

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DONNA BAKER, KRISTEN HALL, and ANNETTE
McWASHINGTON PRUITT, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

BETH CHAPMAN, in her official capacity as Alabama
Secretary of State, NELL HUNTER, in her official capacity
as Jefferson County Registrar and on behalf of a class of all
voter registrars in the State of Alabama, JEAN
KIRKLAND, in her official capacity as Monroe County
Registrar and on behalf of a class of all voter registrars in
the State of Alabama, BEATRICE ROGERS, in her official
capacity as Monroe County Registrar and on behalf of a
class of all voter registrars in the State of Alabama, and
DONNA JORDAN, in her official capacity as Monroe
County Registrar and on behalf of a class of all voter
registrars in the State of Alabama,

Defendants.

Civil Action No. _____

COMPLAINT

COME NOW Plaintiffs, by and through undersigned counsel, and hereby show this
Honorable Court the following:

INTRODUCTION

1. Plaintiffs bring this civil rights action under state and federal law to remedy
Defendants' arbitrary and unconstitutional deprivations of their fundamental right to vote.
Specifically, Plaintiffs challenge: (a) Defendants' denial of voting rights to people convicted of
crimes which the Legislature has never defined as involving moral turpitude; and (b)
Defendants' requirement that people convicted of crimes involving moral turpitude pay all of
their legal financial obligations ("LFOs") before they are eligible for restoration of their voting

rights. Defendants' disfranchisement of Plaintiffs violates Plaintiffs' fundamental right to vote and undermines our representative system of government. Plaintiffs seek declaratory and injunctive relief.

2. Article VIII, Section 177 of the Alabama Constitution of 1901 disfranchises certain individuals who have been convicted of felonies that involve moral turpitude, but does not define which felonies involve moral turpitude for the purpose of voting rights. Article VIII, Section 177, and Article III, Sections 42 and 43 of the Alabama Constitution state that only the Legislature may define the qualifications of electors. The Legislature has adopted only one list of felonies involving moral turpitude for the purpose of voting rights, found at Ala. Code § 15-22-36.1(g). However, Defendants are instead disfranchising a much broader category of felony convictions, relying in part but not exclusively upon a 2005 Attorney General Opinion, No. 2005-092 which unlawfully disfranchises thousands of Alabamians. Plaintiffs are among these improperly disfranchised—each plaintiff has a felony conviction, but none have been identified by the Legislature as involving moral turpitude for the purpose of voting rights.

3. The 2005 Attorney General Opinion purports to provide a partial list of felonies that are and are not disfranchising. Defendants are partially relying on and enforcing this list to unlawfully disfranchise thousands of Alabamians, including Plaintiffs BAKER, HALL, and the proposed Plaintiff Class.

4. The 2005 Attorney General Opinion also specifically states that it does not address every felony conviction within its two lists. These uncategorized felonies have not been defined by any state actor—not the Legislative Branch, not the Executive Branch, nor the Judicial Branch—as being disfranchising. Nevertheless, Defendants are either outright disfranchising individuals convicted of these felonies or, at a minimum, are requiring these

individuals to go through an additional administrative process before allowing them to register to vote. Plaintiff MCWASHINGTON PRUITT, and the proposed Plaintiff Subclass that she represents, has a felony conviction that does not appear on the 2005 Attorney General list, and yet she and her class have been disfranchised.

5. Alabama law allows a person convicted of a crime involving moral turpitude to apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote, but the applicant must have paid all fines, court costs, fees, and victim restitution associated with their sentence before being eligible for restoration of their voting rights. Ala. Code § 15-22-36.1(a)(3). Denying the right to vote based on one's failure or inability to pay LFOs is the modern equivalent of a poll tax and serves no compelling or legitimate governmental interest.

6. Because Defendants have wrongfully disfranchised Plaintiffs, Plaintiffs seek declaratory and injunctive relief to restore their right to vote as guaranteed under state and federal law.

JURISDICTION AND VENUE

7. This is a civil action arising under Ala. Const. art. VIII, § 177, Ala. Const. art. III, §§ 42-43, Ala. Code §§ 12-11-31 and 12-11-33, and 42 U.S.C. § 1983.

8. Venue is proper in the Montgomery Circuit Court pursuant to Ala. Code § 6-3-2 and Ala. R. Civ. P. 82(c) because Defendant Secretary of State BETH CHAPMAN's official residence is in this county and she is a material defendant to this action.

PLAINTIFFS

9. Plaintiff DONNA BAKER resides in Birmingham in Jefferson County, Alabama. She is a thirty year old citizen of the United States and is of lawful voting age. After Ms.

