



**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  
FIFTEENTH JUDICIAL CIRCUIT – CIVIL DIVISION**

**TIARA YOUNG HUDSON**, in her individual capacity as a candidate for Jefferson County, Alabama’s vacant Tenth Judicial Circuit, Place 14 judgeship,

*Plaintiff,*

v.

Civil Action No.

**KAY IVEY**, in her official capacity as Governor of Alabama; **PATRICK TUTEN**, in his official capacity as appointee to Madison County, Alabama’s Twenty Third Judicial Circuit; and **TOM PARKER**, in his official capacity as Chair of the Judicial Resources Allocation Commission.

*Defendants.*

**VERIFIED COMPLAINT FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is an action to challenge the unlawful reallocation of a judicial seat (designated as Place 14 in the Tenth Judicial Circuit) from Jefferson County to the Twenty-Third Judicial Circuit in Madison County, Alabama.

2. In 2017, the Alabama Legislature attempted to empower a new agency, the Alabama Judicial Resources Allocation Commission (“JRAC”), to reallocate judgeships from

one circuit or district to another in the event of a vacancy due to death, retirement, resignation, or removal from office of a district or circuit judge. Ala. Code § 12-9A-2.

3. Under the enacting statute, in the event JRAC chooses not to reallocate the vacant judgeship within the prescribed thirty (30) days, the vacancy shall be filled according to the law in the district or circuit in which the judgeship is located. *Id.*

4. Thus, the Legislature unlawfully purported to delegate to another branch of government its constitutional duty to increase and/or decrease the number of circuit or district court judicial seats. *See* Ala. Const. Art. VI § 151.

5. On June 1, 2022, incumbent Circuit Judge Clyde Jones announced his retirement, effective immediately. Notably, Judge Jones was age-ineligible to serve another term as a judge, though his retirement announcement came about seven months before the natural termination of his term.

6. Pursuant to Section 6.14 of Amendment 328 of the Alabama Constitution of 1901, vacancies in any judicial office shall be filled by appointment by the governor. However, when judicial vacancies arise in Jefferson County, Amendments 83 and 110 to the Alabama Constitution of 1901 require the Jefferson County Judicial Commission (“JCJC”) to nominate three qualified individuals, from whom the Governor selects one for the appointment. That appointee then holds office until the next general election occurring at least six months after the vacancy arises; in this case, until November 5, 2024. Ala. Const. Jeff. Cnty. § 8.

7. Immediately after Judge Jones announced his retirement, JCJC began its constitutionally mandated process of identifying suitable candidates to recommend to Defendant Ivy to fill the Birmingham Division vacancy.

8. However, on or about June 9, 2022, JRAC convened and voted along racially divided lines to reallocate the vacant judgeship in the predominantly Black Birmingham Division of the Jefferson County Circuit Court to the predominantly white Madison County—acting for the first time pursuant to its purported authority under Ala. Code § 12-9A-2. JRAC’s action in reallocating the seat created significant confusion and disruption. On July 18, 2022, Governor Ivey appointed Patrick Tuten to serve in the reallocated—that is, newly created—judgeship in Madison County.

9. On its face, the statute which empowers JRAC to “increase or decrease the number of judges” is an unconstitutional delegation of legislative authority and shields the Legislature from effectively addressing the issues facing the citizens of Alabama.

10. Because Alabama Code § 12-9A-2 violates the Alabama Constitution, JRAC’s reallocation of a judgeship from Jefferson County to Madison County must be invalidated.

11. Further, this Court must order Governor Ivey to fill the Jefferson County vacancy according to process set forth in the Alabama constitution and enjoin Defendant Tuten from exercising any authority as a circuit judge pursuant to Governor Ivey’s July 18, 2022, appointment.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over this action pursuant to Ala. Const. Art. VI § 142.

13. In addition, this Court has jurisdiction to grant declaratory relief under Alabama’s Uniform Declaratory Judgments Act, *see* Ala. Code 1975 § 6-6-222.

14. Venue is proper in the Fifteenth Judicial Circuit of Alabama pursuant to Alabama Rules of Civil Procedure, Rule 82, because this is an action against agencies and officials of the

State of Alabama who officially reside in Montgomery County, and because a substantial part of the events and omissions giving rise to the claims in this case occurred in this Circuit. *Hardin v. Fullilove Excavating Co.*, 353 So. 2d 779 (Ala.1977); *Boswell v. Citronelle–Mobile Gathering, Inc.*, 292 Ala. 344, 294 So. 2d 428 (1974); *Tri–State Corp. v. State*, 272 Ala. 41, 128 So. 2d 505 (1961).

