

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

RICHARD GOODEN, ANDREW JONES, and
ANGELA THOMAS, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

NANCY WORLEY, in her official capacity as
Alabama Secretary of State, and 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,

Defendants,

THE STATE OF ALABAMA,

Defendant-Intervenor.

Civil Action No. CV 05-5778

(Judge Robert S. Vance, Jr.)

FOURTH AMENDED COMPLAINT

Plaintiffs move to add Angela Thomas as a plaintiff and amend the complaint (as allowed by Rule 15(a) of the Alabama Rules of Civil Procedure) against Nell Hunter, Jefferson County Voter Registrar (“Jefferson County Registrar”), and Nancy Worley, Alabama Secretary of State (“Defendant Secretary of State”) (collectively “Defendants”), to read as follows:

1. This action arises under State and Federal law and seeks relief for the named Plaintiffs as well as persons similarly situated. The named Plaintiffs and hundreds of other Alabamians have been disfranchised by the overly expansive interpretation of the provisions of the Alabama Constitution barring persons

convicted of “felonies involving moral turpitude” from voting by certain officials in the State of Alabama.

PLAINTIFFS

2. RICHARD GOODEN is a 64-year-old African American of lawful voting age, a citizen of the United States and a lifetime resident of Birmingham, Alabama.

3. Though Mr. Gooden wanted to register to vote when he turned 18, he was not permitted to register to vote in the State of Alabama until his mid-20s due to Alabama’s well-documented and systematic efforts to deny the right to vote to African-American citizens. It was not until the passage of the Voting Rights Act of 1965 that Mr. Gooden, like thousands of African Americans, was finally permitted to vote in his home state.

4. Mr. Gooden was registered to vote from the mid-1960s until 2000, when he was convicted of a felony — driving under the influence of alcohol (DUI) — and informed by the State of Alabama that his voting rights were revoked as a collateral consequence of his conviction.

5. ANDREW JONES is a 47-year-old African American of lawful voting age, a citizen of the United States and a resident of Birmingham, Alabama. Mr. Jones was registered to vote from the mid-1970s until the early 1990s, when he was convicted of felony possession of drugs, and informed by the State of Alabama that his voting rights were revoked as a collateral consequence of his conviction.

6. ANGELA THOMAS is a black female resident of Jefferson County, Alabama. She was registered to vote in the 1990's but was removed in 2003 after her conviction for possession of marijuana (first degree).

7. Hundreds of individuals from across the State of Alabama have been identified to Plaintiffs' counsel by the Alabama Board of Pardons and Paroles ("Board" or "Board of Pardons" or "Board of Pardons and Paroles"), pursuant to The Public Writings Act of the State of Alabama, Ala. Code. § 36-12-40 *et seq.*, as Alabama citizens whose only felony convictions did not involve moral turpitude and who are presently eligible to register to vote.

8. Plaintiffs bring this action on their own behalf, and on behalf of all other persons similarly situated (the Plaintiff Class) against Defendants pursuant to the provisions of Rule 23 of the Alabama Rules of Civil Procedure.

9. The Plaintiff Class that Plaintiffs 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 any felonies involving moral turpitude.

10. The members of the Plaintiff Class are so numerous as to make it impractical to bring them all before this Court. The individual identities of the Plaintiff Class members are ascertainable through Defendants' records, by public notice and through records kept by the Alabama Board of Pardons and Paroles. The Board of Pardons and Paroles, for example, has identified to Plaintiffs' counsel, pursuant to The Public Writings Act of the State of Alabama, Ala. Code. § 36-12-40 *et seq.*, hundreds of people from across the State of Alabama whose

felony convictions did not involve moral turpitude and who are presently eligible to register to vote.

