



AlaFile E-Notice

03-CV-2022-900892.00

Judge: JIMMY B POOL

To: ELLEN LEE DEGNAN
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

TIARA YOUNG HUDSON V. KAY IVEY ET AL
03-CV-2022-900892.00

The following matter was FILED on 7/19/2022 3:08:35 PM

C001 HUDSON TIARA YOUNG
MOTION FOR PRELIMINARY INJUNCTION
[Filer: DEGNAN ELLEN LEE]

Notice Date: 7/19/2022 3:08:35 PM

GINA J. ISHMAN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL, 36104

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CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

GINA J. ISHMAN, CLERK

STATE OF ALABAMA

Revised 3/5/08

Cas

Unified Judicial System

03-MONTGOMERY

 District Court Circuit Court

CV21

CIVIL MOTION COVER SHEET

TIARA YOUNG HUDSON V. KAY IVEY ET AL

Name of Filing Party: C001 - HUDSON TIARA YOUNG

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

ELLEN LEE DEGNAN
 400 Washington Ave.
 MONTGOMERY, AL 36104
 Attorney Bar No.: DEG012

 Oral Arguments Requested**TYPE OF MOTION****Motions Requiring Fee**

- Default Judgment (\$50.00)
 Joinder in Other Party's Dispositive Motion
 (i.e. Summary Judgment, Judgment on the Pleadings,
 or other Dispositive Motion not pursuant to Rule 12(b))
 (\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative
 Summary Judgment (\$50.00)
 Renewed Dispositive Motion (Summary
 Judgment, Judgment on the Pleadings, or other
 Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56 (\$50.00)
- Motion to Intervene (\$297.00)
- Other _____
 pursuant to Rule _____ (\$50.00)

*Motion fees are enumerated in §12-19-71(a). Fees
 pursuant to Local Act are not included. Please contact the
 Clerk of the Court regarding applicable local fees.

Local Court Costs \$ 0 _____

Motions Not Requiring Fee

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other _____
 pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously
 with this motion an Affidavit of Substantial Hardship or if you
 are filing on behalf of an agency or department of the State,
 county, or municipal government. (Pursuant to §6-5-1 Code
 of Alabama (1975), governmental entities are exempt from
 prepayment of filing fees)

Date:
 7/19/2022 3:01:54 PM

Signature of Attorney or Party
 /s/ ELLEN LEE DEGNAN

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



**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.

NOTICE AND MOTION FOR A PRELIMINARY INJUNCTION

INTRODUCTION

On June 9, 2022, an unelected body known as the Judicial Resources Allocation Commission (“JRAC”) exercised a lawmaking power that the Alabama Constitution explicitly and exclusively vests in the Legislature: it eliminated a Jefferson County Criminal Court judgeship and created a new judgeship in Madison County. This glaringly unconstitutional usurpation of legislative authority must be enjoined.

The purpose of an injunction is to maintain the *status quo* pending the resolution of the action on its merits. *Jacobs Broad. Grp., Inc. v. Jeff Beck Broad. Grp., LLC*, 160 So. 3d 345, 349 n. 3 (Ala. Civ. App. 2014). Plaintiff Tiara Hudson asks this court to preserve the *status quo* to

prevent the Judicial Resource Allocation Commission from illegitimately and unconstitutionally increasing the number of judgeships in one Judicial Circuit while diminishing judgeships in another. On June 9, 2022, JRAC voted to “reallocate” the vacant Place 14 judgeship in the Tenth Judicial Circuit Court, Birmingham Division, in Jefferson County to Madison County. Verified Complaint ¶ 8. On July 18, 2022, Governor Ivey appointed district court judge Patrick Tuten to serve as a circuit judge in the new, unconstitutionally created Madison County judicial seat.

JRAC purports to have the ability to “transfer” judgeships between counties pursuant to Ala. Code § 12-9A-2. But this “reallocation” is nothing more than creating and eliminating judgeships by changing the number of judges serving in two different judicial circuits without legislative action. Only the Legislature can make such changes.

