

**IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA**

LANDIS SEXTON AND CUBIE RAE HAYES,
Plaintiffs,

vs.

ROBERT BENTLEY, Governor of the State of Alabama, in his official capacity
BETH CHAPMAN, Secretary of State, in her official capacity, GREG PAPPAS, Secretary of the Alabama House of Representatives, in his official capacity;
PAT HARRIS, Secretary of the Alabama Senate, in his official capacity,
MIKE HUBBARD, Speaker of Alabama House of Representatives, in his official capacity; DEL MARSH, President pro-tempore of the Alabama Senate, in his official capacity; JIM MCCLENDON, House Chairman of Joint Committee on Reapportionment, in his official capacity;
and GERALD DIAL, Senate Chairman of Joint Committee on Reapportionment, in his official capacity
Defendants.

Case No.: CV-2012- 00503

AMENDED COMPLAINT

COMES NOW, Plaintiffs, LANDIS SEXTON AND CUBIE RAE HAYES, and pursuant to Rule 65, Ala. R. Civ. P., move this Honorable Court to issue a preliminary and permanent injunction against the above-named Defendants, in their official capacities, from any action with respect to legislative reapportionment; and, pursuant to the Alabama Declaratory Judgment Act, § 6-6-5, et seq., Ala. Code, 1975, move this Honorable Court to find that the Alabama

Legislature has abrogated its duty under the Alabama Constitution of 1901, Art. IX, §§ 198, 199, and 200, to redraw Alabama's legislative district lines; and, further, in the absence of legislative action to constitutionally draw the district lines, request this Honorable Court to determine the appropriate legislative district lines, and grant any other such relief the Court deems necessary for the administration of justice. In support thereof, Plaintiffs submit as follows:

1. This is an action asking the judicial branch of the State of Alabama judicial system, specifically the Montgomery Circuit Court, as the Court of original jurisdiction, to oversee redistricting of the Alabama Legislature. In Brooks v. Hobbie, 631 So. 2d 883, 884 (Ala. 1993), the Alabama Supreme Court held that "the Montgomery Circuit Court had jurisdiction to enter its order adopting a plan for the reapportionment of the State Legislature." In so holding, the Supreme Court recognized that "the legislature has the primary right and responsibility, pursuant to Art. IX, §§ 198, 199, and 200, to redistrict itself," but that "judicial relief becomes appropriate when the legislature fails to reapportion according to constitutional requisites in a timely fashion after having adequate opportunity to do so." Id. at 885, 888. Specifically, the Court held, "There is no dispute that the legislature has the initial responsibility to act in redistricting matters." Ala. Const., Art. IX, §§ 198, 199, 200. However, in the event the legislature fails to act, the responsibility shifts to the state judiciary." Id. at 889-90. In this instance, the Alabama Legislature has "fail[ed] to reapportion according to constitutional requisites in a timely fashion after having adequate opportunity to do so," and now "the responsibility [to reapportion] shifts to the state judiciary." Id. at 888, 890.

PARTIES

2. Plaintiffs LANDIS SEXTON AND CUBIE RAE HAYES are over the age of nineteen years.

3. Plaintiffs LANDIS SEXTON AND CUBIE RAE HAYES reside in and are registered to vote in Montgomery County, Alabama.

4. Upon information and belief, Defendant Robert Bentley is over the age of nineteen years and resides in Montgomery County, Alabama. Defendant Bentley discharges his official duties as Governor of the State in Montgomery County, Alabama. Defendant Bentley is sued in her official capacity only.

5. Upon information and belief, Defendant Beth Chapman is over the age of nineteen years and resides in Montgomery County, Alabama. Defendant Chapman discharges her official duties as Secretary of State in Montgomery County, Alabama. Defendant Chapman is sued in her official capacity only.

6. Upon information and belief, Defendant Greg Pappas is over the age of nineteen years and resides in Montgomery County, Alabama. Defendant Pappas discharges his official duties as Secretary of the Alabama House of Representatives in Montgomery County, Alabama. Defendant Pappas is sued in his official capacity only.

7. Upon information and believe, Defendant Pat Harris is over the age of nineteen years and resides in Montgomery County, Alabama. Defendant Pappas discharges his official duties as Secretary of the Alabama Senate in Montgomery County, Alabama. Defendant Harris is sued in his official capacity only.