## PARTIES

15. Plaintiff Tiara Young Hudson is over the age of 18 and is a resident of the state of Alabama. Hudson is also a candidate for the vacant Alabama Tenth Judicial Circuit, Place 14 judgeship in Jefferson County, Alabama. Pursuant to the instructions contained in JCJC’s June 1, 2022, public notice, Plaintiff Hudson submitted an application to JCJC to be considered to fill the vacancy until the general election that will occur in November 2024. Notably, on May 24, 2022, Plaintiff Hudson won a contested Democratic Party primary election for the position then held by Judge Clyde Jones; however, Judge Jones’s immediate retirement from his position on June 1 created a vacancy that effectively canceled the planned general election for that position in November 2022.

16. Defendant Kay Ivey is the Governor of the State of Alabama. As Governor, Defendant Ivey is responsible for upholding the Alabama Constitution, Ala. Const., art. V, § 120, and executing state law. Additionally, when judicial vacancies arise in the Birmingham Division of Jefferson County, the Governor is responsible for selecting one individual for appointment from a list of qualified nominees submitted by JCJC. As constitutionally mandated, JCJC is currently reviewing applications for the vacant Tenth Judicial Circuit, Place 14 judgeship in Jefferson County, previously occupied by Judge Jones. These applications are expected to be submitted to the Governor for appointment. Governor Ivey also received from JRAC a set of

applicants to the new, unconstitutionally created Madison County seat, and on July 18, 2022, appointed one of those candidates to the seat.

17. Defendant Patrick Tuten is Governor Ivey's appointee to serve as a circuit judge in the new, unconstitutionally created Madison County seat on the Twenty Third Judicial Circuit. Before being selected to fill the circuit court judgeship, Tuten served as a district judge in Madison County. Consequently, Governor Ivey is anticipated to make an additional appointment to Tuten's now vacant district court judgeship, thus compounding the collateral confusion of JRAC's unconstitutional exercise of authority.

18. Defendant Tom Parker is the Chief Justice of the Alabama Supreme Court and the chair of JRAC. JRAC's membership also includes the legal advisor to the Governor, the Attorney General (or his designee), three incumbent circuit judges, three incumbent district judges, and three licensed attorneys. Ala. Code § 12-9A-1(a).

19. JRAC's primary duty is to "annually review the need for increasing or decreasing the number of judgeships in each district court and circuit court" and to provide to the Governor and Legislature a list reflecting each court's relative needs. Ala. Code § 12-9A-1(d)-(e). A separate provision of the JRAC statute, however, applies when judicial vacancies arise and purports to give JRAC the power to reallocate those vacant judgeships to other districts or circuits. Ala. Code § 12-9A-2.

20. Acting according to state law, Defendant Parker led the meeting in which the Commission voted 8-3 to move the Place 14 seat from Jefferson to Madison County after Jefferson County voters had already voted in a primary election and selected a candidate who would have been uncontested for the general election, *but for* the vacancy created Judge Jones'

retirement. Defendant Parker was one of the eight commission members who voted in favor of reallocating the seat. He is sued in his official capacity as Commission Chair.

### FACTUAL ALLEGATIONS

21. Established by the Alabama Legislature in 2017, JRAC has the purported ability to reallocate vacant judgeships based on need. This new commission faced opposition but was ultimately passed 22-5 from the Senate, 77-15 out of the House, and thus codified into Alabama Code § 12-9A-2.

22. Under Alabama Code § 12-9A-2, in the event of a vacancy due to death, retirement, resignation, or removal from office of a district or circuit judge, JRAC has thirty days to determine whether to redistribute judges based on multiple criteria, including caseload, population, and special duties. JRAC may also choose to reallocate a judgeship if the incumbent judge cannot seek re-election because of the age limitation provided in Section 155 of the Alabama Constitution. In the event JRAC chooses not to reallocate the vacant judgeship within the 30 days prescribed in subsection (a), the vacancy shall be filled according to law in the district or circuit in which the judgeship is located.

23. In the five years since its inception, JRAC has toiled with the idea of transferring vacant judgeships from Jefferson County, a county with a high percentage of Black residents, to Madison County, a majority-white county. Each time, the scheme was either barred by statutory limitations or quelled by the Black members of the Commission and public testimony against such a transfer.