BAKER turned eighteen, she voted for the first time in the 1996 federal elections. She was convicted of forgery in Texas and escape in Alabama.

10. Ms. BAKER wishes to vote in the 2008 and future elections, but she is not eligible to register to vote under the current interpretation and rules promulgated by Defendant Secretary of State BETH CHAPMAN and enforced by Defendant Registrar NELL HUNTER because her conviction for forgery is deemed by Defendants to be a disfranchising felony involving moral turpitude.

11. Plaintiff KRISTEN HALL resides in Monroeville, in Monroe County, Alabama. She is a thirty year old citizen of the United States and is of lawful voting age. Ms. HALL was convicted of forgery in Alabama.

12. Ms. HALL wishes to vote in the 2008 and future elections, but she is not eligible to register to vote under the current interpretation and rules promulgated by Defendant Secretary of State BETH CHAPMAN and enforced by Defendant Registrars JEAN KIRKLAND, BEATRICE ROGERS, and DONNA JORDAN because her conviction for forgery is deemed by Defendants to be a disfranchising felony involving moral turpitude.

13. Plaintiff ANNETTE McWASHINGTON PRUITT resides in Birmingham, in Jefferson County, Alabama. She is a forty-eight year old citizen of the United States and is of lawful voting age.

14. Ms. McWASHINGTON PRUITT attempted to register with the Birmingham Board of Registrars on June 23, 2008, but was advised that she is presently ineligible to register because of her conviction for receiving stolen property. (McWashington Pruitt Aff., attached as Ex. A). She was told she would need to have her voting rights restored by the Alabama Board of Pardons and Paroles before she could register to vote. Id.

15. Ms. McWASHINGTON PRUITT wishes to vote in the 2008 and future elections, but is not eligible to register to vote under the current interpretation and rules promulgated by Defendant Secretary of State BETH CHAPMAN and enforced by Defendant Registrar NELL HUNTER because her conviction for receiving stolen property is deemed by Defendants to be a disfranchising felony involving moral turpitude.

16. Plaintiffs BAKER and HALL bring this action on behalf of themselves and all other persons similarly situated (the Plaintiff Class) against Defendants pursuant to the provisions of Ala. R. Civ. P. 23. Plaintiff McWASHINGTON PRUITT also brings this action on her own behalf, and on behalf of all other persons similarly situated (the Plaintiff Subclass) against Defendants pursuant to the provisions of Ala. R. Civ. P. 23(c)(4)(B).

17. The Plaintiff Class that Plaintiffs BAKER and HALL seek to represent is defined as: All unregistered persons otherwise eligible to register to vote in Alabama who have been convicted of one or more felonies, but who have not been convicted of felonies appearing in Ala. Code § 15-22-36.1(g).

18. The Plaintiff Subclass that Plaintiff McWASHINGTON PRUITT seeks to represent is defined as: All unregistered persons otherwise eligible to register to vote in Alabama who have been convicted of one or more felonies, but who have not been convicted of felonies appearing in either Ala. Code § 15-22-36.1(g) or the 2005 Attorney General Opinion, No. 2005-092. The proposed Plaintiff Subclass is by definition a subset of the broader proposed Plaintiff Class.

19. Members of the Plaintiff Class and Plaintiff Subclass are so numerous as to make it impractical to bring them all before this Court. The individual identities of Plaintiff Class and

Plaintiff Subclass members are ascertainable through Defendants' records, by public notice and through records kept by the Alabama Circuit Clerks and Board of Pardons and Paroles.

20. There is a well-defined commonality of interest in the questions of law and fact involved affecting the members of the Plaintiff Class and Plaintiff Subclass. The questions of law and fact common to the Plaintiff Class and Plaintiff Subclass predominate over questions affecting only individual class members, and include, but are not limited to, the following:

- a. Whether Defendant CHAPMAN instructed voter registrars to refuse to register members of the Plaintiff Class, and/or instructed members of the Plaintiff Class to obtain a Certificate of Eligibility to Register to Vote ("CERV") from the Board of Pardons and Paroles prior to being allowed to register to vote;
- b. Whether Defendant CHAPMAN instructed voter registrars to refuse to register members of the Plaintiff Subclass, and/or to unduly delay said registration by (a) instructing members of the Defendant Class to seek an opinion from the Attorney General's office as to whether a Plaintiff Subclass member's conviction involves moral turpitude and/or (b) instructing members of the Plaintiff Subclass to obtain a CERV prior to being allowed to register to vote;
- c. Whether voter registrars in fact refused and/or unduly delayed registrations of Plaintiff Class and/or Plaintiff Subclass members;
- d. Whether Defendants' actions violated the rights guaranteed to Plaintiff Class and/or Plaintiff Subclass members by Alabama's constitution and laws;
- e. Whether Defendants' actions violated the rights guaranteed to Plaintiff Class and/or Plaintiff Subclass members by federal law;

- f. Whether the Plaintiff Class and/or Plaintiff Subclass is entitled to declaratory relief;
- g. Whether the Plaintiff Class and/or Plaintiff Subclass is entitled to injunctive relief;
- h. Whether the Plaintiff Class and/or Plaintiff Subclass is entitled to an award of reasonable attorneys' fees and costs of suit.