8. Upon information and believe, Defendant Mike Hubbard is over the age of nineteen years and resides in Lee County, Alabama. Defendant Hubbard discharges his official

duties as Speaker of Alabama House of Representatives. Defendant Hubbard is sued in his official capacity only.

9. Upon information and believe, Defendant Del Marsh is over the age of nineteen years and resides in Calhoun County, Alabama. Defendant Marsh discharges his official duties as President pro tempore of the Alabama Senate. Defendant March is sued in his official capacity only.

10. Upon information and believe, Defendant Jim McClendon is over the age of nineteen years and resides in St. Clair County, Alabama. Defendant McClendon discharges his official duties as House Chairman of the Joint Committee on Reapportionment. Defendant McClendon is sued in his official capacity only.

11. Upon information and believe, Defendant Gerald Dial is over the age of nineteen years and resides in Clay County, Alabama. Defendant Dial discharges his official duties as Senate Chairman of Joint Committee on Reapportionment. Defendant Deal is sued in his official capacity only.

CLASS ACTION

12. Plaintiffs bring this action on their own behalf on of behalf of all others similarly situated, pursuant to Rules 23(a) and 23(b), Ala. R. Civ. P. The class plaintiffs seek to represent is all citizens of Alabama who are adversely affected by a legislative reapportionment plan that does not comply with the constitutional mandates of Article IX, §§ 199 and 200 of the Alabama Constitution of 1901. All such persons are being or may be adversely affected by a reapportionment plan that does not comply with the constitutional mandates of Article IX, §§ 199 and 200 of the Alabama Constitution of 1901.

13. The class constitutes an identifiable group of Alabama registered voters, who have suffered and are suffering unlawful denial of fair access to the political process, as guaranteed by the constitutional mandates of Article IX, §§ 199 and 200 of the Alabama Constitution of 1901.

14. There are common questions of law and fact affecting the rights of the members of this class, who are and continue to be deprived of fair access to the political process, as guaranteed by the constitutional mandates of Article IX, §§ 199 and 200 of the Alabama Constitution of 1901.

15. These persons are so numerous that joinder of all members is impracticable. There are questions of law and fact common to plaintiffs and the class they seek to represent. The interests of the class are fairly and adequately represented by the named plaintiffs. Defendants have acted or refused to act, or will act, or will refuse to act in a manner that makes appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

ALLEGATIONS OF FACT

16. The 2012 Regular Session of the Alabama Legislature convened at noon, Tuesday, February 7, 2012. A Regular Session may consist of no more than 30 Legislative Days within the framework of a 105-calendar day period.

17. The 2012 Regular Session is adjourned *sine die* on Wednesday, May 16, 2012.

18. No final legislative reapportionment plan was adopted by the Joint Committee on Reapportionment, and no plan was referred to either chamber for consideration.

19. There was no legislative reapportionment plan ready to be signed into law by the close of the 2012 Regular Session, as required by the Alabama Constitution of 1901, Art. IX, §§ 198, 199, and 200.

20. Art. IX, § 199 provides, "It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States ... to fix by law the number of representatives and apportion them among the several counties of the state."

21. Art. IX, § 200 provides, "It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States ... to fix by law the number of senators and apportion them among the several counties of the state."

22. On May 17, 2012, a special session of the legislature was called to consider among other things legislative action to reapportion the legislative districts of the Alabama legislature.

23. On May 17, 2012 during said special session, the Joint Committee on Reapportionment passed a legislative redistricting plan, which was after the 2012 Regular session of the Alabama Legislature had closed.

COUNT I

24. Plaintiffs incorporate by reference paragraphs 1 through 23 as if fully set out *herein*.

25. The Constitution of Alabama, 1901, imposes on the Legislature of Alabama the duty at its first session after taking the taking of each federal decennial census to redistrict both houses of the legislature. Ala. Const. 1901, Art. IX, §§ 198-200.

26. Said Constitutional provisions strictly require the completion of the legislative reapportionment process prior to the end of the first legislative session following the issuance of

the federal census data. That duty may be carried out in a special session prior to the regular session specified by §§ 199-200, see Opinion of the Justices, 254 Ala. 185, 47 So. 2d 714 (1950), but the plain language of the Constitution requires that *it must be complete by the last day of the first session following the issuance of the federal census data*. Ala. Const. 1901, Art. IX, §§ 198-200.

