

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF ALABAMA  
 NORTHEASTERN DIVISION**

<b>SCHRADE JONES et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No.: 5:22-cv-0620-LCB</b>
	)	
	)	
<b>UNITED STATES OF AMERICA</b>	)	
<b>et al.,</b>	)	
<b>Defendants.</b>		

**ORDER**

Before the Court is Defendant United States of America’s and the Tennessee Valley Authority’s (the “TVA”) motions to dismiss. (Docs. 44 & 45). The issue has been fully brief by the parties and is ripe for adjudication. (*Id.*; Docs. 46, 49, & 50). Having considered the motions and for the reasons explained below, the Court will grant the United States’ and the TVA’s motions to dismiss (Docs. 44 & 45).

**I. BACKGROUND**

In the summer of 2020, Plaintiffs Schrade Jones and Carter Gilliam, while bowfishing at night, collided with an unmarked duck blind located in the waters of Lake Guntersville. (Doc. 1, “the original complaint”). Jones and Gilliam sued the United States and the TVA under 46 U.S.C. §§ 30901–13, the Suits in Admiralty Act (the “SAA”), claiming that both the United States and the TVA negligently and

wantonly or recklessly failed to remove, warn of, or mark the duck blind. (*Id.*) The original complaint stated that the SAA “waives the United States’ sovereign immunity for maritime and admiralty actions.” (*Id.*) Both the United States and the TVA filed motions to dismiss, explaining that although the SAA does waive sovereign immunity, the Eleventh Circuit has held there is a discretionary-function exception to the SAA’s waiver of sovereign immunity. (Docs. 12 & 14) (citing *Cranford v. United States*, 466 F.3d 955, 958 (11th Cir. 2006)). Further, the United States and the TVA argued that their decisions regarding warning of, marking, or removing the duck blind are discretionary decisions, so that their sovereign immunity remains intact. (Doc. 12 at 15; Doc. 14 at 18).

Jones and Gilliam opposed the motions to dismiss for several reasons. (Doc. 19). Some, but not all the points raised by the Plaintiffs, include that the SAA broadly waives sovereign immunity and does not exclude discretionary decisions, that “engrafting the FTCA’s discretionary-function exception onto the SAA violates the separation of powers,” and that the United States’ and the TVA’s arguments were based on “bad law.” (*Id.* at 12, 14, 22).

On March 22, 2023, the Court held a hearing on the motions to dismiss. At the hearing, counsel for Jones and Gilliam argued,

“all of [the] Eleventh Circuit cases [recognizing the discretionary function exception in the SAA] are not binding in any way. Because they didn’t accomplish anything . . . It is error. The Eleventh Circuit erred when it took 2680(a) of the Federal Tort

Claims Act and incorporated in onto the SAA. That was unconstitutional . . . There is just nothing that binds [the Court] to some Eleventh Circuit case law that was itself unconstitutional and never occurred.”

(Doc. 41 at 37–44). Alas, this Court rejected all of Jones’s and Gilliam’s arguments explaining, “[t]he law in this Circuit is that the SAA’s waiver of sovereign immunity is subject to the discretionary-function exception found in the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2680(c).” (Doc. 35 at 9) (citing *Cranford*, 446 F.3d at 958). The Court then determined that the conduct challenged by Jones and Gilliam fell within the discretionary-function exception, which kept the United States and the TVA’s sovereign immunity intact. (*Id.* at 11–14). Accordingly, the original complaint was dismissed without prejudice, but Jones and Gilliam were given leave to amend their complaint. (*Id.* at 15) Specifically, the Court explained that it believed “that the core facts of this suit *might* give rise to a cognizable claim *if* Plaintiffs make certain amendments to their complaint. Such amendments, for example, *could* include proceeding under a jurisdictional statute; alleging non-maritime claims; or dropping or adding parties.” (*Id.*) Subsequently, Jones and Gilliam filed an amended complaint. (Doc. 36, the “amended complaint”).

The United States and the TVA have both filed motions to dismiss the amended complaint. (Docs. 44 & 45). The United States argues that the amended complaint is due to be dismissed for two reasons: (1) the amended complaint fails to state a claim for which relief may be granted, and (2) the claims stated in the

amended complaint are barred by sovereign immunity. (Doc. 44-1). The TVA argues that the amended complaint is due to be dismissed because it alleges additional jurisdictional bases that are not applicable here, and the claims are barred by sovereign immunity. (Doc. 46). For the reasons explained below, the United States' and the TVA's motions to dismiss (Docs. 44 & 45) will be granted.