21. Plaintiffs BAKER and HALL can fairly and adequately represent the interests of the Plaintiff Class because their interests do not conflict with the interests of the class members they seek to represent, and they are similarly situated with members of their Plaintiff Class. Plaintiffs BAKER and HALL will fairly and adequately represent and protect the interests of the Plaintiff Class, and Plaintiffs BAKER's and HALL's interests are not antagonistic to the Plaintiff Class.

22. Plaintiff McWASHINGTON PRUITT can fairly and adequately represent the interests of the Plaintiff Subclass because her interests do not conflict with the interests of the class members she seeks to represent, and she is similarly situated with members of their Plaintiff Subclass. Plaintiff McWASHINGTON PRUITT will fairly and adequately represent and protect the interests of the Plaintiff Subclass, and her interests are not antagonistic to the Plaintiff Subclass.

23. The claims of Plaintiffs BAKER and HALL are typical of the Plaintiff Class as a whole. The claims of Plaintiff McWASHINGTON PRUITT are typical of the Plaintiff Subclass as a whole.

24. Defendants have refused to register the Plaintiff Class and Plaintiff Subclass members on grounds that apply generally to the entire classes, and final injunctive relief or corresponding declaratory relief is appropriate respecting the classes as a whole.

25. Lead Plaintiffs' counsel, attorneys of the American Civil Liberties Union of Alabama Foundation, attorneys of the American Civil Liberties Union Voting Rights Project, and Robert D. Segall of Copeland, Franco, Screws & Gill, P.A., are familiar with the applicable laws, have the resources necessary to pursue this litigation, and are experienced in class action and voting rights litigation.

26. A class action is superior to other available means for the fair and efficient adjudication of the Plaintiff Class and Plaintiff Subclass members' claims. Plaintiffs BAKER, HALL, McWASHINGTON PRUITT, and the members of the Plaintiff Class and Plaintiff Subclass have suffered irreparable harm as a result of Defendants' unlawful conduct. Because of the cost of legal representation, few, if any, class members could afford to seek legal redress for the wrongs complained of herein. Absent the class action, the members of the Plaintiff Class and Plaintiff Subclass will continue to suffer deprivation of their right to register to vote.

DEFENDANTS

27. Defendant BETH CHAPMAN is the Secretary of State of Alabama and, as such, is the chief elections official in the state, and is responsible for providing uniform guidance and promulgating administrative rules for election activities. Ala. Code § 17-1-3(a). She is sued in her official capacity only for actions that she has taken under color of state law.

28. Defendant NELL HUNTER is Chair of the Board of Registrars for Jefferson County, and is responsible for registering voters in said county. Ala. Code §§ 17-3-1 – 17-3-13. She is sued in her official capacity only for actions that she has taken under color of state law.

29. Defendant JEAN KIRKLAND is Chair of the Board of Registrars for Monroe County, and is responsible for registering voters in said county. Ala. Code §§ 17-3-1 – 17-3-13. She is sued in her official capacity only for actions that she has taken under color of state law.

30. Defendant BEATRICE ROGERS is a member of the Board of Registrars for Monroe County, and is responsible for registering voters in said county. Ala. Code §§ 17-3-1 – 17-3-13. She is sued in her official capacity only for actions that she has taken under color of state law.

31. Defendant DONNA JORDAN is a member of the Board of Registrars for Monroe County, and is responsible for registering voters in said county. Ala. Code §§ 17-3-1 – 17-3-13. She is sued in her official capacity only for actions that she has taken under color of state law.

32. Plaintiffs bring this action against Defendant NELL HUNTER, as Registrar of Jefferson County; Defendants JEAN KIRKLAND, BEATRICE ROGERS, and DONNA JORDAN, as Registrars of Monroe County, (collectively “Defendant Registrars”), and against all other persons similarly situated (“Defendant Class”) pursuant to Ala. R. Civ. P. 23.

