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

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## INTRODUCTION

Plaintiff Tiara Young Hudson asks the Court to override the Legislature and a Commission composed of attorneys, judges, representatives of the Governor and Attorney General, and the Chief Justice of the Alabama Supreme Court and undo the reallocation of a vacant circuit judgeship from Jefferson County to Madison County. Plaintiff does not argue that she has a constitutional right to take office as a

initiating a quo warranto action. A quo warranto action is the exclusive mechanism to do what Plaintiff seeks to do here: oust an official from his or her public office. Given the significance of cases that seek this type of relief, the Legislature created a specially structured, expedited process in which individuals can serve as relators to bring a claim on behalf of the State of Alabama. Plaintiff ignored the legal requirements associated with filing this type of action. And at any rate, she lacks standing to bring a claim on her own behalf as a potential candidate to be appointed to a circuit judgeship. Whether for lack of subject-matter jurisdiction or for failure to state a claim, the Complaint is due to be dismissed.

## FACTS

In 2017, the Alabama Legislature enacted Act No. 2017-42, which is now codified at Ala. Code § 12-9A-1*et seq.*In the Act, the Legislature created a "permanent study commission on the judicial resources in Alabama," the Judicial Resources Allocation Commission, and defined its composition and duties. Ala. Code § 12-9A-1(a). The Commission is tasked with "annually review[ing] the need for increasing or decreasing the number of judgeships in each district court and circuit court" and then ranking each district court and circuit court according to need.

must consider a "Judicial Weighted Caseload Study, as adopted by the Alabama Supreme Court," populations of the districts or circuits, and the judicial duties of the judges in the districts or circuits. *Id.* (d)(1)-(3). The Commission must also "us[e] [u]niformity in the calculation of how civil, criminal, and domestic cases are accounted for between circuits." *Id.* (d)(4). Finally, the Commission can consider "[a]ny other information deemed relevant by the Commission." *Id.* (d)(5). The Act

Meet. Tr. Jan. 11, 2018 at 88-89) (attached as Exhibit F); (Comm. Let. Feb. 2, 2018 at 4) (attached as Exhibit G).

Since that time, the Commission has recommended that the Legislature create new judgeships on three separate occasions. On June 14, 2018, the Commission voted without opposition[2] to recommend the creation of five circuit judgeships, including one in Madison County and none in Jefferson County. (Comm. Let. July 23, 2018) (attached as Exhibit H). On January 9, 2020, the Commission voted without opposition[3] to recommend the creation of eleven circuit judgeships, including three circuit judgeships in Madison County and none in Jefferson County. (Comm. Let. Jan. 30, 2020) (attached as Exhibit J). And on January 5, 2022, the Commission voted to recommend the creation of twelve circuit judgeships, again recommending the addition of three circuit judgeships in Madison County and none in Jefferson County. (Comm. Let. Jan. 5, 2022) (attached as Exhibit L).

In the Act, the Legislature also empowers the Commission to reallocate a judgeship "in the event of a vacancy due to death, retirement, resignation, or removal from office of a district or circuit judge." Ala. Code § 12-9A-2(a). The Commission has 30 days to determine whether to reallocate a judgeship. In making the

[2] One member of the Commission was absent and another member of the Commission abstained. (Comm. Meet. Tr. June 14, 2018 at 145) (attached as Exhibit I).

[3] One member of the Commission abstained. (Comm. Meet. Tr. Jan. 9, 2020 at 61) (attached as Exhibit K).

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A Rule 12(b)(6) motion "tests the sufficiency of the pleadings to determine if the plaintiff has stated a claim upon which relief can be granted, and in ruling on

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demonstrate that she has "been injured in fact" and that "the injury is to a legally protected right." *State v. Prop. at 2018 Rainbow Drive known as Oasis*, 740 So. 2d 1025, 1027 (Ala. 1999). It is not enough to allege a "mere speculative possibility" of an injury. *Ex parte Merrill*, 264 So. 3d 855, 864 (Ala. 2018). Rather, "[a] party's injury must be tangible." *Id.* (citation and quotation marks omitted).