JRAC does not have the power, under the Alabama Constitution, to “reallocate”—that is, to create or eliminate judgeships. The Alabama Constitution explicitly states: “**No change shall be made** in the number of circuit or district judges, or the boundaries of any judicial circuit or district **unless authorized by an act** adopted after the recommendation of the [S]upreme [C]ourt on such proposal has been filed with the legislature.” Ala. Const. Art. VI § 151(b) (emphasis added). Under any plain-language reading of that constitutional provision, § 12-9A-2 unconstitutionally delegates to JRAC powers reserved for the Legislature. Thus, under Rule 65 of the Alabama Rules of Civil Procedure, this Court should enjoin Patrick Tuten from assuming the new judgeship in Madison County and direct Governor Ivey to fill the Jefferson County vacancy according to the process set forth in the Alabama Constitution.

SUMMARY OF THE FACTS

Under § 152 of the Alabama Constitution, the people of Alabama elect their judges. Over 31,000 Jefferson County voters exercised this right in a Democratic Party primary election for a

criminal court judgeship in Alabama’s Tenth Judicial Circuit, Criminal Division, Place 14, located in Birmingham. Verified Complaint ¶ 15. On May 24, 2022, Plaintiff Tiara Hudson, a Black female public defender, prevailed in that election with nearly 54% of the vote, defeating Eric Hamilton. *Id.* Facing no Republican opposition in the general election, Ms. Hudson was on track to assume the judgeship from Judge Clyde Jones upon the expiration of his term on January 16, 2023, Ala. Code § 36-3-2, and become the first public defender to ever serve as a circuit court judge in Jefferson County. Verified Complaint ¶ 15.

This historic achievement was frustrated when, on June 1, 2022, Judge Jones decided to retire from his judgeship before his term ended—thereby creating a vacancy in the Place 14 judgeship. *Id.* at ¶ 5. Under the Alabama Constitution, judicial vacancies arising in the Birmingham Division of Jefferson County are to be filled by the Governor from one of three qualified candidates recommended by the Jefferson County Judicial Commission (“JCJC”). Ala. Const. Jeff. Cnty. § 8. *See Naftel v. State ex rel Driggars*, No. 1200755, 2022 WL 497474, at *4 (Ala. Feb. 18, 2022) (discussing the procedure). The appointee then serves in the position until the next general election held at least six months after the initial vacancy. Ala. Const. Jeff. Cnty. § 8. Here, the next scheduled general election to take place more than six months after the vacancy is in November 2024. Ala. Code § 17-14-3.

On June 1, 2022, JCJC commenced its constitutional duty by announcing that it was accepting applications to fill the vacant judgeship until June 30th. Verified Complaint ¶ 7. Plaintiff submitted her application to be considered for the position. *Id.* at ¶ 15. JCJC will start to interview applicants on July 18, 2022.¹ After the interviews, JCJC will submit the names of the three finalists to Governor Ivey for her selection. *Id.* at ¶ 16.

¹ https://cdn.ymaws.com/birminghambar.org/resource/resmgr/judicial_commission/2022/rename_pl_14_cr_div_-_public.pdf (last visited July 13, 2022).

While JCJC was carrying out its constitutional duty to select nominees to forward to the Governor, JRAC—another agency—announced that it was convening on June 9, 2022, to decide whether to “reallocate” the vacant judgeship. *Id.* at ¶ 30. The Alabama Legislature created JRAC in 2017, through Act 2017-42. Ala. Acts 2017. JRAC’s stated purpose is to review the needs for increasing or decreasing the number of judgeships in the state annually, and then report those recommendations to the Governor and the Legislature. Ala. Code § 12-9A-1(d), (e). In January, JRAC recommended to the Legislature that it increase the size of the Madison County circuit; however, the Legislature failed to act on JRAC’s recommendation.²

At the June 9th meeting, JRAC argued that a caseload study showed that Jefferson County did not need the vacant judgeship, and that Madison County did. State Senator Rodger Smitherman testified that the caseload study was based on a flawed premise. Verified Complaint ¶ 32. He explained that Jefferson County, unlike Madison County, assigns case numbers in such a way that makes the county’s caseload appear smaller than it is. *Id.* In Jefferson County, multiple charges can be filed for the same person under one number whereas in Madison County charges are filed as separate cases. *Id.* In fact, as the largest county in Alabama, Jefferson County has the most murder and assault cases in their circuit.³ *Id.* This testimony was neither countered nor rebutted. Many others, including Judge Elisabeth French, Presiding Judge for the Tenth Judicial Circuit of Alabama, also spoke up to oppose transferring the vacant judgeship. *Id.* at ¶ 33. Nevertheless, JRAC voted 8-3 to permanently “reallocate” the Tenth Judicial Circuit, Place 14 judgeship in Jefferson County to the Twenty-Third Judicial Circuit in Madison County. *Id.* at ¶ 34. Notably,

² See *January 5, 2022 Letter to Governor Ivey and Members of the Legislature*, Judicial Resources Allocation Commission, <https://www.alacourt.gov/docs/lettertogovleg.152022.pdf>.