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

a. Whether Defendant Worley instructed voter registrars to refuse, and whether voter registrars in fact refused, to register members of the Plaintiff Class to vote;

b. Whether Defendant Worley's and voter registrars' actions violated the rights guaranteed to Plaintiff Class members by Alabama's constitution and laws;

c. Whether Defendant Worley's and voter registrars' actions violated the rights guaranteed to Plaintiff Class members by federal law;

d. Whether the Plaintiff Class is entitled to declaratory relief;

e. Whether the Plaintiff Class is entitled to injunctive relief;

f. Whether the Plaintiff Class is entitled to an award of reasonable attorneys' fees and costs of suit.

12. Plaintiffs 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 will fairly and adequately represent and protect the

interests of the Plaintiff Class, and Plaintiffs' interests are not antagonistic to the Plaintiff Class.

13. The claims of Plaintiffs are typical of the class as a whole.

14. Plaintiffs' counsel, attorneys of the NAACP Legal Defense & Educational Fund, Inc. and Edward Still, are familiar with the applicable laws, have the resources necessary to pursue this litigation and are experienced in class action and voting rights litigation.

15. A class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' and Plaintiff Class members' claims. Plaintiffs and the members of the Plaintiff Class 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 will continue to suffer deprivation of their right to register to vote. Defendant Worley continues to deny wrongdoing and to engage in the unlawful conduct that is the subject of this complaint.

DEFENDANTS

16. NANCY WORLEY is the Secretary of State of Alabama ("Secretary of State"), and, as such, is vested with the authority, as Alabama's "Chief Election Official," to execute and enforce the state laws related to the elective franchise to preserve public confidence in the democratic process and to facilitate voter participation in elections. She is sued in her official capacity in connection with actions taken under color of state law, including the promulgation

of procedures for and the receipt and administration of applications for voter registration. *See* Ala. Code. § 17-4-136.

17. NELL HUNTER is the Jefferson County Voter Registrar (“Jefferson County Registrar”), and, as such, is vested with the authority to grant or refuse an individual’s application to register to vote in Jefferson County in accordance with the directives of the Secretary of State. She is sued in her official capacity in connection with actions taken under color of state law, including the refusal by her office of the voter registration application of Plaintiff Gooden on September 21, 2005.

18. Plaintiffs bring this action against Nell Hunter, as Registrar of Jefferson County (“Defendant Registrar”), and against all other persons similarly situated (the Defendant Class) pursuant to the provisions of Rule 23 of the Alabama Rules of Civil Procedure.

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

20. 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, except Jefferson, Barbour, and Talladega counties. Jefferson County has one registrar, and both Talladega County and Barbour County have four.

21. There is a well-defined community 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 Worley instructed members of the Defendant Class to refuse, and whether voter registrars in fact refused, to register members of the Plaintiff Class;

b. Whether Defendant Worley's and voter registrars' actions violated the rights guaranteed to Plaintiff Class members by Alabama's constitution and laws;

c. Whether Defendant Worley's and voter registrars' actions violated the rights guaranteed to Plaintiff Class members by federal law;

d. Whether the Plaintiff Class is entitled to declaratory relief against the Defendant Class;

e. Whether the Plaintiff Class is entitled to injunctive relief against the Defendant Class;

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

22. Defendant Registrar 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 Registrar will fairly and adequately represent and protect the interests of the Defendant Class, and their interests are not antagonistic to the Defendant Class.

23. The defenses of Defendant Registrar are typical of the Defendant Class as a whole.

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

**RELEVANT STATUTORY AND CONSTITUTIONAL
PROVISIONS AND CASES**

25. The Alabama Constitution, Article VIII, Section 177 (Recompiled, July 28, 1995), provides in pertinent part:

(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. (Emphasis added).

26. The term "felony involving moral turpitude" has been defined by Alabama courts.

27. *Moore v. State*, 12 Ala. App. 243, 250, 67 So. 789 (1915), contains an early definition of crimes of "moral turpitude":

A felony of moral turpitude is defined in Alabama as "anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man."