33. The Defendant Class is defined as: All voter registrars in the State of Alabama.

34. The members of the Defendant Class are so numerous as to make it impractical to bring them all before this Court. Each county in Alabama has a board of three voter registrars unless otherwise prescribed by law. Ala. Code § 17-3-2(a). Every county has three registrars except Barbour, Clarke, and Talladega Counties, which have four registrars, and Jefferson County, which has only one registrar.

35. There is a well-defined commonality of interest in the questions of law and fact involved affecting the members of the Defendant Class. The questions of law and fact common

to the Defendant Class predominate over questions affecting only individual class members, and include, but are not limited to, the following:

- a. Whether Defendant CHAPMAN instructed voter registrars to refuse to register members of the Plaintiff Class, and/or instructed members of the Plaintiff Class to obtain a CERV prior to being allowed to register to vote;
- b. Whether Defendant CHAPMAN instructed voter registrars to refuse to register members of the Plaintiff Subclass, and/or to unduly delay said registration by (a) instructing members of the Defendant Class to seek an opinion from the Attorney General's office as to whether a Plaintiff Subclass member's conviction involves moral turpitude and/or (b) instructing members of the Plaintiff Subclass to obtain a CERV prior to being allowed to register to vote;
- c. Whether voter registrars in fact refused and/or unduly delayed registrations of Plaintiff Class and/or Plaintiff Subclass members;
- d. Whether Defendant CHAPMAN's and the Defendant Class's actions violated the rights guaranteed to Plaintiff Class and/or Plaintiff Subclass members by Alabama's constitution and laws;
- e. Whether Defendant CHAPMAN's and the Defendant Class's actions violated the rights guaranteed to Plaintiff Class and/or Plaintiff Subclass members by federal law;
- f. Whether the Plaintiff Class and/or Plaintiff Subclass is entitled to declaratory relief against Defendant CHAPMAN and the Defendant Class;
- g. Whether the Plaintiff Class and/or Plaintiff Subclass is entitled to injunctive relief against Defendant CHAPMAN and the Defendant Class;

h. Whether the Plaintiff Class and/or Plaintiff Subclass is entitled to an award of reasonable attorneys' fees and costs of suit to be paid by the Defendant Class and/or the Defendant CHAPMAN.

36. Defendant Registrars can fairly and adequately represent the interests of the Defendant Class because their interests do not conflict with the interests of the Defendant Class members they would represent, and they are similarly situated with members of the Defendant Class. Defendant Registrars will fairly and adequately represent and protect the interests of the Defendant Class, and their interests are not antagonistic to the Defendant Class.

37. The defenses of Defendant Registrars are typical of the Defendant Class as a whole.

38. A class action is superior to other available means for the fair and efficient adjudication of the Defendant Class members' defenses.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

39. Article III, section 42 of the Alabama Constitution of 1901 provides that:

The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

40. Article III, section 43 of the Alabama Constitution of 1901 provides that:

In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

41. Article VIII, section 177 of the Alabama Constitution of 1901 provides that:

(a) Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law,

if registered as provided by law, shall have the right to vote in the county of his or her residence. The Legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting. The Legislature shall, by statute, prescribe a procedure by which eligible citizens can register to vote.

(b) No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

(c) The Legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.

42. Section 17-3-31 of the Alabama Code provides that:

Any person who is disqualified by reason of conviction of any of the offenses mentioned in Article VIII of the Constitution of Alabama of 1901, except treason and impeachment, whether the conviction was had in a state or federal court, and who has been pardoned, may be restored to citizenship with the right to vote by the State Board of Pardons and Paroles when specifically expressed in the pardon. If otherwise qualified, such person shall be permitted to register or reregister as an elector upon submission of a copy of the pardon document to the board of registrars of the county of his or her residence. In addition, any person who has been granted a Certificate of Eligibility to Register to Vote by the Board of Pardons and Paroles pursuant to Section 15- 22-36.1, shall be permitted to register or reregister as an elector upon submission of a copy of the certificate to the board of registrars of the county of his or her residence.

43. Section 15-22-36.1 of the Alabama Code provides in relevant part that:

(a) Any other provision of law notwithstanding, any person, regardless of the date of his or her sentence, may apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote if all of the following requirements are met:

- (1) The person has lost his or her right to vote by reason of conviction in a state or federal court in any case except those listed in subsection (g).
- (2) The person has no criminal felony charges pending against him or her in any state or federal court.
- (3) The person has paid all fines, court costs, fees, and victim restitution ordered by the sentencing court.
- (4) Any of the following are true:
 - a. The person has been released upon completion of sentence.
 - b. The person has been pardoned.
 - c. The person has successfully completed probation or parole and has been released from compliance by the ordering entity.