³ Senator Smitherman also noted that he has consistently found the surplus of \$12 million that would be required to fund 20 new judgeships—the number of new judgeships JRAC has asserted the state needs, funding for which would obviate any need to reallocate existing judgeships among counties.

despite Chief Justice Parker’s statement that this action “was not **just about race**,” all Black members of the Commission voted against transferring the judgeship and all white members voted in favor. *Id.*

Until the occurrence of this judicial vacancy in Birmingham in June, JRAC had never exercised its purported reallocation authority. *Id.* at ¶ 35. Its decision to do so under these circumstances, where the resulting reallocation transfers a judgeship from Jefferson County (a county with a substantial Black population) to Madison County (a majority white county)—after a Black female candidate won a hotly contested primary election and, but for the intervening vacancy, was poised to assume the judgeship after the general election in November, *and* after the Legislature had declined to expand the size of Madison County’s judicial circuit—is particularly problematic.

Plaintiff now requests that this Court enjoin Defendant Tuten from exercising any authority as a circuit judge in Madison County while this Court reviews JRAC’s unconstitutionally exercised legislative power in initiating the reallocation. Plaintiff further requests that this Court direct Governor Ivey to proceed with filling the Place 14 circuit judge position in the Birmingham Division of Jefferson County.

ARGUMENT

The question before this Court is whether Plaintiff is entitled to preliminary injunctive relief while the Court reviews the merits. The answer is yes in that: (1) Plaintiff is likely to succeed on the merits of the case; (2) Plaintiff is facing an imminent and irreparable injury; (3) there is not an adequate remedy at law; and (4) the benefit of an injunction reasonably outweighs any hardship Defendants may face. *State ex rel. Marshall v. TY Green’s Massage Therapy, Inc.*, 332 So. 3d 413, 416 (Ala. 2021) (setting forth the four factors for granting injunctive relief).

I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS OF THE CASE.

Plaintiff is only required to show a “reasonable chance of success” on her claim at this stage instead of proving it by an “absolute certainty.” *Devos v. Cunningham Grp., LLC*, 297 So. 3d 1176, 1180 (Ala. 2019). Plaintiff filed suit seeking an injunction and a declaration that JRAC’s reallocation of the Jefferson County judgeship was unconstitutional because § 12-9A-2 improperly delegates lawmaking power reserved for the Legislature to JRAC. While laws passed by the legislature are presumed to be constitutional and it is the Plaintiff’s burden to rebut that presumption, *State ex rel. King v. Morton*, 955 So. 2d 1012 (Ala. 2006), Plaintiff easily satisfies that burden here.

As a general principle, the Alabama Constitution states that “the legislative power of this state shall be vested in a legislature.” Ala. Const. Art. IV § 44. The Alabama 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 also 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).

This includes the “general power to make law, or the powers encompassed within that general power” *Folsom v. Wynn*, 631 So. 2d 890, 894 (Ala. 1993). The Supreme Court has defined the Legislature’s general powers as the “power to make, alter, amend and repeal laws.” *Point Properties, Inc. v. Anderson*, 584 So. 2d 1332, 1337 (Ala. 1991). “Thus, although the Legislature can delegate the power to make rules and regulations for the ‘purpose of carrying [the law] into practical effect and operation... and to secure an effective execution of the same’ it cannot delegate

the power to repeal, amend, or otherwise supplant an act of the Legislature.” *Freeman v. City of Mobile*, 761 So. 2d 235, 236-37 (Ala. 1999) (internal citations omitted).

In this instance, The Alabama Constitution states that “[n]o **change** shall be made in the number of circuit or district judges, or the boundaries of any judicial circuit or district 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) (emphasis added). The Alabama legislature defines an “act” as a “bill which has passed both houses of the legislature, been enrolled, certified, approved by the governor or passed over the governor’s veto, or otherwise becomes law.”⁴ Under this provision’s “plain meaning,” any change to the size of a judicial circuit must be made by the Alabama Legislature. *Jefferson Cnty. v. Weissman*, 69 So. 3d 827, 834 (Ala. 2011). Moreover, § 142 of the Alabama Constitution confirms that the allocation of judgeships requires “lawmaking power” because it states that “[f]or each circuit, there shall be one circuit court having such divisions and consisting of such number of judges **as shall be provided by law.**” (emphasis added).

