SC-2022-0836

In the Supreme Court of Alabama

Tiara Young Hudson,
Appellant,

v.

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 Resource Allocation Commission,
Appellees.

On Appeal from the Montgomery Circuit Court (CV-22-900892); Civil Appeals Court: CL-22-0936)

Brief of the Appellant

ASB-3244-I12V
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*Motion for admission pro hac vice to be filed.
**Appearance to be filed.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 28(a)(1) and Rule 34(a) of the Alabama Rules of Appellate Procedure, Plaintiff-Appellant Tiara Young Hudson ("Ms. Hudson") respectfully requests oral argument in this matter. Oral argument is necessary because this appeal is not frivolous, the dispositive issue has not been recently decided, the lower court's ruling wo6Mue

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF JURISDICTION

The Circuit Court of Montgomery County had jurisdiction under Ala. Const. Art. VI § 142 and Ala. Code § 6-6-222 because Ms. Hudson properly filed an action for declaratory relief. *C*_6. Ms. Hudson timely filed her notice of appeal to the Alabama Court of Civil Appeals on August 25, 2022. *Id.* at 844. The Alabama Court of Civil Appeals had appellate jurisdiction over this case pursuant to Ala. Code § 12-3-10 because this is a civil appeal "where the amount involved" does not exceed $50,000. This Court has jurisdiction in this case because the Court of Civil Appeals transferred it on September 6, 2022, pursuant to Ala. Code § 12-3-15. (Transfer Order).

STATEMENT OF THE CASE

briefing schedule to give her an opportunity to respond to Appellees' Motion to Dismiss

STATEMENT OF THE ISSUES

This appeal raises three issues. First, whether Ms. Hudson can file a declaratory-judgment action pursuant to Ala. Code § 6-6-222 to request a court to find that the Alabama Legislature unlawfully delegated its lawmaking power to the AOC? Second, whether Ms. Hudson has standing to bring a declaratory-

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Smitherman testified that the caseload study was based on a flawed premise. *Id.* 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.* Others also spoke up to oppose eliminating the Place 14 judgeship. *Id.* at 12. Nevertheless, JRAC voted 8-3 to eliminate the Tenth Judicial Circuit, Place 14 judgeship in Jefferson County and create a new judgeship in the Twenty-Third Judicial Circuit

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appointment to fill the Place 14 judicial vacancy from among the nominees JCJC forwards.

Third, viewing all the allegations of the complaint "most strongly" in Ms. Hudson's favor shows that she has more than sufficiently alleged that the Alabama Legislature "possibly" delegated its lawmaking power to JRAC. *Nance*, 622 So. 2d at 299. This is so because eliminating and creating judgeships requires an "act" by the Legislature under § 142 and § 151 of the Alabama Constitution. This Court has held that the "legislature cannot delegate its powerTJ0

AR GUMENT

I. The circuit court erred when it held that it lacked subject-matter jurisdiction to hear Ms. Hudson's declaratory-judgment action.

The circuit court held that "the only way" for it to have jurisdiction over this matter was through a writ *of quo warranto. C*_830. In so ruling, the circuit court misconstrued both the nature of Ms.

Ms. Hudson filed her complaint pursuant to § 6-6-222 because she requested the court to "declare [the] rights" of JRAC and restore the Place 14 judicial vacancy. *C*_6. Her complaint does not allege any of the *quo warranto* violations. The only violation that could be considered is § 6-6-591(1). Yet, a review of the complaint "most strongly" in Ms. Hudson's favor confirms that she did not allege that Judge Tuten "usurp[ed]" the Madison County judgeship, but rather that JRAC did not have the power to create the office. *C*_13.

2009). *C*_830. In *Riley*, this Court reviewed a claim by taxpay1292iexplCID 0 y5(im)5

of fact'; (2) a 'causal connection between the injury and the conduct complained of'; and (3) a likelihood that the injury will be 'redressed by a favorable decision.'" *Alabama Alcoholic Beverage Control Bd. v. l 0.001 Tw 14.04u-*

judicial vacancy in Jefferson County, and Ms. Hudson would have maintained her

Id.

invested exclusively in the Legislature, cannot be delegated." *Parke v. Bradley*, 86 So. 28, 29 (Ala. 1920); *see also In re Opinions of the Justices*, 166 So. 706, 708 (Ala. 1936).

This Court has held that "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*, 761 So. 2d at 236–37 (citations omitted). Thus, the circuit court should not have reached the question of whether there are sufficiently limiting standards.

Even the cases cited in the circuit court's order underscore this point. In *Monroe v. Harco, Inc.*, 762 So. 2d 828 (Ala. 2000), this Court stated that:

> [t]he true test and distinction whether a power is strictly legislative, or whether it is administrative, and merely relates to the execution of the statute law, "is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution to be exercised under and in pursuance of the law. The first cannot be done. To the latter, no valid objection can be made."

Id. at 831 (internal quotation marks omitted); *see Bailey v. Shelby Cnty.*, 507 So. 2d 438, 442 (Ala. 1987). ("The legislature cannot delegate its power to make a law."). In other words, the Legislature cannot permit a commission to substitute its will for the Legislature's; it can only delegate the discrete power to help execute or administer the Legislature's will.

