

IN THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT  
JEFFERSON COUNTY, ALABAMA

PATRICIA WORKING, and )  
RICK ERDEMIR, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JEFFERSON COUNTY ELECTION )  
COMMISSION, ALAN KING, )  
MIKE HALE, and ANNE- MARIE )  
ADAMS, )  
 )  
Defendants. )

No. \_\_\_\_\_

**VERIFIED COMPLAINT**

This action seeks declaratory and injunctive relief, and relief of writ of mandamus against the issuance of certificate of election or other authorization for anyone to serve as county commissioner from District One for Jefferson County, Alabama, as a result of a special election held on February 5, 2008, as provided by the Jefferson County Election Commission. Authority for the special election is not authorized by Alabama statute, is contrary to the Constitution of Alabama, particularly § 105, and infringes on the First Amendment rights of persons who wish to participate in a properly scheduled election.

**PARTIES**

1. Plaintiffs are Patricia Working, a voter in Jefferson County, Alabama, and Rick Erdemir, also a voter in Jefferson County. Each one resides within the

geographic boundaries of Jefferson County Commission District One. One or both of them owns tangible property and pays taxes for the use of Jefferson County, including its personnel who conduct elections, and who serve in the administration of the Jefferson County Commission.

2. Defendant Jefferson County Election Commission is an agency of the State of Alabama, and is responsible for canvassing and declaring the results of elections conducted for voters on non-municipal matters. The individual defendants are Alan King, probate judge No. 1 for Jefferson County, Anne-Marie Adams, the circuit clerk for Jefferson County, and Mike Hale, sheriff for Jefferson County. Collectively, these defendants, by virtue of their offices, comprise the Jefferson County Election Commission. They are named as individual defendants solely for the purpose of securing any needed relief in the nature of a writ of mandamus.

### JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to Ala. Code § 12-11-31. There is no plain and adequate remedy provided before other judicial tribunals for timely relief. Relief is authorized by § 6-6-220 *et seq.*, and Ala. Code §§ 6-6-500, 6-6-640. Relief is also authorized by 42 U.S.C. § 1983, and § 1988. Venue is proper in this court because all defendants are residents of Jefferson County.

### STATEMENT OF FACTS

4. In October 2007, Jefferson County Commissioner for District One, Larry Langford ("Langford"), was elected Mayor of the City of Birmingham. By virtue of

election to that position, Langford vacated the position of commissioner for District One.

5. In late October 2007, the Defendants, acting under of color of state law as the Jefferson County Election Commission, provided for a special election to fill the vacancy created by Langford's election. The Defendants scheduled the special election for February 5, 2008. A copy of the resolution is attached hereto as Exhibit A.

6. Before the action of the Jefferson County Election Commission and the other Defendants, there was scheduled an election for the voters of Jefferson County for the limited purpose of electing delegates to the presidential nominating conventions of the national political parties. It was scheduled by the legislature in Act No. 2007-461, and enacted into law in June 2007. These presidential nominating convention delegates do not hold federal, state, or county office by virtue of the February 5 election. Rather, they become officials of their respective private and autonomous political parties. As a result of the February 5 election for convention delegates, no person obtains a certificate of nomination for election to any federal, state, or county office.

7. In late November 2007, the Governor appointed George Bowman to the vacancy created by Langford's becoming Mayor of the City of Birmingham.

8. Persons were allowed to file papers qualifying to be candidates for the February 5, 2008, election as late as January 15, 2008. At least six persons have done so.

9. Since 1964, there has never been an election conducted to fill a vacancy on the Commission at the same time of an election to select delegates to presidential nominating conventions.

10. The Jefferson County Election Commission resolution also provides for a runoff election between the two highest vote-getters on February 26, 2008, in the event none of the six obtains a majority.