28. In *Williams v. State*, 55 Ala. App. 436, 437, 316 So.2d 362, 363

(Ala. Cr. App. 1975), the court stated:

A better summary of the meaning of moral turpitude can hardly be given than that found in McElroy, *Law of Evidence in Alabama*, Vol. I, s 145.01(7) as follows:

Moral turpitude signifies an inherent quality of baseness, vileness, depravity. *Gillman v. State*, 165 Ala. 135, 51 So. 722. Moral turpitude “implies something immoral itself, regardless of the fact whether it is punishable by law. The doing of the act, and not its prohibition by statute fixes the moral turpitude.” *Pippin v. State*, 197 Ala 613, 73 So. 340. Moral turpitude means ‘something immoral in itself. * * * It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself and not its prohibition by statute, fixes the moral turpitude. * * * It is the nature of the act itself, and not its legislative characterization or punishment which must be the test in determining whether or not it involves moral turpitude. *Ex Parte Marshall*, 207 Ala 566, 93 So. 451 (471).

29. In *Ex Parte McIntosh*, 443 So.2d 1283, 1284 (Ala. 1983), the

Alabama Supreme Court favorably cited C. Gamble, *McElroy’s Alabama Evidence*, § 145.01(7) (3d ed. 1977):

The Supreme Court of Alabama has defined the term “moral turpitude” on many occasions and the following are the most commonly found definitions. Moral turpitude signifies an inherent quality of baseness, vileness and depravity. It is immoral in itself, regardless of the fact that it is punished by law. Therefore, an offense for conviction of which a witness’ credibility is lessened must be *mala in se* and not *mala prohibitum*.

30. Ala. Code § 17-3-9 provides:

Any person possessing the qualifications of an elector set out in Article 8 of the Constitution of Alabama, as modified by federal law, and not laboring under any disqualification listed

therein, shall be an elector, and shall be entitled to register and to vote at any election by the people.

31. Ala. Code § 17-4-124 provides:

Any person to whom registration is denied shall have the right of appeal, without giving security for costs, within 30 days after such denial, by filing a petition in the circuit court in the county in which he or she seeks to register, alleging that he or she is a citizen of the United States over the age of 18 years having the qualifications as to residence prescribed by law and entitled to register to vote under the provisions of the Constitution of Alabama, as amended. Upon the filing of the petition, the clerk of the court shall give notice thereof to the district attorney authorized to represent the state in said county, who shall appear and defend against the petition on behalf of the state. The issues shall be tried in the same manner and under the same rules that other cases are tried in such court and by a jury, if the petitioner demands it. The registrars shall not be made parties and shall not be liable for costs. An appeal will lie to the Supreme Court in favor of the petitioner if taken within 42 days from the date of the judgment. Final judgment in favor of the petitioner shall entitle him or her to registration as of the date of his or her application to the registrars.

32. Section 1971, Title 42 of the United States Code, provides in part as follows:

(2) No person acting under color of law shall—

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election

FACTS

33. From Reconstruction until the passage of the Voting Rights Act of 1965, Alabama employed virtually every state instrument of disfranchisement

available to suppress the Black vote, including terror and violence, literacy tests, poll taxes, a “grandfather clause,” good character tests, and white-only primaries. As a result, only 19 percent of the Black voting-age population in Alabama was registered to vote in 1964, one of the lowest proportions in the South. By contrast, 69 percent of the white voting-age population was registered at that time.

34. As a result of its long history of discrimination against Blacks in voting, the entire State of Alabama is covered by Section 5 of the Voting Rights Act of 1965 pursuant to Section 4 of that statute and the designation of the Attorney General.

35. Following the 1982 renewal of Section 5 of the Voting Rights Act of 1965, the Supreme Court recognized in *Hunter v. Underwood*, 471 U.S. 222 (1985), that Alabama, in violation of the Equal Protection Clause of the Fourteenth Amendment, impermissibly used its felon disenfranchisement law to intentionally disenfranchise Blacks and to maintain and reinforce white supremacy.

