[PUBLISH]

2020 census. After the School Board voted 4–3 along racial and party lines to adopt the redistricting map, it submitted that map to the Georgia General Assembly. The map was included in House Bill 1028, which passed both legislative houses and was signed into law on March 2, 2022. *See* 2022 Ga. Laws 5274.

In June 2022 four registered Cobb County voters and a group of non-profit organizations sued the Cobb County Board of Elections and Registration and its then-director (the "Election Defendants") under 42 U.S.C. § 1983, alleging that the 2022 redistricting map was based on unconstitutional racial gerrymandering in violation of the Equal Protection Clause of the Fourteenth Amendment. The operative complaint claims that map "packed" Black and Latino voters into certain voting districts to "dilute their political power" and preserve a majority white School Board. The complaint sought declaratory and injunctive relief to prevent the 2022 map from being used.

The Cobb County School District moved to intervene as a defendant, and the district court granted that motion. Now a party defendant, the School District moved for judgment on the pleadings on the grounds that it was not liable for any constitutional violation. Its primary argument was not that the 2022 map was constitutionally valid, but that the School District was not liable for any infirmity in the map because it was the Georgia General Assembly and not the School Board that enacted the challenged map. It also argued that the plaintiffs could not show that the alleged constitutional violation resulted from a government policy or custom as is

court's approval, the court would supervise the implementation of a remedial map with input from the parties.

The plaintiffs filed their motion for a preliminary injunction

would then decide whether to approve that map. The court's goal was to approve a new map by February 9, 2024, which the parties agreed would leave enough time for the map to be "properly implemented" in time for the scheduled election.

Still not a party, and without seeking to reintervene for purposes of appeal, the School District promptly appealed the preliminary injunction order. On January 19, 2024, a motions panel of this Court stayed that order (and its deadlines for approving any remedial map) pending the outcome of this appeal.

Not long thereafter, on January 30, 2024, the Georgia General Assembly passed Senate Bill- (n)-4.82587-3.1 (p7w532)]TJ-0.Td( )Tjcco2est3.1 (p)0.9 (

v. Galle, 83 F.4th 1366, 1374–75 (11th Cir. 2023). The threshold question is whether the School District has standing to appeal that order.[1] We review *de novo* questions of appellate standing. *Kimberly Regenesis, LLC v. Lee County*, 64 F.4th 1253, 1258 (11th Cir. 2023).

Wolff, 351 F.3d at 1353. For example, while standing to sue requires an "injury caused by the underlying facts," standing to appeal requires an "injury caused by the judgment." *Kimberly Regenesis*, 64 F.4th at 1259 (quotation marks omitted). In other words, the liti-

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the district court" proceedings, and the county commissioner in that case had not done so. *Id*. That does not mean *Kimberly Regenesis* held that a nonparty who did participate in the district court proceedings may appeal an order or judgment that resulted from them.

To begin with, our discussion in *Kimberly Regenesis* about the possibility of a nonparty appeal exception was only dicta. As we've said many times, "[t]he holding of a case comprises both the result of the case and those portions of the opinion necessary to that result." *See, e.g.*, *United States v. Gillis*, 938 F.3d 1181, 1198 (11th Cir. 2019) (quotation marks omitted); *United States v. Hurtado*, 89 F.4th 881, 895 n.16 (11th Cir. 2023) (same). Any other statements that are not necessary to the result are dicta and do not bind us. *See United States v. Shamsid-Deen*, 61 F.4th 935, 949 n.1 (11th Cir. 2023) ("Because the statement . . . was not necessary to the result in that case, it was dicta."); *Rambaran v. Sec'y, Dep't of Corr.*, 821 F.3d 1325, 1333 (11th Cir. 2016) ("[T]he statement is dicta because it was not necessary to the result in [the earlier case]."); *Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co.*, 953 F.3d 707, 725 (11th Cir. 2020) ("Our statement . . . in [an earlier case] was not necessary to the decision we reached, so it is not part of our holding."); *Castillo v. Fla., Sec'y of DOC*, 722 F.3d 1281, 1290 (11th Cir. 2013) ("[B]ecause those statements in [an earlier] opinion are not necessary to the result in that case, . . . they are not the holding of

whereas holding is comprised both of the result of the case and those portions of the opinion necessary to that result by which we are bound.") (quotation marks omitted); *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1298 (11th Cir. 2010) ("We have pointed out many times that regardless of what a court says in its opinion, the decision can hold nothing beyond the facts of that case. All statements that go beyond the facts of the case . . . are dicta. And dicta is not binding on anyone for any purpose.") (citations omitted). Our statements about the possibility of an exception that might allow a nonparty who participated to appeal were not necessary to the result *Kimberly Regenesis* reached, which was that the nonparty could not appeal.

First, the appeal fails under the "participation" test of the nonparty appeal exception. When our sister circuits have considered whether a nonparty "actually participated" in the district court

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
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