27. The Alabama Legislature failed to carry out its duty constitutional duty to reapportion itself at the first regular session following the 2010 federal census. The Legislature adjourned, *sine die*, for the 2012 regular session. To date, the Alabama Legislature has failed to reapportion itself as mandated by Art. IX, §§ 199 and 200 of the Alabama Constitution of 1901.

28. The Legislature's failure to reapportion itself violates the rights of Plaintiffs and the class they seek to represent to a republican form of government, in which political power inheres in the people and free governments are instituted for their benefit, Ala. Const. 1901, Art. I, § 2, and their right to legal protection of their right to vote in free elections, Ala. Const. 1901, Art. I, § 33.

COUNT II

29. Plaintiffs incorporate by reference paragraphs 1 through 28 as if fully set out herein.

30. The Legislature's failure to reapportion itself violates the rights of the plaintiffs and the class they seek to represent to equal protection of the law, guaranteed by Art. I, § 1 of the Alabama Constitution, 1901

31. The Defendants' interpretation and application of the Alabama Constitution of 1901, Art. IX, §§ 199 and 200, governing legislative reapportionment, and their attempt to reapportion the legislative districts after the close of the 2012 Regular session has caused and

will continue to cause irreparable injury and damages to the Plaintiffs and the Class including other persons who in the future would have no choice but to vote for a legislator to represent a district drawn in an unconstitutional reapportionment process. There is no adequate remedy at law to prevent this ongoing injury.

32. All of the Plaintiff Class members will be deprived of their right to elect a legislator pursuant to the reapportionment process guaranteed by the Alabama Constitution of 1901, Art. IX, §§ 198, 199, and 200.

33. In the absence of a permanent injunction enjoining this unconstitutional reapportionment process, and any legislative action on the legislative redistricting plan passed by the joint committee on reapportionment on May 17, 2012 during a special legislative session, the Class is, and will continue to be, deprived of the right to elect a legislator pursuant to the reapportionment process guaranteed by the Alabama Constitution of 1901, Art. IX, §§ 198, 199, and 200, and enjoining any further legislative action on the legislative redistricting plan passed by the joint committee on reapportionment on May 17, 2012 during a special legislative session.

34. It is necessary and proper for this Court to issue a permanent injunction enjoining the Defendants from the conducting any further reapportionment proceedings in violation of the Alabama Constitution of 1901, Art. IX, §§ 198, 199, and 200. No act of the legislative, executive or judicial branch can render any further reapportionment proceedings constitutional.

COUNT III

35. Plaintiffs incorporate by reference paragraphs 1 through 34 as if fully set out herein.

36. There is no rational or legitimate basis for the Defendants to sanction any further action to reapportion the Legislature, as any such action will be patently unconstitutional under the Alabama Constitution of 1901.

37. The Defendants' only reason to conduct further action to reapportion the legislature would be to attempt to remedy the constitutional deficiency of the present reapportionment process. However, no official act can turn back the clock to render the present reapportionment process constitutional, because that process cannot be completed prior to the adjournment of the 2012 Regular Session.

38. Finally, any further action to reapportion the Legislature will be patently unconstitutional and will violate their constitutional right to a republican form of government, in which political power inheres in the people and free governments are instituted for their benefit, Ala. Const. 1901, Art. I, § 2, and their right to legal protection of their right to vote in free elections, Ala. Const. 1901, Art. I, § 33.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court will advance this case on its docket, grant the Plaintiffs' contemporaneously filed motion for temporary restraining order, order a speedy hearing at the earliest practicable date, cause this action to be in every way expedited, and upon such hearing:

39. Certify this cause as a class action, pursuant to Rule 23(b)(2), Ala. R. Civ. P., defining the plaintiff class as all Alabama registered voters who have been, or will be harmed by the passage of a patently unconstitutional reapportionment plan.

40. Enter a temporary restraining order, enjoining the Defendants, their agents, successors, attorneys, and those acting in concert with them or at their direction from performing

any legislative action on the legislative redistricting plan passed by the Joint Committee on Reapportionment on May 17, 2012, during a special legislative session, and from advancing an unconstitutional reapportionment process that has, and will continue to, deprive Plaintiffs and the class they represent of the right to elect a legislator pursuant to the reapportionment process guaranteed by the Alabama Constitution of 1901, Art. IX, §§ 198, 199, and 200.