36. In 1995-1996, the Alabama Legislature proposed, and the people ratified, Act 95-443 of the 1995 Regular Session of the Legislature of Alabama, which proposed a constitutional amendment to repeal Article VIII of the Constitution of Alabama of 1901 regarding voting, and replace it with Section 177 (the text of which is set out above).

37. In the 2003 Second Special Session, the Alabama Legislature adopted Act 2003-415, *codified at* Ala. Code § 15-22-36.1, a law requiring members of the Board of Pardons to provide a procedure for the restoration of voting rights — by issuing a Certificate of Eligibility to Register to Vote

(“Certificate of Eligibility”) — to individuals with felony convictions who satisfactorily complete each of the terms and conditions of their sentences.

38. On information and belief, in the course of attempting to discharge its statutory duties the Board of Pardons and Paroles determined that there was public confusion about the scope of the State of Alabama’s felon disfranchisement law, and/or that agents of the State, including the Secretary of State and Defendant Registrar, were misapplying Alabama’s law, thereby creating confusion and depriving eligible citizens of their right to register to vote and exercise the franchise.

39. To facilitate compliance with Ala. Code § 15-22-36.1, and to determine which felonies require the issuance of a Certificate of Eligibility as a prerequisite to registering to vote, William Segrest, Executive Director of the Board of Pardons and Paroles, requested that Troy King, Attorney General for the State of Alabama, set forth which felonies do not involve moral turpitude under State law.

40. In response to Segrest’s request, the Attorney General issued an Opinion, grounded in Alabama law, which explained that “[i]f a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply [to the Board of Pardons] for a Certificate of Eligibility to Register to Vote.” *See* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.). (A copy of the Attorney General’s Opinion is annexed as Exhibit A.)

41. In the Opinion, the Attorney General did not “provide an exhaustive list of every felony involving moral turpitude,” but listed a number of

crimes that have been determined by Alabama courts not to involve moral turpitude, including “violation of liquor laws” and “driving under the influence.” *Id.* at 2 (citing *Parker v. State*, 280 Ala. 685, 198 So. 2d 261 (1967); *Finley v. State*, 661 So. 2d 1321 (Ala. Crim. App. 1995)). Thus, if “a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote.” *Id.* at 3.

42. Following the Attorney General’s Opinion, the Board of Pardons and Paroles issued a press release on May 17, 2005 to inform the public and clarify the operation of Alabama’s felon disfranchisement law. (The Board of Pardon’s press release is annexed as Exhibit B.)

43. The May 17th press release noted that as the Board of Pardons attempted to implement Ala. Code § 15-22-36.1 it “discovered that many eligible voters [were] unaware” that they did not need a “certificate from this agency in order to register to vote.” “Under the current law only felonies involving moral turpitude disqualify a person from voting. Convictions for other felonies do not disqualify a person from voting. If individuals who are already eligible to vote do not ask us for certificates, we can process the other applications more promptly.” The press release stated unequivocally, *inter alia*, that “felony driving under the influence” and “felony possession of drugs” are offenses that do not involve moral turpitude.

44. On information and belief, notwithstanding the dictates of Alabama law, which reflect the express ratification of the people of Alabama, the aforementioned Attorney General’s Opinion, and the press release that was issued by the Board of Pardons and Paroles, within the last six months in the following

twenty counties, registrars were directed by the Secretary of State not to register people with any felony conviction — whether or not the felony involved moral turpitude — without a Certificate of Eligibility: Bullock, Chilton, Choctaw, Dallas, Escambia, Greene, Houston, Jefferson, Lowndes, Macon, Madison, Marengo, Mobile, Montgomery, Pike, Randolph, St. Clair, Talladega, Tallapoosa and Tuscaloosa.