(b) The Certificate of Eligibility to Register to Vote shall be granted upon a determination that all of the requirements in subsection (a) are fulfilled.

....

(g) A person who has lost his or her right to vote by reason of conviction in a state or federal court for any of the following will not be eligible to apply for a Certificate of Eligibility to Register to Vote under this section: Impeachment, murder, rape in any degree, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason.

FACTS

Passage of Constitutional Amendment 579.

44. In 1995 Amendment 579 to the Alabama Constitution of 1901 was proposed by the Legislature by Act 95-443, was submitted at the June 4, 1996 election, and was proclaimed ratified on June 19, 1996.

45. Amendment 579 re-wrote Article VIII of the Alabama Constitution of 1901 by removing pre-existing sections and inserting a new section 177. The new section 177 specifies certain qualifications of electors, and that “[t]he Legislature shall, by statute, prescribe a procedure by which eligible citizens can register to vote.” Ala. Const. art. VIII, § 177(a). Section 177 also provides that “[t]he Legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.”

46. Section 177 provides that “[n]o person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.” Ala. Const. art. VIII, § 177(b).

47. Section 177 does not define the term “felony involving moral turpitude.”

48. Amendment 579, which enacted the new Section 177, did not define the term “felony involving moral turpitude.”

Enactment of “Certificate of Eligibility to Register to Vote” Legislation.

49. In 2003 the Legislature adopted Act 2003-415, which codified section 15-22-36.1 of the Alabama Code of 1975. This Act permits a person who “has lost his or her right to vote by reason of conviction in a state or federal court” to “apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote.” Ala. Code § 15-22-36.1(a). To be eligible a person must (1) not have lost the right to vote because of certain enumerated felonies; (2) have no criminal felony charges pending against him or her in any state or federal court; (3) have paid all fines, court costs, fees, and victim restitution ordered by the sentencing court; and (4) have been released upon completion of sentence, have been pardoned, or have successfully completed probation or parole and have been released from compliance by the ordering entity. Id.

50. The 2003 law requires that a CERV be issued within 50 days after application if the above qualifications are satisfied. Ala. Code §§ 15-22-36.1(b), (e).

51. Upon receipt of a CERV, the person “shall be permitted to register or reregister as an elector upon submission of a copy of the certificate to the board of registrars of the county of his or her residence.” Ala. Code § 17-3-31.

52. The 2003 Act states that the following felonies involve moral turpitude: Impeachment, murder, rape in any degree, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason. Ala. Code § 15-22-

36.1(g). It further stated that individuals with these felony convictions are not eligible for a CERV. Id.

53. The Legislature has adopted no other list delineating which felonies involve moral turpitude for purposes of voting rights and Article VIII, Section 177, of the Alabama Constitution of 1901.

2005 Attorney General Opinion No. 2005-092.

54. In 2005 the Attorney General issued an Opinion addressing, inter alia, the question of “[w]hat specific felonies do not include moral turpitude?” Att’y Gen. Op. No. 2005-092, 2005 WL 1121853 (2005) (hereinafter “2005 Attorney General Opinion”) (attached as Exhibit B). The Attorney General responded that his “[o]ffice cannot provide an exhaustive list of every felony involving moral turpitude, [but] we can provide a list of the crimes that Alabama courts have determined to be crimes involving moral turpitude.” Id. at *2. This Attorney General’s list includes any felony that has fraud as an element, as well as murder, rape, burglary, robbery, income tax evasion, forgery, conspiracy to commit fraud, aggravated assault, possession of marijuana for resale, sale of marijuana, manslaughter, theft, transporting stolen vehicles across state lines, unauthorized sale of a controlled substance, and bigamy. Id. at *1–*2.

55. The 2005 Attorney General Opinion also noted felonies that Alabama courts have found do not involve moral turpitude, and listed assault, doing business without a license, violation of liquor laws, aiding prisoner to escape (now listed in the Alabama Code as permitting or facilitating escape), mere possession of marijuana, and driving under the influence. Id.

56. The 2005 Attorney General Opinion does not categorize every possible felony conviction, as its author explicitly notes. Id. at *2.

Interpretation and Enforcement by Alabama Boards of Registrars.

57. Registrars for each county comprise a Board of Registrars, and they are collectively and individually responsible for registering electors. Ala. Code §§ 17-3-1 – 17-3-13.

58. No legal training is required to be a Registrar. Ala. Code § 17-3-2(a) (noting that qualifications include being a (1) qualified elector, (2) resident of the county, (3) having a high school diploma or equivalent, and (4) possessing computer and map reading skills).