11. A primary election to nominate persons to be candidates for federal, state or county office is scheduled for the first Tuesday in June 2008. That election is conducted on a countywide basis. A general election for voters to choose between nominees for the federal, state or county office is scheduled for November 2008.

#### **STATUTORY AND CASE PRECEDENT BACKGROUND**

12. Alabama statutes provide generally that a vacancy in a county commission position shall be filled by appointment by the Governor. *See* Ala. Code § 11-3-6.

13. In 1977, a local act applicable to Jefferson County provided for election on certain limited dates in the event of county commission vacancies. *See* Act No. 1977-784. The date for the election is chosen in accord with §§ 3 and 4 of the Local Act. To be designated for qualifying date, there must be two specific conditions (i) an election to elect a Federal, State or County officer or to nominate a candidate . . . for a Federal, State or county office . . . , or to submit one or more questions . . .” and (ii) electors throughout the County are entitled to vote.

14. If there is a countywide election is scheduled for between 40 and 180 days, the election to fill the vacancy must be held on that date. If not, then the election must occur between 33 and 40 days after the resolution of the Election Commission.

15. The next “county-wide election” within the meaning of the Local Act is the first Tuesday in June 2008. Under Ala. Code § 17-13-100, presidential preference primaries occur to identify “preferred candidates,” not to nominate the actual candidates for the office of president of the United States. The only persons elected are delegates, “subject to rules and procedures of the political party of . . . [the] presidential candidate. *Id.* § 17-13-100(b).

16. Section 105 of the Alabama Constitution prohibits enactment of any local law “which is provided for by a general law.” In 1988, the Alabama Supreme Court ruled that § 105 prohibited the enforcement of a 1985 local act providing for a special election to fill a vacancy on the Baldwin County Commission because the filling of vacancy was provided for by Ala. Code § 11-3-6. *See Stokes v. Noonan*, 534 So. 2d 237 (Ala. 1988).

17. In 2004, in Act No. 2004-376, the legislature provided that “if filling vacancy by appointment,” the commissioner must reside in the district at least one year.

18. In 2004, in Act No. 2004-455, the legislature amended § 11-3-6 and provided again for appointment by the Governor to fill commissioner vacancies, unless a local law provides otherwise. The reference to “unless a local law provides

otherwise” permits only such local laws enacted *after* Act No. 2004-455. *See Riley v. Kennedy*, 928 So. 2d 1013 (Ala. 2005).

19. Since the adoption of Act No. 2004-455, no local law has been adopted to provide for special election to fill vacancies on the Jefferson County Commission.

20. In 2007, in Act No. 2007-488, the legislature repealed Ala. Code § 11-3-6, and replaced it with a limited term of appointment by the Governor of a person fill a vacancy in Ala. Code § 11-3-1(b), and an election at a regular time. Rather than have the appointee fill the vacancy for the unexpired term of the vacating officeholder, the appointee “shall only serve until seven days after the next general election following the appointment. . . .” If the appointment does not occur more than 30 days before the close of party qualifying, then the appointee serves until the remainder of the term in which the vacancy was created.

21. Act No. 2007-488 provides a caveat similar to the previous statutes, and the caveat reads “[u]nless a local law authorizes a special election. . . .” That caveat refers only to a local law enacted *after* Act No. 2007-488. *See Riley v. Kennedy*, 928 So. 2d 1013 (Ala. 2005).

## CAUSES OF ACTION

### COUNT ONE

#### **(Date of Election Not Authorized by Act No. 1977-784)**

22. Plaintiffs re-allege and incorporate herein the allegations of paragraphs 1 through 21, as if fully set out herein.

23. The Jefferson County Election Commission's resolution, its plans to conduct, and its conducting of an election to fill the vacancy in the Jefferson County Commission for District One on February 5, 2008, and February 26, 2008, for District One is not authorized by the Local Act.

