers (which by the commandement of the High Steward be summoned) answer to their names, and then they take their places and sit down, and their names are recorded: and the entry of the Record is, that they appear, Ad faciendum ea quae ex parte Domini Regis eis injungentur. And when they be all in their places, and the prisoner at the Bar, the High Steward declares to the prisoner the cause of their assembly, and perswades him to answer without feare, that he shall be heard with patience, and that justice should be done. Then the Clerk of the Crown reades the Indictment, and proceeds to the arraignment of the prisoner, and if he plead not guilty, the entry is, Et de hoc de bono & malo ponit se super Pares suos &c. Then the High Steward giveth a charge to the Peers, exhorting them to try the prisoner indifferently according to their evidence.
Edward Coke, The Third Part of the Institutes of the Laws of England: Concerning High Treason, and other Pleas of the Crown, and Criminal Causes 28–29 (1644)

Today, arraignments—not to mention other pretrial proceedings—are often integral to the judicial process regardless of whether the defendant pleads guilty. At arraignments, for example, criminal defendants make decisions that affect the rest of the judicial process and may even waive constitutional rights. *See, e.g.*, *Johnson v. Caldwell*, 232 Ga. 200, 200 (1974) (per curiam) (holding that failure to insist on commitment hearing until after arraignment waives any requirement for commitment hearing). In Georgia, the arraignment is often the first opportunity for a defendant to request appointed counsel—or to proceed without one. Uniform Superior Court Rule 30.2. The date of arraignment also triggers filing dates for the prosecution and defense. It is the last date a prosecutor may seek an enhanced penalty, O.C.G.A. § 17-10-18, and beginning of a ten-day period for the defense to file pretrial motions. § 17-7-110. Georgia law also requires the state to provide a list of witnesses during arraignment. § 17-6-3. In a system defined by limited discovery and finite memories, an early witness list is an essential line of defense. Behind the scenes, arraignments often set the tone for the remaining proceedings. Prosecutors, for tactical reasons, may overcharge to encourage guilty pleas. H. Mitchell Caldwell, *Coercive Plea Bargaining: The Unrecognized Scourge of the Justice System*, 61 Cath. U. L. Rev. 63, 64 (2011). By hearing these charges, the public encourages both parties to exercise "their duties more conscientiously." *Gannett*, 443 U.S. at 393.

All of this is to say that there are significant reasons to keep an arraignment open to the public. But in any event, precedent compels the Court's conclusion because Plaintiffs allege they are precluded from all pretrial hearings, and the Supreme Court has already extended the First Amendment right to preliminary hearings. Moreover, the right to access logically should extend to guilty pleas, just as it does to trial. At this juncture, the Court is simply not prepared to say that Plaintiffs have no First Amendment rights to the hearings at the Ben Hill County and Crisp

County LECs. Defendants' Motions to Dismiss, then, are **DENIED** on this ground for all the reasons stated.

iii. Whether qualified immunity for Defendant Haralson warrants dismissal

Defendant Haralson argues that he is entitled to qualified immunity against Plaintiffs' First Amendment individual-capacity claim. (Doc. 16 at 3.) He contends that he did not violate any constitutional rights and that the legal grounds alleged in Plaintiffs' complaint are not clearly established. (*Id.* at 11–12.) In response, Plaintiffs maintain that Defendant Haralson has policymaking authority over courtroom security and that the "Supreme Court, Eleventh Circuit and Georgia Supreme Court case law have for decades held that closure of court proceedings to the general public must only occur in a specific case based upon application of a constitutional standard." (Doc. 29 at 5–8.) Plaintiffs and Defendant agree that Haralson acts in discretionary capacity when he establishes courtroom security. (Doc. 16 at 4; Doc. 29 at 2.)

The doctrine of qualified immunity provides that government officials acting within the scope of their employment are shielded from liability in their individual capacity when they perform discretionary tasks, unless their actions violate a clearly established constitutional right of which a reasonable person would have known. *Chandler v. Sec'y of Florida Dept. of Transp.*, Nos. 11-12374, 11-12425, 2012 WL 4094518, at *2 (11th Cir. 2012) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). On a motion to dismiss, the inquiry becomes whether Plaintiffs have alleged sufficient facts to support a constitutional violation of clearly established law. *Oliver v. Fiorino*, 586 F.3d 898, 905 (11th Cir. 2009).

Here, Plaintiffs have alleged adequate facts to establish that Defendant Haralson violated their federal constitutional rights. The Supreme Court has long held that the public has a right to access certain pretrial proceedings, such as preliminary hearings. *Press-Enterprise II*, 478 U.S. at 10. Further, it is well settled that a decision to close a courtroom requires the court to afford the

public notice and an opportunity to be heard on the proposed closure. *Valenti*, 987 F.2d at 713. The complaint describes a policy of closure that prevents Plaintiffs from entering Crisp County LEC courtrooms unless they are members of the criminal defendant's family and the criminal defendant also pleads guilty during the hearing. These facts show that at least some hearings were completely closed to the public because the defendant did not plead guilty. Further, the facts establish, at least at this stage of litigation, that some individuals, such as Joyce Scales, were deprived altogether of their constitutional right to access pretrial hearings.