45. The effect of the practices described above is to deny the vote to eligible citizens of Alabama.

46. By order of the Alabama Supreme Court dated October 22, 1999, two voter registration forms were approved pursuant to Ala. Code § 17-4-22, as set out in the Alabama Code Commissioner’s Notes following that section. The first form is entitled “State of Alabama Agency-Based Voter Registration Form” and is known as “NVRA-1.” The second form is entitled “State of Alabama Postcard Voter Registration Form” and is known as “NVRA-2.” Copies of those forms are attached as Exhibit 2.

47. Form NVRA-2 is published by the Secretary of State on her website (at <http://www.sos.state.al.us/downloads/election/vr/nvra-2.pdf>). The Secretary of State makes Form NVRA-2 available for printing and use as a mail-in application for voter registration. The Secretary of State makes available Form NVRA-1 for use by the “voter registration agencies.”

48. Forms NVRA-1 and NVRA-2 are voter registration applications containing this statement: “To register to vote in the State of Alabama, you must: . . . have not been convicted of a felony, or if you have been convicted, you must have had your civil rights restored.”

49. Registrars throughout the State use Form NVRA-2, or one substantially similar, containing the statement that to be eligible to vote, the applicant must not have been convicted of a felony.

50. The Secretary of State adopted regulations on January 10, 2001, regulating voter registration. *See* Ala. Admin. Code Chapter 820-2-2 (<http://www.alabamaadministrativecode.state.al.us/docs/sos/2sos2.htm>). Section 820-2-2-.05 provides that the “voter registration agencies” shall use the voter registration form prescribed by the Secretary of State. The term “voter registration agencies” refers to agencies listed in Ala. Code § 17-4-250.

51. The Secretary of State submitted proposed voter registration forms to the Alabama Supreme Court on March 15, 2006. The letter of transmittal and the forms are attached as Exhibit ___. The only substantive change was to insert the word “disqualifying” before “felony” in two places on the form so that the statement of qualifications reads: “To register to vote in the State of Alabama, you must: . . . have not been convicted of a disqualifying felony, or if you have been convicted, you must have had your civil rights restored.”

52. In response to the Secretary of State’s request, the Alabama Supreme Court issued an order on April 19, 2006, advising the Secretary that she (rather than the Court) has the authority to proscribe the form and contents of applications for voter registration. The Court’s order is attached as Exhibit ____.

53. The Secretary of State has submitted the proposed voter registration forms to the United States Department of Justice for preclearance under the Voting Rights Act. The proposed forms may not be used until they have been precleared by the Attorney General of the United States.

54. Form NVRA-1, as now in effect, misstates the qualifications for voter registration.

55. Form NVRA-1, as proposed by the Secretary of State, misstates the qualifications for voter registration.

56. Form NVRA-2, as now in effect, misstates the qualifications for voter registration.

57. Form NVRA-2, as proposed by the Secretary of State, misstates the qualifications for voter registration.

Alabama's Denial of the Franchise to Plaintiff Gooden

58. On September 21, 2005 Plaintiff Gooden attempted to register with Defendant Jefferson County Registrar, but was told that he was “not eligible” to register to vote because of his felony DUI conviction.

59. Notwithstanding the ratification — by the people of Alabama — of the constitutional amendment narrowing the scope of the State's felon disenfranchisement law to felons who have committed crimes of moral turpitude, the Attorney General's Opinion, and the press release issued by the Board of Pardons, Plaintiff Gooden was instructed by Defendant Jefferson County Registrar to apply to the Board of Pardons and Paroles for a Certificate of Eligibility.

60. Plaintiff Gooden was told later that day by an employee of the Board of Pardons and Paroles that because his felony DUI conviction did not involve moral turpitude, consistent with Alabama law and the related Attorney General's Opinion, he need not apply for a Certificate of Eligibility since his voting rights were never forfeited.