## **II. DISCUSSION**

The amended complaint alleges that Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1333(1), 1346, 1349, 1367(a), and Article III, Section 2, Clause 1 of the Constitution. (Doc. 36 at 4–5). Additionally, according to the amended complaint, the SAA waives sovereign immunity for both the United States and the TVA, and the TVA Act's sue-or-be sued clause further waives sovereign immunity for the TVA. (*Id.* at 2–3). Thus, there are two important issues that must be resolved: (1) whether this Court has subject-matter jurisdiction to hear Jones's and Gilliam's claims, and (2) whether the United States and the TVA are entitled to sovereign immunity.

### **A. This Court has Subject-Matter Jurisdiction.**

The amended complaint lists several statutes that Jones and Gilliam claim give this Court subject-matter jurisdiction over their claims, including 28 U.S.C. §§ 1331, 1333(1), 1346, 1349, and 1367(a). (Doc. 36 at 2–3).

Subject-matter jurisdiction is required for a court to adjudicate a plaintiff's claims. *United States v. Morton*, 467 U.S. 822, 828 (1984). A federal court has subject-matter jurisdiction only over cases that fall within the Constitution's limits and a jurisdictional statute. *Patel v. Hamilton Med. Ctr., Inc.*, 967 F.3d 1190, 1193 (11th Cir. 2020). Article III, Section 2, Clause 1 of the Constitution provides in relevant part that "[t]he judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction." Under 28 U.S.C. § 1333(1), federal district courts have original jurisdiction of "[a]ny civil case of admiralty or maritime jurisdiction." For the reasons explained in this Court's previous order, Jones's and Gilliam's claims are maritime in nature and invoke this Court's admiralty jurisdiction. (Doc. 35 at 5–7). Although the amended complaint lists several other general jurisdictional grants, this Court sits in admiralty over Jones's and Gilliam's claims, and the additional statutes cited as jurisdictional bases, §§ 1331, 1346, 1349, and 1367(a), are irrelevant. *See, e.g., Everett v. Carnival Cruise Lines*, 912 F.2d 1355, 1358 (11th Cir. 1990) ("Even when the parties allege diversity of citizenship as the basis of the federal court's jurisdiction (as they do in this case), if the injury occurred on navigable waters, federal maritime law governs the substantive issues in the case.").

Thus, the Court has subject-matter jurisdiction over Jones's and Gilliam's claims pursuant to 28 U.S.C. § 1333(1).

**B. The United States and the TVA are Entitled to Sovereign Immunity.**

First, none of the cited general jurisdiction statutes waive the United States' or the TVA's sovereign immunity in this case. 28 U.S.C. § 2680(d) (section 1346's waiver of sovereign immunity in (b) does not apply to suits in admiralty); *Beale v. Blount*, 461 F.2d 1133, 1138 (5th Cir. 1972) (holding that § 1331 "may not be construed to constitute waivers of the federal government's defense of sovereign immunity."); *Walker v. Secretary of the Army*, No. 23-14229, 2024 WL 4635382, at \*2 (11th Cir. Oct. 31, 2024) (stating that "just because a court can hear all cases involving federal questions does not mean it can adjudicate all disputes. One limitation on a court's ability to answer these questions is sovereign immunity."); *Paulk v. Tennessee Valley Auth.*, No. 22-CV-105-CLM, 2025 WL 37116 (N.D. Ala. Jan. 6, 2025) (explaining that the court sat in admiralty pursuant to § 1333, but determined if sovereign immunity was waived under the SAA); *American National Red Cross v. S.G.*, 505 U.S. 247, 261 (1992) (holding that § 1349 "speaks only to jurisdiction"); *Kight v. U.S. District Court, Northern District of Georgia*, 681 Fed. App'x 882, 883 n.4 (11th Cir. 2017) (finding that § 1367(a) gives a court supplemental jurisdiction over related claims, but does not waive sovereign immunity).

Nonetheless, the SAA does waive sovereign immunity for suits in admiralty against the United States and any federally owned corporation. 46 U.S.C. §

30903(a). This limited waiver of sovereign immunity makes the SAA the “sole jurisdictional basis for admiralty claims against the United States.” *Cranford v. United States*, 466 F.3d 955, 958 (11th Cir. 2006). Thus, Jones’s and Gilliam’s claims can proceed only with the SAA’s waiver of sovereign immunity.