The complaint also contains enough facts to hold Haralson liable for those violations in his supervisory capacity. Under Section 1983, a plaintiff may establish supervisor liability by showing a causal connection between the constitutional violation and the defendant's conduct. *Boyd v. Nichols*, 616 F. Supp. 2d 1331, 1341–42 (M.D Ga. 2009). A causal connection can be established by a custom or policy that results in a constitutional violation or by "a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he fails to do so." *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003). The complaint alleges that the sheriff has a policy of closing the courtrooms. Moreover, the facts show that the NAACP previously sued Crisp County for similar reasons and the county allegedly agreed to open its courtrooms in a settlement agreement. These allegations are sufficient to support the claim that Defendant Haralson knew of widespread abuse but failed to correct it.

Accordingly, Defendant Haralson's Motion to Dismiss for reason of qualified immunity is **DENIED without prejudice**.

iv. <u>Whether Plaintiffs state a Section 1983 claim against Defendant Haralson in his official capacity</u>

Defendant Haralson also argues Plaintiffs fail to state a First Amendment Section 1983 claim against him in his official capacity. (Doc. 16 at 14.) He contends that "the affidavits submitted by the Judges in opposition to Plaintiffs' request for a preliminary injunction show that

it was the Judges, not Haralson, who established the procedures that are being utilized in the courtroom at Crisp LEC." (*Id.* at 15.) The Court, however, is generally confined to the four corners of the complaint on a motion to dismiss for failure to state a claim. *Speaker v. U.S. Dept. of Health & Human Servs. Ctrs. for Disease Control & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010).

In any event, the complaint contains sufficient detail to state a Section 1983 claim against Haralson in his official capacity. A Section 1983 suit against a government actor in her official capacity is in fact a suit against the entity that employs her. *Brown v. Neumann*, 188 F.3d 1289, 1290 (11th Cir. 1999). An entity is liable under Section 1983 "when execution of [its] policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978).

Here, the complaint maintains that Haralson's deputies followed a custom and policy of closing the Crisp County LEC to Plaintiffs and other observers. Plaintiffs contend that the county knew of this problem because of a previous lawsuit against it and that Defendant Haralson promulgated a policy of closure. Furthermore, even in the absence of a specific policy, the complaint contains enough factual allegations to make a claim that, at the very least, Defendant Haralson and his deputies had a custom of prohibiting the majority of the public from entering the hearings at the Crisp County LEC.

c. Sixth Amendment and Fourteenth Amendment claims

Defendants argue that Plaintiffs fail to state a claim under the Sixth and Fourteenth Amendments. (Doc. 9-1 at 24–29.) In response, Plaintiffs concede that the complaint does not

state a Sixth Amendment or an independent Fourteenth Amendment claim.[3] (Doc. 23 at 14–15.) Accordingly, to the extent the complaint alleges violations of the Sixth and Fourteenth Amendment, Defendants Motions are granted and the claims are **DISMISSED**.

d. Georgia Constitution Claims

i. Claims against Defendants in their Official Capacities

Defendant Judges and Haralson, in their official capacities, move to dismiss Plaintiffs' state-law claims because neither Georgia nor the county governments have waived sovereign immunity. (Doc 9-1 at 30; Doc. 16 at 19.) Defendant-Judges argue that *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 120 (1984), precludes federal courts from enjoining state officials for violations of state law. (Doc. 9-1 at 30.) Plaintiffs hope to avoid dismissal by drawing a distinction between Georgia constitutional claims and other state-law claims. (Doc. 23 at 15.)

In *Pennhurst*, the Supreme Court held that the doctrine of sovereign immunity bars federal courts from awarding injunctive relief against state officials for violations of state law. 465 U.S. at 106. Because Superior Court judges are arms of the state, *see Kaimowitz v. The Florida Bar*, 996, F.2d 1151, 1155 (11th Cir. 1993), they are protected by the doctrine of sovereign immunity. *E.g.*, *Cohran v. State Bar of Ga..*, 790 F. Supp. 1568, 1576 (N.D. Ga. 1992). Accordingly, Plaintiffs' state-law claim for injunctive relief against the judges must be dismissed, absent a waiver or exception.