61. Upon information and belief, an employee of the Board of Pardons telephoned Defendant Jefferson County Registrar on September 21, 2005, and explained that Plaintiff Gooden was not disqualified from voting since his felony conviction did not involve moral turpitude, and, therefore, that a Certificate of Eligibility was not necessary for him to register to vote.

62. Upon information and belief, the employee of the Board of Pardons also offered to fax Defendant Jefferson County Registrar a copy of the press release the Board of Pardons had issued to this effect.

63. Upon information and belief, notwithstanding its recognition that Plaintiff Gooden's felony DUI conviction did not involve moral turpitude, and that, in fact, his conviction was expressly identified under Alabama law and in the Attorney General's Opinion as non-disqualifying crime, Defendant Jefferson County Registrar informed the Board of Pardons that the Defendant Secretary of State had directed them not to register individuals with felony convictions who had not obtained a Certificate of Eligibility, without regard to whether or not such felony convictions involved moral turpitude.

64. In an attempt to resolve this matter on Friday, September 23, 2005, Plaintiff Gooden's counsel faxed two copies to a valid facsimile number and mailed, via next day service, a letter that sought the cooperation of Defendant Secretary of State in resolving the issues set forth herein in time for Plaintiff Gooden and similarly situated individuals in Jefferson County to register by Friday, September 30, 2005 and for all subsequent elections. (A copy of Plaintiff counsel's letter to the Defendant Secretary of State is annexed as Exhibit C.) In

light of the time-sensitive nature of this action, the letter requested a facsimile response from the Defendant Secretary of State by Monday, September 26, 2005.

65. Defendant Secretary of State did not respond to Plaintiffs counsel's letter by late Monday afternoon, September 26, 2005, and counsel for Plaintiffs contacted the office of Secretary of State. Counsel for Defendant Secretary of State explained that she was unaware of the letter, and was unfamiliar with the Attorney General's Opinion. Plaintiffs' counsel faxed additional copies of the letter to, and requested an opportunity to speak directly with, Defendant Secretary of State as quickly as possible. On Tuesday, September 27, 2005, when Plaintiffs' counsel twice telephoned Defendant Secretary of State, the Defendant still had not responded to Plaintiff Counsel's letter, but counsel explained that Defendant Secretary of State had requested that the Attorney General further clarify his Opinion as to which crimes involve moral turpitude. Counsel for Defendant Secretary of State agreed to fax a copy of the Defendant Secretary of State's letter to the Attorney General. As of the time of filing of this complaint, Defendant Secretary of State had provided its clarification letter (a copy of which is annexed as Exhibit D), but repeated requests by Plaintiffs' counsel to speak directly with Defendant Secretary of State have not been honored.

66. Efforts to resolve this issue with the Secretary of State, as to Plaintiff Gooden and all similarly situated Alabamians, have been unsuccessful, and the Secretary of State continues to enforce voting practices and procedures that result in the deprivation of the right to vote.

Alabama's Denial of the Franchise to Plaintiff Jones

67. In a June 20, 2005 letter to Plaintiff Jones, the Board of Pardons explained that after reviewing his “application for a Certificate of Eligibility to Register to Vote, we have determined that you were convicted of possession of a controlled substance,” which is a felony “that does not appear to this agency to involve moral turpitude.” The Board of Pardons determined that, according to Amendment 579 of the Alabama Constitution, Mr. Jones’ “conviction does not disqualify [him] from voting.” The Board of Pardons, therefore, asserted that “we are closing our file on your application, as you do not need a certificate in order to be eligible to register.” (The Board of Pardons’ letter is annexed as Exhibit E.)

68. Plaintiff Jones, after receiving the June 20, 2005 letter from the Board of Pardons, submitted a Voter Registration Form to Defendant Jefferson County Registrar.