41. Grant Plaintiffs and the class they represent preliminary and permanent injunctions, enjoining the Defendants, their agents, successors, attorneys, and those acting in concert with them or at their direction from advancing an unconstitutional reapportionment process that has, and will continue to, deprive Plaintiffs and the class they represent of the right to elect a legislator pursuant to the reapportionment process guaranteed by the Alabama Constitution of 1901, Art. IX, §§ 198, 199, and 200.

42. Grant Plaintiffs and the class they represent a declaratory judgment that, according to the plain language of the Alabama Constitution of 1901, Art. IX, §§ 199 and 200, any reapportionment plan passed from the date of this filing forward will be patently unconstitutional and will violate their constitutional right to a republican form of government, in which political power inheres in the people and free governments are instituted for their benefit, Ala. Const. 1901, Art. I, § 2, and their right to legal protection of their right to vote in free elections, Ala. Const. 1901, Art. I, § 33.

43. Because the defendants have failed to pass a constitutional reapportionment plan, as required by the Alabama Constitution of 1901, Art. IX, §§ 199 and 200, Plaintiffs and the class they represent request that this Court promptly begin to formulate a remedy.

44. Because the defendants have failed to pass a constitutional reapportionment plan, as required by the Alabama Constitution of 1901, Art. IX, §§ 199 and 200, Plaintiffs and the

class they represent request that this Honorable Court immediately order the parties to submit proposals for a reapportionment plan this Court can adopt and schedule a hearing promptly to consider such proposals.

45. In considering proposals for a court-ordered plan, this Court should, first, ensure that all districts are equally populated, to the extent practicable, with the smallest deviations possible without retrogressing any majority minority districts. To the extent practicable, this Court should attempt to accommodate the constitutional concerns for preserving communities of interest, political and geographical boundaries, and any other legitimate state or federal interests. Further, this Court should defer to any plan that accommodates the controlling federal and state constitutional and statutory concerns.

46. At this time, Plaintiffs allege that the plan for reapportioning House districts approved tentatively by the Joint Committee on Reapportionment on Thursday, May 17, 2012, fails to satisfy any of those criteria. It packs African American voters, carves up communities of interest, fails to respect geographical boundaries, and only respects the political boundaries of Republicans.

47. Under any circumstances, if this Court adopts a court-ordered reapportionment plan, it must defer its implementation, pending preclearance under Section 5 of the Voting Rights Act. The defendants or any other state officer, or their attorneys, should be ordered to immediately submit this Court's plan for preclearance under Section 5 of the Voting Rights Act. Thereafter, if section 5 preclearance objections are received, this Court should modify its plan to cure any defects and finally obtain preclearance before ordering state officials to implement it. See Hawthorn v. Lovorn, 457 U.S. 255, 263 (1982); McDaniel v. Sanchez, 452 U.S. 130 (1981).

48. Award Plaintiffs and the class they seek to represent their costs in this action, including an award of reasonable attorneys' fees and expenses, pursuant to the Alabama Declaratory Judgment Act, § 6-6-5, et seq., Ala. Code, 1975.

49. Retain jurisdiction of this action for a sufficient period to ensure compliance with the decrees and orders of this Court and with the laws and constitutions of Alabama and the United States.

50. Grant such other and further equitable relief as the Court may deem just and proper for the administration of justice.

Respectfully submitted on this the 17th day of May, 2012



Plaintiff Landis Sexton




Plaintiff Cubie Rae Hayes

THE STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

BEFORE ME, the undersigned authority for said County and State, personally Landis Sexton, who being first duly sworn, deposes and says that the facts as averred in the foregoing Complaint are true and correct to the best of his/her knowledge.

SWORN TO AND SUBSCRIBED before me this 17 day of May,
2012

(SEAL)

Notary Public: 
My Commission Expires: 8/5/13

THE STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

BEFORE ME, the undersigned authority for said County and State, personally Cubie Rae Hayes, who being first duly sworn, deposes and says that the facts as averred in the foregoing Complaint are true and correct to the best of his/her knowledge.

SWORN TO AND SUBSCRIBED before me this 11 day of May,
2012

(SEAL)

Notary Public: [Signature]
My Commission Expires: 8/5/13

[Signature]
Kenneth Shinbaum (SHI006)
Attorney for Plaintiffs

[Signature]
Julian Lenwood McPhillips Jr. (MCP 004)
Attorney for Plaintiffs

Of Counsel:

McPhillips Shinbaum, LLP
Post Office Box 61
Montgomery, Alabama 36101-0061
Phone: (334) 262-1911