24. JRAC has submitted multiple calls to the Legislature for action to address the critical need for additional judgeships, including converting district court judgeships to circuit court judgeships, providing incentives for expenses for retired judges to assist in hearing cases,

and increasing the number of judgeships overall. *See, e.g.*, June 14, 2018 Commission Transcript, [https://www.alacourt.gov/docs/JRAC\\_06\\_14\\_2018\\_Transcript.pdf](https://www.alacourt.gov/docs/JRAC_06_14_2018_Transcript.pdf); July 23, 2018 Letter to Governor and Legislature, <https://www.alacourt.gov/docs/JRACRecommendation.pdf>; January 9, 2020 Commission Transcript, [https://www.alacourt.gov/docs/JRAC\\_01\\_09\\_2020\\_Transcript.pdf](https://www.alacourt.gov/docs/JRAC_01_09_2020_Transcript.pdf); January 30, 2020 Letter to Governor and Legislature, <https://www.alacourt.gov/docs/JRAC%20recomendation-01-30-2020.pdf>; January 5, 2022 Letter to Governor and Legislature, <https://www.alacourt.gov/docs/lettertogovleg.152022.pdf>.

25. Even JRAC has recognized that their delegation of authority to reallocate judgeships overlapped with the Legislature’s duty to do the same. For instance, during JRAC’s first meeting, Justice Lyn Stuart, the predecessor to Chief Justice Parker, mentioned that their actions were something the Legislature could do “if the Legislature chose to do so. [The Legislature] can act on . . . anything if they choose to do so.” January 11, 2018, Commission Meeting Transcript 83, [https://www.alacourt.gov/docs/JRAC\\_01\\_11\\_2018\\_Transcript.pdf](https://www.alacourt.gov/docs/JRAC_01_11_2018_Transcript.pdf).

26. Several months later, Justice Stuart referred again to the Legislature’s responsibility, acknowledging that JRAC was created to “shift away from the Legislature . . . itself the responsibility for determining where the judges were needed.” June 14, 2018, Commission Meeting Transcript 124, [https://www.alacourt.gov/docs/JRAC\\_06\\_14\\_2018\\_Transcript.pdf](https://www.alacourt.gov/docs/JRAC_06_14_2018_Transcript.pdf). Notably, Justice Stuart was influential in lobbying for the creation of JRAC.

27. In that same meeting, Judge Clyde Jones acknowledged that the requirement that the Legislature determine the need for additional judgeships was “already in the books.” *Id.* at 113. At the conclusion of that meeting, JRAC members agreed that it was more expedient and

efficient to propose that the Legislature act on their constitutional duty of increasing the overall number of judges, because reallocation was “too slow” and only transferred the deficiency from one county to another. *Id.* at 94, 106, 112.

28. Yet again, in 2020, the Honorable James Reid commented that it was “*admirable* that the Legislature actually allowed us to do this.” January 31, 2020, Commission Meeting Transcript 27 (emphasis added), [https://www.alacourt.gov/docs/JRAC\\_01\\_31\\_2020\\_Transcript.pdf](https://www.alacourt.gov/docs/JRAC_01_31_2020_Transcript.pdf). He continued, “They could have just reallocated or relocated circuits, judges. They have the power to do that. But instead, they authorized this Commission to do that work.” *Id.*

29. In the six times that JRAC met prior to the meeting in which they ultimately transferred a vacant judgeship in Jefferson County, JRAC reiterated their charge to the Legislature to act on their own authority. Yet, the Legislature failed to do so.

30. On June 9, 2022, as JRAC convened once again to act where the Legislature had chosen not to do so, Judge Jones’ vacancy presented an opportunity to partially implement JRAC’s previously rejected reallocation recommendations.

31. During the meeting, there was substantial testimony opposing this move. Members of the public overwhelmingly objected to the transfer, citing, among other consequences, that it effectively strips a county with a high percentage of Black residents of a critical resource and gives that resource to a majority-white county.

32. Although a caseload study implied that Jefferson County’s caseload has decreased, State Senator Roger Smitherman noted during testimony that Jefferson County, unlike Madison County, assigns case numbers in such a way that makes the county’s caseload appear smaller than it is.



33. Additionally, testimony also supported the idea the Legislature had the funds to support up to 20 new judgeships, which would obviate any need to reallocate existing judgeships in the first place.

34. In an unprecedented move, JRAC voted 8-3 to permanently relocate the Tenth Judicial Circuit, Place 14 judgeship in Jefferson County to the Twenty-Third Judicial Circuit in Madison County, seizing an essential criminal court seat from the most populous county in the state and transferring it to another community. All Black members of the Commission voted against transferring the judgeship and all white members voted in favor.

35. This occasioned the first judgeship transfer in the five years since the reallocation statute has been codified in Alabama.