Further, the injury-in-fact inquiry "is not as simple as whether a justiciable controversy exists"; rather, a plaintiff must "demonstrate that [she is] a proper party to invoke judicial resolution of the dispute" and establish "actual, concrete and particularized injury in fact." *Muhammad v. Ford*, 986 So. 2d 1158, 1162 (Ala. 2007) (quotation marks and citations omitted). "[A]n individual's belief that a law is invalid or unenforceable is not the kind of actual, concrete and particularized injury in fact that supports an individual95.20 -168.40 (1)] TJ /F0(95.20 4.20 (i)-4.20 (ff)

2022." Doc. 2 ¶ 15. The Jefferson County Judicial Commission is tasked with selecting three candidates to fill the vacancy, one of whom is then appointed by the Governor. Id. According to Plaintiff, the appointee would then serve in office until after the November 2024 election. Id. ¶ 6. In her separately filed Preliminary Injunction Motion, Plaintiff explains that she "does not argue that her injury stems from the initial vacancy that stripped her primary win." Doc. 6 at 9. "Rather, her injury arises from [the Commission's] interference with the constitutionally mandated process for filling judicial vacancies in the Birmingham Division of the Jefferson County Circuit Court." Id.

This broad, non-personalized allegation is not an injury that could establish an injury-in-fact for standing iadmaaf h

particularized injury in fact'" on behalf of citizen and organization of citizens). Plaintiff's belief "that her home county cannot lose a judgeship," doc. 6 at 9, does

III. Plaintiff fails to state a claim because the Legislature lawfully empowered the Commission to reallocate judgeships.

Even if the Court had subject-matter jurisdiction, the Complaint is nevertheless due to be dismissed because it fails to state a claim. In this context, it must be emphasized that "acts of the legislature are presumed constitutional," State ex rel. King v. Morton, 955 So. 2d 1012, 1017 (Ala. 2006), and that "Courts will strive to uphold acts of the legislature," City of Birmingham v. Smith, 507 So. 2d 1312, 1315 (Ala. 1987). See also Kirby v. State, 899 So. 2d 968, 973 (Ala. 2004) ("We must afford the Legislature the highest degree of deference, and construe its acts as constitutional if their language so permits.") (internal quotation marks and citations omitted). Courts "approach the question of the constitutionality of a legislative act with every presumption and intendment in favor of its validity, and

subject to the Alabama Open Meetings Act and Alabama Open Records Act. Ala. Code § 12-9A-6. Sixth, the Commission has only thirty days following a judicial vacancy to decide whether to reallocate that judgeship. Ala. Code § 12-9A-2(a). Finally, the Legislature provided for the appointment process, compensation, and powers of judges appointed to a newly allocated judgeship, preventing any possibility that the Commission itself would attempt to fill any perceived gap in the judicial reallocation process. Ala. Code §§ 12-9A-2(a), -3 & -4.

The Alabama Supreme Court has found statutes with much less guidance to present no issue under the separation of powers provision of the Alabama Constitution. *Monroe*, 762 So. 2d at 833; *Folsom*, 631 So. 2d at 894. In *Monroe*, the Supreme Court considered a challenge to a statute in which the Legislature delegated authority to the Governor to determine the amount of sales-tax discounts to be allowed to licensed retailers. *Monroe*, 762 So. 2d at 830. The Court noted just two legislative restrictions on the Governor's discretion: (1) the Governor could not exceed a maximum allowable discount, and (2) the Governor could not allow a discount to retailers that were delinquent in their tax payments. *Id.* at 833. The Court held that this modest guidance constituted sufficient standards to prevent a separation of powers violation, explaining that the statute "d[id] not vest the Governor with unlimited discretion to decide what amount retailers can claim as a sales-tax discount." *Id.*

In this case, it cannot be said that the Legislature "vest[ed] the [Commission] with unlimited discretion to decide" how to allocate judicial vacancies. Id. Instead, the Legislature provides detailed guidance and strict limits about the circumstances

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in each circuit and district" (emphasis added), underscores that Section 151(b) concerns only the "number of circuit or district judges" statewide. If the Legislature (and ratifying voters) meant to include "the number of judges needed *in* each circuit and district" in Section 151(b), they would have done so.