59. Upon information and belief, the Secretary of State has advised Registrars that when they are presented with an application to register to vote, they are to rely on the 2005 Attorney General Opinion in determining whether to register an applicant who has a felony conviction.

60. Upon information and belief, the Secretary of State has directed Registrars to register applicants with felony convictions that the 2005 Attorney General Opinion states are not disfranchising, *i.e.*, assault, doing business without a license, violation of liquor laws, aiding, permitting or facilitating escape, possession of marijuana, and driving under the influence. Possession of other controlled substances is also treated as a felony not involving moral turpitude.

61. Upon information and belief, the Secretary of State has directed Registrars to not register applicants with felony convictions that the 2005 Attorney General Opinion states are disfranchising unless and until the applicant has received a CERV from the Board of Pardons and Paroles.

62. Upon information on belief, the Secretary of State has directed Registrars to solicit an opinion from the Attorney General's office if they are uncertain whether an applicant's felony conviction is disfranchising, especially if the conviction does not appear on the 2005 Attorney General Opinion list.

63. Upon information and belief, Registrars treat every felony other than those specifically listed as not being disfranchising in the 2005 Attorney General Opinion in the same manner: they inform applicants that they are currently ineligible to register and that they need to obtain a CERV from the Board of Pardons and Paroles first.

Plaintiffs' Registration Eligibility.

64. Plaintiff BAKER has two felony convictions, for forgery in the state of Texas, and for escape in Alabama. Forgery is listed as a felony involving moral turpitude in the 2005 Attorney General Opinion. Escape is not listed in the 2005 Attorney General Opinion. Because of the forgery conviction, Defendants' policy prohibits Ms. BAKER from being eligible to register to vote.

65. Plaintiff BAKER still has financial obligations related to her forgery and escape convictions, but she has completed all other conditions of her conviction. Because of the outstanding money owed, she remains ineligible to apply for a CERV to re-gain her voting rights.

66. The Alabama State Legislature has never stated that a conviction for forgery involves moral turpitude for the purposes of voting rights under Section 177 of the Alabama Constitution.

67. The Alabama State Legislature has never stated that a conviction for escape involves moral turpitude for the purposes of voting rights under Section 177 of the Alabama Constitution.

68. Plaintiff HALL has one felony conviction for forgery. Ms. HALL has paid off all the costs related to this conviction, but she remains on probation and therefore is not otherwise eligible to apply for a CERV to re-gain her voting rights.

69. Forgery is listed as a felony involving moral turpitude in the 2005 Attorney General Opinion. Because of the forgery conviction, Defendants' policy prohibits Ms. HALL from being eligible to register to vote.

70. Plaintiff McWASHINGTON PRUITT has one felony conviction for receiving stolen property. This felony is not listed in the 2005 Attorney General Opinion.

71. On June 23, 2008, Plaintiff McWASHINGTON PRUITT attempted to register to vote, but was told by staff at the Birmingham Board of Registrars that she was ineligible to register because of her felony conviction. Ms. McWASHINGTON PRUITT was advised that she would need to have her voting rights restored by the Board of Pardons and Paroles before she would be allowed to register. (McWashington Pruitt Aff, attached as Exhibit A).

72. Plaintiffs BAKER, HALL and the Plaintiff Class they represent are being denied their fundamental right to vote by Defendants' policy.

73. Plaintiff McWASHINGTON PRUITT and the Plaintiff Subclass she represents are being denied their fundamental right to vote by Defendants' policy.

74. Plaintiffs BAKER, HALL and the Plaintiff Class they represent should not be required to complete the CERV process before being eligible to register to vote.

75. Plaintiff McWASHINGTON PRUITT and the Plaintiff Subclass should not be required to complete the CERV process before being eligible to register to vote.

76. Plaintiff McWASHINGTON PRUITT and the Plaintiff Subclass should not be required to undergo any additional processes or delay while registering to vote, as compared to other elector-applicants who are eligible to register to vote.

77. The Alabama State Legislature has never stated that a conviction for receiving stolen property involves moral turpitude for the purposes of voting rights under Section 177 of the Alabama Constitution.

CAUSES OF ACTION

COUNT 1

VIOLATION OF SEPARATION OF POWERS DOCTRINE

78. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

79. As specified in the Alabama Constitution, it is the duty of the Legislature to define qualifications of electors in the state of Alabama. Ala. Const. art. VIII, § 177. This is a task only the Legislative branch may perform. Ala. Const. art. III, §§ 42–43.

80. The Legislature has adopted a list of felonies that it has determined involve moral turpitude for the purposes of voting rights. See Ala. Code § 15-22-36.1(g).