However, as explained in this Court’s previous order of dismissal, Eleventh Circuit precedent clearly holds that the SAA’s waiver of sovereign immunity is subject to the discretionary-function exception found in the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2680(a). (Doc. 35 at 9) (citing *Cranford*, 466 F.3d at 958). Despite this Court’s clear statement that the discretionary-function exception applies, Jones and Gilliam use almost 29 pages of their response in opposition to the motions to dismiss to argue, yet again, that the discretionary-function exception does not apply to the SAA. (Doc. 47 at 14–42). Jones and Gilliam give several reasons why they argue discretionary-function exception does not, or rather, should not, apply to the SAA, but the core of their argument remains unchanged—they would like this Court to overrule the Eleventh Circuit. (*Id.*) For a second time, this Court will follow binding Eleventh Circuit precedent and apply the discretionary-function exception to the SAA.

The Court now turns its inquiry to applying the discretionary-function exception. The discretionary-function exception applies if: (1) the challenged conduct involves “an element of judgment or choice,” and (2) if the judgment is of

the kind that the discretionary-function exception was designed to shield. *United States v. Gaubert*, 499 U.S. 315, 322 (1991). Conduct involves an element of judgment or choice unless “a federal statute, regulation, or policy specifically proscribes a course of action embodying a fixed or readily ascertainable standard.” *Hughes v. United States*, 110 F.3d 765, 768 (11th Cir. 1997) (per curiam).

The original complaint challenged the United States’ and the TVA’s nonperformance of marking, warning of, or removing the duck blind. (Doc. 1 at 13–15, 19). This Court found that such conduct was an element or choice because Jones and Gilliam failed to identify any statute, regulation, or policy, that required the United States or the TVA to mark, warn of, or remove a privately-owned structure located outside of the commercial navigation channel, as was the duck blind. (Doc. 35 at 11–12).

In the amended complaint, Jones and Gilliam challenge the United States’ and the TVA’s nonperformance of “maintaining the area in a reasonably safe condition and fail[ing] to remove, give adequate warning of, or reasonably mark the hazard.” (Doc. 36 at 21). The word-game that the amended complaint engages in is of little consequence. While Jones and Gilliam allege that the United States and the TVA failed to “maintain the area,” the core of the claim remains that Jones and Gilliam allege the United States failed to remove, warn of, or mark the hazard, which is identical to the claims made in the original complaint. (Doc. 1 at 16, 19; Doc. 36 at

21, 25). However, this time, Jones and Gilliam cite generally to the “duties imposed by the general maritime law and applicable statutes and regulations as set forth in paragraphs 89 through 106,” as well as Alabama state court case law on negligence. (Doc. 36 at 19–20). There are no federal statutes, regulations, or policies cited in the amended complaint in paragraphs 89 through 106 to show the United States and the TVA were required to mark, warn of, or remove the duck blind. (*Id.* at 9–16). Moreover neither “general maritime law” nor Alabama case law reciting the elements of negligence is “a federal statute, regulation, or policy specifically proscrib[ing] a course of action embodying a fixed or readily ascertainable standard.” Accordingly, the first element of the discretionary-function exception is established.

As to the second element of the discretionary-function analysis, this Court explained in its previous order that the United States’ and the TVA’s decision not to mark, warn of, or remove the duck blind is the type of decision that the discretionary-function is designed to shield. (Doc. 35 at 14). There is little need to repeat that analysis in full here. Accordingly, the discretionary-function exception applies so that the United States’ and the TVA’s sovereign immunity remains intact to bar Jones’s and Gilliam’s claims.

The amended complaint also alleges that the TVA’s sovereign immunity is waived vis-à-vis its sue-or-be-sued clause. (Doc. 36 at 2–3). However, this Court

rejected this same argument in its previous order (Doc. 35 at 10) and does so again in this order for the same reasons.

The United States and the TVA are both entitled to sovereign immunity, and the amended complaint (Doc. 36) is due to be dismissed.

### **III. CONCLUSION**

Although this Court previously gave Jones and Gilliam leave to amend their original complaint, they failed to amend their complaint to show that sovereign immunity does not bar their claims. Accordingly, the Court **GRANTS** the United States' and the TVA's motions to dismiss (Docs. 44 & 45) and **DISMISSES** the amended complaint (Doc. 36) **WITHOUT PREJUDICE**. The Clerk is **DIRECTED** to close this case.

**DONE** and **ORDERED** this January 22, 2025.

A handwritten signature in black ink, appearing to read "Liles C. Burke", written over a horizontal line.

**LILES C. BURKE**  
UNITED STATES DISTRICT JUDGE