The question the court should have asked was whether Ms. Hudson's complaint "possibly" alleged that eliminating and creating judgeships requires an act by the Legislature. *Nance,* 622 So. 2d at 299. The Court would have denied the motion to dismiss because the Alabama Constitution is unequivocal: *only* the Legislature may change the number of judges serving in each judicial circuit. Even if the Constitution did not explicitly state that changing the number of judges serving in each judicial circuit is the Legislature's exclusive purview (which it does), courts have established a clear definition of lawmaking power, and this type of decision-making falls squarely within that power.

Ms. Hudson presented the circuit court with two Alabama Constitutional provisions that illustrate this. First, Article 6 § 142(a) 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*." Ala. Const. Art. VI § 142(a) (emphasis added).

Pursuant to that mandate, the Legislature enacted a law setting exactly the number of judges serving in each circuit: Ala. Code § 12-17-20. Section 12-17-20 establishes, in precise and unambiguous terms, that "there shall be 27 circuit judges in the tenth judicial circuit," in Jefferson County. Ala. Code § 12-17-20(b)(8). It also states that "there shall be seven circuit judges in the twenty-third judicial circuit," in Madison County. *Id*. at § 12-17-20(b)(20). The Legislature can and has amended this statute to change the number of judges in each circuit. In 2009, for example, the Legislature amended the statute to increase the number of judgeships in the twenty-

amending or otherwise supplanting § 12-17-20—requires lawmaking power that cannot be delegated.

The second constitutional provision providing evidence that the Legislature may not delegate authority to change the number of judges serving in each circuit is found in Article 6, § 151. Section 151(b) 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 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."[2] Under the plain meaning of § 151(b), any change to the number of judgeships in a judicial circuit must be made by the Alabama Legislature. *See Jefferson Cnty. v. Weissman*, 69 So. 3d 827, 834 (Ala. 2011) ("[T]he

2 The Alabama Legislature: The Alabama Legislative Glossary,

being an election. *Id.* This Court held that this was unconstitutional because § 152 states that "[a]ll judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts." *Id.* at 980.

This Court reasoned that to permit the governor to make the initial appointment would be an "emasculation of § 152" because of how clear the section is. *Id.* at 981. Similarly, JRAC cannot be given the power to "emasculat[e]" § 151 by eliminating and creating new judgeships when the language of § 151 specifically reserves this power to the Legislature. Moreover, this Court cited multiple cases in *King* that illustrated the point that creating and eliminating public offices requires the will of the legislature. *Id.* at 979-81; *see Lane*, 9 So. at 874 ("Being created, and its functions and emoluments conferred, by the legislature, the same body may abolish it, take away or reduce its functions and emoluments.").

At the minimum, Ms. Hudson's complaint, viewed "most strongly" in her favor,

This Court's decision in *Harper* supports that Ms. Hudson has met her burden. 873 So. 2d 220 (Ala. 2003). In *Harper,* the defendants received a judgment against plaintiff's corporation. *Id*. at 222. In a post-judgment deposition, defendants realized that the plaintiff could also be held personally liable for the judgment against the corporation due to fraud. *Id*. The plaintiff filed a declaratory-judgment action against the defendants "seeking to determine the rights, status, and other legal relations between the two parties." *Id*.

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Similarly, Ms. Hudson alleged a "justiciable controversy" in her complaint. She needed the court to "clarify the uncertain issue whether" JRAC has the power to eliminate the judgeship which she applied to through a constitutionally protected process. *C*_12. Therefore, *Harper* supports reversal of the circuit court's decision.

If this Court were to agree with the lower court that eliminating and creating judgeships are not in the exclusive control of the Legislature, then this Court should still reverse because it is a factual question whether there are "reasonably clear standards governing the execution and administration" of appointments for JRAC. *Folsom v. Wynn*, 631 So. 2d 890, 894 (Ala. 1993). This Court has held that courts do not review factual questions on a motion to dismiss. *Anonymous v. Anonymous,* 672 So. 2d at 787, 788 (Ala. 1995).

Here, § 12-9A-2 grants JRAC virtually unfettered discretion to step into the Legislature's shoes, permitting JRAC to substitute its will for the will of the Legislature—as codified in § 12-17-20, setting the number of judges in each circuit. The only constraint on JRAC's discretion is that it must "consider" rankings that JRAC itself devises based on criteria

including "[a]ny . . . information deemed relevant by the commission." Ala. Code §§ 12-9A-2(a), 12-9A-1(d)(5).

Nevertheless, all Ms. Hudson would have to allege at this stage is whether it is "possibl[e]" there are not sufficient constraints. *Nance*, 622 So. 2d at 299. Her complaint meets this burden. Therefore, this Court should reverse the circuit court's decision.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellant respectfully requests this Court to reverse the circuit court's decision.

Dated: September 27, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify compliance with the font and world limits as required by Rule 32(d) of the Alabama Rules of Appellate Procedure because this Motion contains 6,821 words and uses Century Schoolbook

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2022, I electronically filed the foregoing Brief with the Clerk of Court using AlaFile, which will send notification of such filing to all counsel of record.

Dated: September 27, 2022

/s/ Ellen Degnan
Ellen Degnan

Counsel for Appellant