Plaintiffs have failed to identify a waiver to the judges' immunity. Their attempt to distinguish state constitutional claims from other types of state claims is unpersuasive. The Court in *Pennhurst* reached its holding because *Ex Parte Young*, 209 U.S. 123 (1908) and its progeny existed to protect federal rights, not state laws. 465 U.S. at 104–06. And it would seem that a

[3] As mentioned *supra*, Plaintiffs do state a First Amendment claim, which is applicable to the states through the Fourteenth Amendment.

federal court's interest in comity is greater, not lesser, when a litigant asks it to interpret a state constitution. The state-law claim against Defendant-Judges is therefore **DISMISSED.**

Notwithstanding that, Defendant Haralson has failed to carry his burden of showing that he is also entitled to dismissal on this ground. He makes no attempt to analyze whether he is an arm of the state or arm of the county under federal law. His Georgia constitutional sovereign immunity claim is also unavailing. Although the Georgia Constitution shields the state, its agencies, and counties from liability under the doctrine of sovereign immunity, Ga. Const., Art. I, Sec. II, Par. IX (e), *DeKalb State Court Prob. Dep't v. Currid*, 287 Ga. App. 649, 651 (2007) (holding that sovereign immunity applies to counties), Georgia courts hold that sovereign immunity is inapplicable when a state actor acts illegally and injunctive relief is sought. *Int'l Bus. Machs. Corp. v. Evans*, 265 Ga. 215, 216 (1995). Sovereign immunity likewise does not bar claims for attorney's fees arising out of an action for equitable relief. *Waters v. Glynn Cnty.*, 237 Ga. App. 438, 440 (1999).

It is also unclear whether Georgia sovereign immunity applies to state constitutional claims. *I.B.M. Corp.*, 265 Ga. at 217 n.3 ("Because sovereign immunity does not bar IBM's complaint, it is unnecessary to decide whether sovereign immunity would bar a suit based on the alleged violation of a constitutional right."). Because Defendant Haralson has not addressed or briefed this issue, the Court does not decide it.

To summarize, the claim for equitable relief against Defendant-Judges is **DISMISSED**. Defendant Haralson's Motion as it pertains to Count II, in his official capacity, is **DENIED without prejudice.**

ii. <u>Claims Against Defendant Haralson in his Individual Capacity</u>

Because Plaintiffs sued Defendant Haralson in his individual and his official capacity, Defendant Haralson also moves for dismissal of the state-law individual-capacity claim. (Doc. 16

at 18.) Defendant Haralson argues that "[at] least one Georgia court has found that a plaintiff cannot assert an individual capacity claim against a deputy sheriff for an alleged violation of his or her Georgia Constitutional rights." (*Id.*) Even if Georgia allows individual capacity claims for constitutional rights, Defendant contends that "dismissal is still appropriate because there is no factual basis for their claim." (*Id.* at 19.) In response, Plaintiffs argue that a number of Georgia courts have recognized individual capacity claims for state constitutional claims. (Doc. 29 at 9.)

The Court agrees with Plaintiffs. Both parties recognize that Georgia courts have permitted Plaintiffs to sue a state actor in his or her individual capacity for violations of constitutional law. *See Porter v. Massarelli*, 303 Ga. App. 91, 96–96 (2010) (reversing grant of summary judgment because there was a genuine issue of material fact as to individual capacity claim under Georgia Constitution); *Alford v. Osei-Kwasi*, 203 Ga. App. 716, 721 (1992). Moreover, as discussed *supra* Section I(b)(iii), Plaintiffs have alleged sufficient facts to establish a claim that Defendant created a policy that excluded all people from the Crisp County Courtrooms.

Accordingly, Defendant Haralson's Motion to Dismiss on his state-law claims in his individual capacity is **DENIED**.

e. <u>Defendant-Judges' Motion to Dismiss Plaintiffs' Section 1985 claim.</u>

In their complaint, Plaintiffs made a passing reference to 42 U.S.C. § 1985, which provides a cause of action for conspiracies to interfere with civil rights. Defendant-Judges move for dismissal on this claim, even though "Defendants do not believe that they seek to raise a claim under that statute." (Doc. 9-1 at 32.) The Court agrees. The substantive portion of Plaintiffs' complaint contains no reference to or allegations regarding a conspiracy to deprive Plaintiffs of their constitutional rights. Plaintiffs also do not respond to Defendants' Motion in

this regard. Accordingly, to the extent Plaintiffs sought to bring a Section 1985 claim, it is **DISMISSED**.

f. Plaintiffs' Motion to Amend

Lastly, Plantiffs move to amend their complaint to substitute Defendant Ben Hill County Sheriff Bobby McLemore with Ben Hill County Superior Court bailiffs James R. Butts, James C. Clark, John K. Fletcher, Dewey R. Hannon, Wilbert King, and Donald C. Paulk. Plaintiffs request leave to amend because "it has become apparent since the filing of the Complaint and Motion for Preliminary and/or Permanent Injunction that neither Defendant McLemore nor his staff controls the public access to the Ben Hill County Jail courtroom." (Doc. 33 at 2.) Defendant Judges oppose the Motion because an amendment would be futile given that the courtrooms were not closed and the proposed amended complaint does not contain sufficient allegations to state a claim for relief against the bailiffs. (Doc. 26 at 4–5.)

