



## AlaFile E-Notice

03-CV-2022-900892.00

Judge: JIMMY B POOL

To: ELLEN LEE DEGNAN  
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# NOTICE OF ELECTRONIC FILING

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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

334-832-1260

Oral Arguments Requested

Motion to Intervene (\$297.00)

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 \_\_\_\_\_

Pendente Lite

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Other

pursuant to Rule \_\_\_\_\_ (Subject to Filing Fee)

7/19/2022 3:01:54 PM

**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.

**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.*

Civil Action No.

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**

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.<sup>1</sup> After the interviews, JCJC will submit the names of the three finalists to Governor Ivey for her selection. *Id.* at ¶ 16.

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<sup>1</sup> [https://cdn.ymaws.com/birminghambar.org/resource/resmgr/judicial\\_commission/2022/rename\\_pl\\_14\\_cr\\_div\\_-\\_public.pdf](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.<sup>2</sup>

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

**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.”<sup>4</sup> 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.

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<sup>4</sup> <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*,



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



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