In 2017, the Alabama Legislature gave JRAC the power to reallocate judgeships to different counties in the event of vacancies. § 12-9A-2. However, the reallocation ultimately results in a revocation, and an increase or a decrease in the size of a judicial circuit can occur only by an act of the Legislature. JRAC decreased the size of Jefferson County’s Tenth Judicial Circuit and increased the size of Madison County’s Twenty Third Judicial Circuit. Therefore, the Legislature impermissibly delegated “lawmaking power” that is “invested exclusively” in it by the Alabama Constitution to JRAC when it passed § 12-9A-2.

⁴ <https://www.legislature.state.al.us/aliswww/ISD/AlaLegGlossary.aspx> (Last visited July 19, 2022).

Plaintiff's case is supported by *King v. Campbell*, 988 So. 2d 969 (Ala. 2007). In *King*, the Alabama Legislature—through an act—created a new judgeship and instructed the Governor to select the initial officeholder. *Id.* at 972. The Supreme Court held that this act was unconstitutional because § 152 the Alabama Constitution provides that “all judges shall be elected by vote of the electors.” *Id.* at 981. The defendants in *King* argued that in a prior case the Supreme Court allowed the Governor to fill a vacancy in the judiciary. *Id.* at 980.

The Supreme Court distinguished that case because the act that created the judgeship did not instruct the Governor to appoint the initial officeholder, but rather there was a legitimate vacancy that allowed the Governor to act, *Id.*, whereas in *King*, the act instructed the Governor to select the initial officeholder. *Id.* at 972. The Supreme Court reasoned that the act in *King* would undermine the rights granted by § 152. Similarly, JRAC cannot be given the power to undermine § 151(b).

Plaintiff's case is also supported by *State v. Vaughn*. 30 Ala. App. 201, 4 So. 2d 5 (Ala. Ct. App. 1941). In *Vaughn*, the defendant was arrested for the sale of bream and crappie, which are “game fish.” *Id.* at 202. The arrest was due to a rule promulgated by a state agency that banned the sale of all “game fish.” *Id.* The defendant challenged the rule by arguing that only the Legislature could enact a total ban on the sale of “game fish.” *Id.* The court agreed with the defendant and held that a total ban would use “law making power, invested exclusively in the Legislature.” *Id.* at 203.

The court looked at the Legislature's actions to support its holding. First, the Legislature made it unlawful to sell “any game fish named in this Act.” *Id.* However, bream and crappie were not named in the act. Then, a month after the agency was created, the Legislature banned the sale of bass. *Id.* The court reasoned that if the Legislature wanted bream and crappie to be banned, it would have done it when it prohibited the sale of bass. *Id.*

The court also focused on “the difference between the power to pass a law and the power to adopt rules and regulations to carry into effect a law already passed by the legislature.” *Id.* at 204. In this instance, if the Legislature wanted to act on JRAC’s recommendations, it would have; but—just like in *Vaughn*—it did not. JRAC cannot use “law making power, invested exclusively in the Legislature” to increase the size of the Madison County judicial circuit.

II. PLAINTIFF IS FACING AN IMMINENT AND IRREPARABLE INJURY.

An “‘irreparable injury’ is an injury that is not redressable in a court of law through an award of money damages.” *Id.* (quoting *Perley v. Tapscan, Inc.*, 646 So. 2d 585, 587 (Ala. 1994)). In this instance, Plaintiff’s injury is the illegitimate decrease in the size of the Jefferson County Circuit by JRAC—and the concomitant loss of any opportunity to occupy the vacant judgeship in Jefferson County. It is true that “public office that is a creature of the legislature confers no vested right.” *King*, 988 So. 2d at 979. However, Plaintiff does not argue that her injury stems from the initial vacancy that stripped her primary win. Rather, her injury arises from JRAC’s interference with the constitutionally mandated process for filling judicial vacancies in the Birmingham Division of the Jefferson County Circuit Court. Plaintiff has applied to JCJC to be considered as one of its three candidates to recommend to the Governor; however, JRAC’s illegitimate transfer of the Place 14 judicial position in Jefferson County has confused the process of filling that judicial vacancy. Section 151 (b) of the Alabama Constitution guarantees Plaintiff that her home county cannot lose a judgeship—which she has applied to—in the Tenth Judicial Circuit without “an act” by the Legislature. Monetary damages cannot be awarded to cure the illegitimate decrease in the size of the Tenth Judicial Circuit.