81. Defendants have expanded the number of disfranchising felonies beyond the list found at Ala. Code § 15-22-36.1(g) by including those listed in a 2005 Attorney General Opinion, No. 2005-092, as well as other felony convictions not even appearing in the 2005 Attorney General Opinion. The Legislature has never sanctioned this interpretation.

82. The Defendants' alteration of the qualifications of electors and refusal to permit Plaintiffs BAKER, HALL and the Plaintiff Class from registering to vote violates the separation of powers doctrine as enshrined in article III, sections 42 and 43 of the Alabama Constitution of 1901, for the task of defining elector-qualifications is a task given exclusively to the Legislature by article VIII, section 177.

83. Even assuming that the list of crimes which the Attorney General has identified as involving moral turpitude is valid, the Defendants' denial of voting rights to Plaintiff McWASHINGTON PRUITT and the Plaintiff Subclass based on convictions for crimes which appear neither in the Alabama Code nor in the 2005 Attorney General Opinion also violates the separation of powers doctrine.

COUNT 2

VIOLATION OF EQUAL PROTECTION CLAUSES

84. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

85. Section 1 of the Fourteenth Amendment to the United States Constitution provides that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

86. Article I, section 1 of the Alabama Constitution states that “all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.”

87. The felony convictions of Plaintiffs BAKER, HALL and the Plaintiff Class have not been deemed by the Legislature to be felonies involving moral turpitude for the purposes of Article VIII, Section 177 of the Alabama Constitution. Because Plaintiffs meet all other elector qualifications, Plaintiffs are eligible to register to vote.

88. Defendants' refusal to register Plaintiffs BAKER, HALL and the Plaintiff Class in the same manner as all other eligible registrants is a violation of the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Section 1 of the Alabama Constitution.

89. Even assuming that the list of crimes which the Attorney General has identified as involving moral turpitude is valid, the Defendants' denial of voting rights to Plaintiff McWASHINGTON PRUITT and the Plaintiff Subclass, based on convictions for crimes which appear neither in the Alabama Code nor in the 2005 Attorney General Opinion, violates her and the Class's right to equal protection under the Fourteenth Amendment to the United States Constitution and Section 1 of the Alabama Constitution.

COUNT 3

VIOLATION OF PRIVILEGES AND IMMUNITIES CLAUSES

90. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

91. Section 1 of the Fourteenth Amendment to the United States Constitution provides that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"

92. Article I, section 22 of the Alabama Constitution states that "no . . . law making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the legislature."

93. Defendants' refusal to permit Plaintiffs BAKER, HALL and the Plaintiff Class to register to vote based on their convictions for crimes which the Legislature has not determined involves moral turpitude unlawfully denies the rights, privileges, immunities, and the protections of equality that section 1 of the Fourteenth Amendment to the United States Constitution and article I, section 22 of the Alabama Constitution afford.

94. Even assuming that the list of crimes which the Attorney General has identified as involving moral turpitude is valid, the Defendants' denial of voting rights to Plaintiff

McWASHINGTON PRUITT and the Plaintiff Subclass based on convictions of crimes which appear neither in the Alabama Code nor in the 2005 Attorney General Opinion also violates the privileges and immunities clauses of the United States and Alabama Constitutions.

COUNT 4

VIOLATION OF THE DUE PROCESS CLAUSES

95. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

96. Section 1 of the Fourteenth Amendment to the United States Constitution prohibits a state from “depriv[ing] any person of life, liberty, or property, without due process of law.”

97. Defendants’ policies and rules used to determine elector qualifications are inconsistent with the clear instructions given by the Legislature, and arbitrarily denies Alabamians of their fundamental right to vote. These policies and rules prohibit Plaintiffs BAKER, HALL and the Plaintiff Class from registering to vote and violate their due process rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Sections 1, 6, and 13 of the Alabama Constitution.

98. Furthermore, even assuming that the list of crimes which the Attorney General has identified as involving moral turpitude is valid, the Defendants’ denial of voting rights to Plaintiff McWASHINGTON PRUITT and the Plaintiff Subclass based on convictions for crimes which appear neither in the Alabama Code nor in the 2005 Attorney General Opinion also violates the due process clauses of the United States and Alabama Constitutions.

COUNT 5

VIOLATION OF THE EQUAL PROTECTION CLAUSE **(Disfranchisement for Failure to Pay LFOs)**

99. Plaintiffs hereby re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

100. Section 15-22-36.1(a)(3) of the Alabama Code requires people convicted of disfranchising crimes to have paid all fines, court costs, fees, and victim restitution ordered by the sentencing court before becoming eligible to have their voting rights restored.