36. Individuals including Plaintiff Hudson have submitted applications to fill the Jefferson County vacancy according to the instructions contained in the JCJC's June 1 public notice and the process set forth in the Alabama Constitution.

## COUNT I

### **Unconstitutional Delegation of Legislative Authority (Ala. Const. Art. IV § 44; Art. VI § 151)**

37. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

38. The Alabama Constitution expressly grants to the Legislature the lawmaking power to alter the number of judges serving in each circuit and district court in the state.

39. The Alabama Constitution provides that “the legislative power of this state shall be vested in a Legislature.” Ala. Const. Art. IV § 44. The Legislature may delegate certain governmental powers for efficiency; however, these delegations are always subject to the “clearly implied limitation of the Constitution that the lawmaking power, invested exclusively in

the Legislature, cannot be delegated.” *Parke v. Bradley*, 204 Ala. 455, 456 86 So. 28, 29 (1920). *See In re Opinions of the Justices*, 166 So. 706, 708 (Ala. 1936); *State v. Vaughan*, 30 Ala. App. 201, 203, 4 So. 2d 5, 7 (Ala. Ct. App. 1941).

40. Specifically, Article Six, Section 151 of the Alabama Constitution requires the supreme court to establish criteria for determining the number of judges needed in each circuit and district. Ala. Const. Art. VI §151(a). If the supreme court finds that those numbers should be increased or decreased, it must certify its findings and recommendations to the Legislature. *Id.* It is then up to the Legislature to introduce a bill to effectuate the supreme court’s findings and recommendations. *Id.* §151(b). “No change shall be made in the number of circuit or district judges. . . unless authorized by an act adopted after the recommendation of the supreme court on such proposal has been filed with the Legislature.” Ala. Const. Art. VI §151(b).

41. In other words, a change to the number of judges in a circuit or district may be made only after (1) the supreme court issues a recommendation to the Legislature on the change and (2) the Legislature passes an act authorizing the change.

42. Alabama Code Section 12-9A-2, however, usurps the Legislature’s role in this process. It empowers JRAC to change the number of judges in a circuit or district, and thereby to assume a lawmaking function the Alabama Constitution explicitly and exclusively assigns to the Legislature.

43. JRAC exercised that unconstitutionally delegated power when it voted to move a judgeship from the Tenth Judicial Circuit in Jefferson County to the Twenty Third Judicial District in Madison County.

44. To the extent that Ala. Code § 12-9A-2 allows for the reallocation by JRAC of vacant judgeships, it contravenes Ala. Const. Art. VI § 151, which sets out the procedure for

altering the number or boundaries of circuit or district court judgeships and requires an act of the Legislature to make such changes.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment in her favor and provide her the following relief:

- A. Declare that the JRAC's duties under Ala. Code § 12-9A-2 represent an unconstitutional delegation of legislative authority, to the extent that Ala. Code § 12-9A-2 allows for the reallocation by JRAC of vacant judgeships;
- B. Declare invalid and unconstitutional the Governor's appointment of Patrick Tuten to serve as a circuit judge in the newly created Madison County judicial seat;
- C. Preliminarily and permanently enjoin Patrick Tuten from taking the oath of office to serve as a circuit judge in the newly created Madison County seat or otherwise assuming the purported duties of that seat and exercising any authority as a circuit judge in that seat;
- D. Order the Governor to choose a candidate from those submitted by JCJC to fill the Tenth Judicial Circuit, Place 14 judgeship vacancy in Jefferson County as mandated by the constitution of the State of Alabama;
- E. Grant Plaintiff her fees, costs, and expenses, including reasonable attorneys' fees pursuant to Ala. Code 1975 § 6-6-231; and
- F. Grant Plaintiff such additional and further relief as this Court deems just and proper.

[Signatures Contained on the Following Page]

Dated: July 19, 2022

Respectfully Submitted,

/s/ Ellen Degnan

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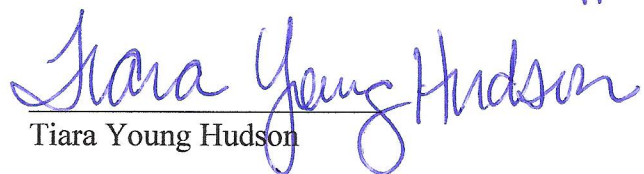
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\*Motion for admission pro hac vice to be filed.

**Declaration Under Penalty of Perjury**

I, Tiara Young Hudson, a citizen of the United States and a resident of the State of Alabama, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of July, 2022, at Jefferson County, Alabama

  
Tiara Young Hudson