The injury is imminent because JCJC’s constitutional duty has been thwarted by efforts to establish an illegitimate and illegal judgeship in Madison County. Under proper procedure, JCJC

will start interviewing applicants the week of July 18, 2022, to serve in Jefferson County. After JCJC selects the three finalists, the Governor will have 90 days to appoint one. Ala. Const. Jefferson County § 9. If the Governor does not act within that time, the power of appointment goes to the Chief Justice of the Alabama Supreme Court. *Id.*

However, Governor Ivey has already appointed Judge Tuten to serve as a circuit judge in the reallocated Madison County judicial seat. If the illegally created judgeship in Madison County is declared unconstitutional after Judge Tuten assumes the duties of a circuit judge, any rulings he issues as a circuit judge will be subject to challenge and he will suffer a disruption in his professional life. At the same time, Plaintiff Hudson will continue to suffer a disruption in her professional life and in her efforts to be recommended for appointment to fill the circuit court vacancy in Birmingham created by Judge Jones' retirement. Governor Ivey must heed her constitutional obligation to appoint a judge to fill that vacancy upon receiving JCJC's recommendation. Ala. Const. Jeff. Cnty. § 8.

III. THERE IS NO ADEQUATE REMEDY AT LAW.

An "adequate remedy" at law is defined as a legal remedy that provides sufficient relief to the petitioning party, "thus preventing the party from obtaining equitable relief." *Devos*, 297 So. 3d at 1180-81 (Ala. 2019). The only sufficient remedy the Court can grant in this case is a declaration that JRAC's duties under Ala. Code § 12-9A-2 represent an unconstitutional delegation of legislative authority, an injunction preventing Judge Tuten from assuming the unconstitutionally reallocated judgeship in Madison county and exercising any authority as a circuit judge in that seat, and an injunction directing the Governor to fill the vacancy in Jefferson County according to the process set out in the Alabama Constitution. Additionally, a finding that there is an irreparable harm "necessarily shows that there is no adequate remedy at law." *Id.* (quoting *Water Works &*

Sewer Bd. of the City of Birmingham v. Inland Lake Investments, LLC, 31 So. 3d 686, 692 (Ala. 2009)). Thus, there is no adequate remedy at law for Plaintiff.

IV. THE BENEFIT TO THE ELECTORATE AND SAVING JUDICIAL RESOURCES OUTWEIGHS ANY HARDSHIP DEFENDANTS INCUR BY HAVING TO PRESERVE THE STATUS QUO.

The Alabama Supreme Court has held that it is “committed to the proposition that equity will interfere by injunction to restrain elections not authorized by law. It will also restrain the usurpation of office, or the assumption of functions of office where no lawful office exists.” *Dennis v. Prather*, 212 Ala. 449, 452, 103 So. 59, 62 (1925). This is exactly the type of equitable remedy Plaintiff seeks here.

Neither JRAC, Governor Ivey, nor Judge Tuten face any legitimate burden should the Court pause the reallocation of the Jefferson County judgeship while it determines whether that reallocation was effectuated in contravention of the Alabama Constitution. The Supreme Court said in *Dennis* that the “rights and interests of the electorate are better promoted by a decision in advance, advising the commissioners of their want of power, and restraining them from proceeding with a meaningless and useless election.” *Id.* at 453.

Additionally, the Court runs the risk of wasting judicial resources if it permits an illegitimate judgeship to be created in Madison County. Judge Tuten’s rulings could be attacked because he lacks the constitutional authority to sit on the bench. In *Dennis*, the Supreme Court highlighted that preventing the waste of judicial resources was a priority, and even considered it a “duty.” *Id.* Therefore, Defendants’ burdens do not outweigh the benefits of an injunction.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant her motion for a preliminary injunction and enjoin Judge Tuten from taking the oath of office to serve as a

circuit judge in the reallocated Madison County seat or otherwise assuming that seat and from hearing cases as a circuit judge in that seat. Additionally, Plaintiff requests the Court order Governor Ivey to fill the vacant Jefferson County judgeship pursuant to Ala. Const. Jeff. Cnty. § 8.

Dated: July 19, 2022

Respectfully submitted,

/s/ Ellen Degnan

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