The Federal Rules of Civil Procedure provides that a party may amend its pleadings as a matter of course within twenty-one days after service of a responsive pleading or twenty-one days after service of a motion under Rule 12(b), (e), or (f). Fed. R. Civ. P. 15(a)(1). For all other amendments, a party must seek the opposing party's consent or the court's leave. Fed. R. Civ. P. 15(a)(2). A court should freely grant leave "if the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief." *Foman v. Davis*, 371 U.S. 178, 182 (1962). *See also Hall v. United Ins. Co. of America*, 367 F.3d 1255, 1262 (11th Cir. 2004). A court may deny a motion for leave for a number of reasons, including futility, undue delay, bad faith, or undue prejudice to Defendant. *Burns v. Winnebago Indus., Inc.*, 2012 WL 4839271, at *1 (per curiam) (citing *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1319 (11th Cir.1999)).

"When a district court denies the plaintiff leave to amend a complaint due to futility, the court is making the legal conclusion that the complaint, as amended, would necessarily fail." *St.*

Charles Food, Inc. v. America's Favorite Chicken Co., 198 F.3d 815, 822 (11th Cir. 1999). In other words, the futility standard is akin to a motion to dismiss. *Grant v. Countrywide Home Loans, Inc.*, No. 1:08-CV-1547-RWS, 2009 WL 1437566, at *8 (N.D. Ga. May 20, 2009). The Court should therefore deny leave when the "complaint as amended is still subject to dismissal." *Halliburton & Assocs., Inc. v. Henderson, Few & Co.*, 774 F.2d 441, 444 (11th Cir. 1985).

Defendants argue that Plaintiffs' amendment is futile for two reasons. First, they argue that there was no closure under the First Amendment. Given the Court's previous analysis, however, this argument is unpersuasive. Second, Defendants claim that the amended complaint fails to state a claim against the bailiffs. They claim that "Plaintiffs fail to allege that each of the named defendants actually participated in the alleged constitutional violation." (Doc. 36 at 6.)

Plaintiffs' complaint contains sufficient allegations to state a constitutional violation against Defendant bailiffs. The amended complaint contains allegations showing that bailiffs denied access to Plaintiffs and other LEC visitors. According to the complaint, "[e]ach bailiff questions Plaintiffs . . . about their reasons for wanting to enter," "requires Plaintiffs and others to provide the name of the criminal defendant they are there to see," bars non-relatives from entering the courtrooms, and even bars relatives from entering absent a guilty plea. (Doc. 37-2 ¶ 27.) Moreover, Plaintiffs specifically allege that bailiffs prevented Beverly Fuqua, Jessica Simonds, and Reverend James Davis from entering the courtrooms. Finally, the complaint contends that the bailiffs are "directly responsible for setting policy and determining who enters and leaves the courtroom, and when." (*Id.* ¶¶ 19–24.) These allegations are sufficient to establish that Defendant bailiffs participated in the alleged deprivation of Plaintiffs' constitutional rights.

Plaintiffs' Motion for Leave to Amend Complaint and Substitute Parties is therefore **GRANTED**, and Plaintiffs shall file an amended complaint within **fourteen (14) days** of the entry of this Order.

CONCLUSION

In summary, Defendant-Judges' Motion to Dismiss (Doc. 9) as it pertains to injunctive relief is **GRANTED**, and the claim for injunctive relief is **DISMISSED without prejudice**. Defendant-Judges' claim regarding Count I, which focuses on alleged violations of the First Amendment, is **DENIED**. Defendant Judges' Motion to Dismiss Count II is **GRANTED**, and that Count is **DISMISSED** against Defendant-Judges. Defendant Haralson's Motion (Doc. 15) is **DENIED** as to Count I and **DENIED without prejudice** as to Count II**.** To the extent Plaintiffs' complaint can be read as alleging a Sixth Amendment claim, a standalone Fourteenth Amendment claim, and a Section 1985 claim, those claims are **DISMISSED**. The conclusions in this Order apply only to the question of whether Plaintiffs stated claims for which relief can be granted under Rule 12(b)(6).

Plaintiffs' Motion for Leave to Amend Complaint (Doc. 33) is **GRANTED**. Plaintiffs shall file an amended complaint within **fourteen (14) day** of the entry of this Order. This action shall go forward on the remaining claims.

SO ORDERED, this 20th day of February 2013.

/s/ W. Louis Sands
THE HONORABLE W. LOUIS SANDS,
UNITED STATES DISTRICT COURT