**COUNT TWO**

**(Violation of § 105 of the Alabama Constitution)**

24. Plaintiffs re-allege and incorporate herein the allegations of paragraphs 1 through 23, as if fully set out herein.

25. The Jefferson County Election Commission's resolution, its plans to conduct, and its conducting of an election on February 5 and February 26, 2008, to fill the vacancy in the Jefferson County Commission for District One is unauthorized and unconstitutional under § 105 of the Alabama Constitution.

**COUNT THREE**

**(Act No. 1977-784 Authority to Set Election Repealed)**

26. Plaintiffs re-allege and incorporate herein the allegations of paragraphs 1 through 25, as if fully set out herein.

27. The statutory basis for the Jefferson County Election Commission's resolution, its plans to conduct, and its conducting of an election on February 5 and February 26, 2008, to fill the vacancy in the Jefferson County Commission for District One -- Act No. 1977-784 -- was repealed in Act No. 2004-455, or by Act No. 2007-488.

## COUNT FOUR

### **(Violation of First and Fourteenth Amendment, U.S. Constitution)**

28. Plaintiffs re-allege and incorporate herein the allegations of paragraphs 1 through 27, as if fully set out herein.

29. The Jefferson County Election Commission's resolution, and the conduct of the Defendants reflected therein, acting under color of state law, including the plans to conduct, and the conducting of an election on February 5 and February 26, 2008, instead of at the time provided by State law, abridge Plaintiffs' right to participate in the election to fill the vacancy created by Langford's departure. This infringement arises by unauthorizedly diluting, with an extra election, her opportunity to speak to voters about the candidates, by contributing to the political committee of persons seeking election to the Jefferson County Commission at a time designated by State law. The action of the Defendants violates the First and Fourteenth Amendments of the U.S. Constitution.

## DEMAND FOR JUDGMENT

Plaintiffs demand a judgment against the Jefferson County Election Commission, and Alan King, Anne-Marie Adams, and Mike Hale which declares that the Jefferson County Election Commission is not authorized to conduct an election on February 5 or February 26, 2008, to fill the vacancy on the Jefferson County

Commission for District One, and is not authorized to canvas or declare the results thereof.

Plaintiffs further demand a temporary restraining order which prohibits, pending a hearing on motion for preliminary injunction, the Jefferson County Election Commission from conducting an election on February 5 or February 26, 2008, and from canvassing or declaring the results of any election conducted, to fill the vacancy on the Jefferson County Commission for District One.

Plaintiffs further demand a preliminary injunction which prohibits, pending trial on the merits, the Jefferson County Election Commission from conducting an election on February 5 or February 26, 2008, and from canvassing or declaring the results of any election conducted, to fill the vacancy on the Jefferson County Commission for District One.

Plaintiffs further demand a permanent injunction which prohibits the Jefferson County Election Commission from conducting, and from canvassing or declaring the results of any election conducted, on February 5 or February 26, 2008, to fill the vacancy on the Jefferson County Commission for District One.

Plaintiffs further demand a judgment that Act No. 1977-784 is contrary to the Constitution of Alabama, particularly § 105, and is null and void, and of no effect.

Plaintiffs further demand a judgment that Act No. 1977-784, as applied by the action of the Jefferson County Election Commission in resolving to conduct, and conducting, an election in February 2008, instead of June and November, limits their

ability to participate in the one election intended to fill the vacancy on the Jefferson County Commission by financial contribution and thereby abridges their freedom of speech contrary to the U.S. Constitution's First and Fourteenth Amendments.

Plaintiffs further demand issuance of a writ of mandamus against the Defendants Alan King, Mike Hale and Anne-Marie Adams as may be necessary to require them correct any inaccurate or misleading information distributed about the date of the election to fill the vacancy on the Jefferson County Commission.

Plaintiffs demand such other relief as may be just and proper, including an award of costs and attorneys fees of this action.

Plaintiffs reserve the right to assert other claims or add other parties as discovery progresses.

Respectfully submitted this 31st day of January, 2008.

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