101. Alabama's requirement that people convicted of disfranchising crimes must pay all fines, court costs, fees, and victim restitution ordered by the sentencing court before becoming eligible to have their voting rights restored unlawfully denies Plaintiff BAKER equal protection under the law.

102. The requirements set forth at § 15-22-36.1(a)(3) also negatively and disproportionately impacts indigent people in violation of the equal protection clause.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that the following relief be granted:

a. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclass seek a declaratory judgment that:

- (1) only the Legislature has the authority to define qualifications of electors, pursuant to Ala. Const. art. III, §§ 42-43 and Ala. Const. art. VIII, § 177;
- (2) the Legislature's authority includes defining which felonies involve moral turpitude for the purposes of Ala. Const. art. VIII, § 177(b);
- (3) the Legislature only has defined those felonies listed in Ala. Code § 15-22-36.1(g); and

(4) because Plaintiffs, the Plaintiff Class, and the Plaintiff Subclass were not convicted of felonies which the Legislature has enumerated as involving moral turpitude, they retain the right to register and vote.

b. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclass seek declaratory judgment that Defendants' refusal to register individuals with felony convictions other than those listed in Section 17-22-36.1(g) of the Alabama Code violates Alabama's Separation of Powers doctrine, and the equal protection, due process, and privileges and immunities clauses of the United States and Alabama Constitutions.

c. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclass request an injunction enjoining Defendants and their agents, employees, and representatives from denying them the right to register to vote.

d. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclass request an injunction to require Defendant Secretary of State BETH CHAPMAN to provide effective notice to Defendant Registrars and to Defendant Class Registrars that individuals with felony convictions other than those listed in Ala. Code § 15-22-36.1 are otherwise eligible to register to vote, and are not required to apply for or obtain a CERV from the Board of Pardons and Paroles prior to registering to vote.

e. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclass request a mandatory injunction to require Defendant Secretary of State BETH CHAPMAN to give full and appropriate notice to the public in general, and to citizens of Alabama with felony convictions in particular, of the relief granted by this Court. Plaintiffs suggest that an appropriate public notice should include the following:

(1) public service announcements on television, running once a week for at least three weeks, on the major network affiliates, including WHNT 19, WAAY-TV 31, WAFF-TV 48, and WZDX-TV Fox 54 in Huntsville; WTJP 66 in Gadsden; WBRC-TV 6, WBIO 10, WVTM-TV 13, WCFT/WJSU ABC 33/40, and WIAT-TV 42 in Birmingham; WAKA-TV 8, WSFA-TV 12, WCOV-TV 20, and WNCN-TV 32 in Montgomery; WKRG-TV 5, WPMI-TV 15, and WEIO 42 in Mobile; and WDHN-TV 18 and WDFX-TV Fox 34 in Dothan;

(2) public service announcements on radio, running once a week for at least three weeks, on stations throughout the state such as WEUP (AM & FM), WOCG (FM) and WJAB (FM) in Huntsville; WMGJ (AM) in Gadsden, WILD (AM), WBHK (AM), WPSB (AM) in Birmingham; WWPG (AM) and WZZA (AM) in Tuscaloosa; WVAS (FM) and WZHT (FM) in Montgomery; WBIL (AM) in Tuskegee, WYVC (AM) in Camden, and WJJN (FM) and WAGF (AM) in Dothan.

(3) publication in each daily newspaper of general circulation in Alabama and the following newspapers which serve a predominantly African-American population: Birmingham Times, Birmingham World, Greene County Democrat, Mobile Beacon-Citizen, Montgomery-Tuskegee Times, Speakin' Out News (of Huntsville), The People's Voice (Roanoke); and that such publication be at least 2 columns by 4 inches and run once a week for three weeks.

f. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclass request a mandatory injunction to require Defendant Secretary of State BETH CHAPMAN to modify voter registration forms to reflect that only the convictions specifically listed in Ala. Code § 15-22-36.1(g) are disfranchising.

g. Plaintiffs request the award of reasonable attorneys' fees, expenses, and costs under 42 U.S.C. §§ 19731(e) and 1988.

h. Plaintiffs request such other, further, and different relief as the facts and circumstances may warrant.

Exhibits

The following Exhibits are attached in the Appendix to this Complaint:

A. Affidavit from Plaintiff Annette McWashington Pruitt.

B. Attorney General Opinion, Ala. Op. Atty. Gen. No. 2005-092, 2005 WL 1121853

(March 18, 2005).

Respectfully submitted,

s/ Allison E. Neal

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**Pro hac vice motions to follow*

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