This distinction between Section 151(a) and Section 151(b) makes even more sense considering that changing the number of judges statewide would necessitate an increase in State funding, and appropriating additional funds is a quintessential legislative function. In contrast, merely reallocating judgeships has no similar effect on the State treasury and carries no implication that "lawmaking" is taking place. Indeed, the Legislature has preemptively provided that "the state resources allocated to fund the [reallocated] judgeship shall continue to fund the judgeship in the district or circuit to which it was reallocated." Ala. Code § 12-9A-2(d). No new appropriation is required.

Further, Section 151(b)—even if it did concern reallocating judicial vacancies—does not establish or imply that reallocating judicial vacancies is a non-delegable lawmaking function vested purely in the Legislature. Quite the opposite. Section 151(b) is a restriction

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at 981. The constitutional infirmity had nothing to do with the timing of the law's enactment or that fact that a candidate had already won a primary election. Instead, the Court simply held that a newly created judgeship was not a "vacancy" under Alabama's Constitution, so the Governor could not appoint someone to fill the seat—the judge was required to elected. *Id.*

As its facts make plain, *King* has nothing to do with Plaintiff's claim that the Commission violates the separation of powers provision of the Alabama Constitution. Instead, *King* forecloses a claim that Plaintiff has chosen not to bring: In the same way that Woodruff had no entitlement to office by winning a party primary, Plaintiff likewise has no entitlement to office by winning a party primary. Plaintiff argues that, under *King*, the Commission "cannot be given the power to undermine § 151(b)." Doc. 6 at 8. But as set forth above, *King* turned on the application of an entirely different section of the Constitution. Moreover, the Commission does not undermine Section 151(b), which says nothing about judicial reallocation. And *King* certainly does not establish that such a process is a non-delegable lawmaking function under Alabama law.

Lastly, Plaintiff cites *State v. Vaughn* in support of her claim. 4 So. 2d 5 (Ala. Ct. App. 1941). There, the Legislature passed two relevant acts. First, the Legislature

as game fish in the text of the act. Id.; see Ala. Acts 1933-72, § 2. Importantly, the

state, but not the sale of all fish caught outside the State. Id. The Court of Appeals agreed, reasoning that it was "significant . . . that the legislature itself prohibited the sale of bass taken without the State." Id. at 8. Importantly, the Court of Appeals explained that "the legislature itself has regarded[] the prohibition of the sale of fish, foreign or domestic, a subject of law and not a subject of a regulation to carry some previously enacted law into effect." Id. The Legislature had not delegated to the Department of Conservation the ability to criminalize the sale of foreign fish. Id. The laws it had passed showed the Legislature's "intent not to authorize [prohibiting the sale of fish] to be done by an administrative agency." Id. 8

Unlike in Vaughn, which involved a broad and generalized delegation of authority, the Legislature he oudtan pg" hu,l e taniy a(y)-5.30 31ni f aug ni-3.40 (e)27.7(

accordingly. Unlike in *Vaughn*, Plaintiff does not argue that the Commission has exceeded the authority the Legislature granted to it.

The Legislature lawfully delegated its authority to reallocate judgeships and the Commission acted within the bounds of the power the Legislature conferred on it. Plaintiff cites no authority that would lead to a different result. Accordingly, even should the Court reach the merits of Plaintiff's claims, the Complaint shoul0 (t)4.30 (

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2022, I electronically filed the foregoing