69. Notwithstanding the Board of Pardon’s June 20, 2005 letter to the contrary, Defendant Jefferson County Registrar, in a June 30, 2005 letter to Plaintiff Jones, stated that his Voter Registration Form could not be processed because “a person convicted of a felony offense is barred from voting, unless there has been a reinstatement of voting rights.” (Defendant Jefferson County Registrar’s June 30, 2005 letter is annexed as Exhibit F.)

70. Defendant Jefferson County Registrar referred Plaintiff Jones to the Board of Pardons to “get [his] voting rights restored.” “If you have already done this,” the June 30th letter concluded, “mail a copy of your Certificate of Pardon or Certificate of Registration of Voter Rights to the Jefferson County Board of Registrars.”

71. Plaintiff Jones was later mailed a Voter Registration Card, which permitted him to vote in “all elections — except municipal.” (Defendant Jefferson County Registrar’s letter is annexed as Exhibit G.)

Alabama’s Denial of the Franchise to Angela Thomas

72. Angela Thomas was convicted of possession of marijuana in the first degree in 2002. This crime is a felony, but is not a crime of moral turpitude.

73. The Defendant Hunter removed Angela Thomas from the list of registered voters in August 2003 because of her conviction of a felony.

74. Angela Thomas applied to the Board of Pardons and Paroles for a restoration of her right to vote in 2005, but the Board of Pardons explained that after reviewing her “application for a Certificate of Eligibility to Register to Vote, we have determined that you were convicted of possession of a controlled substance,” which is a felony “that does not appear to this agency to involve moral turpitude.”

75. Angela Thomas is not registered to vote, but is eligible to do so and would have been registered but for the illegal policy of the defendants to disfranchise all persons convicted of any felony.

Effect of Statewide Practices

76. Upon information and belief, a substantial but unspecified number of similarly situated citizens of Alabama are being denied the right to vote as result of the conduct described above on the part of the Secretary of State and Defendant Registrar.

77. Plaintiffs are without an adequate remedy at law and will suffer irreparable damage unless the actions of the Defendants in violation of the Alabama Constitution and laws are enjoined.

78. The gravity of the rights deprivation that would flow to Plaintiffs and other similarly situated individuals from resolving these critical issues on Defendant Secretary of State's timetable necessitates immediate action.

CAUSES OF ACTION

Count One

79. Plaintiffs hereby re-allege and incorporate by reference all the facts stated above.

80. Defendants' refusal to register members of the Plaintiff Class, each of whom is otherwise eligible to become a voter, violates the rights of each as guaranteed by Ala. Const. § 177 and Ala. Code 1975 § 17-3-9.

Count Two

81. Plaintiffs hereby re-allege and incorporate by reference all the facts stated above.

82. On information and belief, Jefferson County Registrar, the Houston County Registrars, and Registrars in at least 18 other counties in Alabama, represented that they were directed by Defendant Secretary of State not to register people with felony convictions irrespective of whether or not such convictions involved moral turpitude, in violation of Plaintiffs' rights, and similarly situated individuals, as guaranteed under Ala. Const. § 177 and Ala. Code 1975 § 17-3-9.

83. This misrepresentation by the Secretary of State of the right of certain persons to register to vote has caused voter registrars in at least twenty counties to refuse to register persons who are eligible under the law, in violation of their rights guaranteed under Ala. Const. § 177 and Ala. Code 1975 § 17-3-9. This misrepresentation by the Secretary of State may discourage eligible persons from registering to vote. This can only be counteracted by the Secretary of State giving notice to all voter registrars and to the public of the correct eligibility requirements.

Count Three

84. Plaintiffs hereby re-allege and incorporate by reference all the facts stated above.

85. Plaintiff Gooden, pursuant to § 17-4-124 of the Alabama Code, appeals Defendants' refusal to register them to vote.

Count Four

86. Plaintiffs hereby re-allege and incorporate by reference all the facts stated above.

87. Plaintiff Thomas, pursuant to § 17-4-124 of the Alabama Code, appeals Defendants' refusal to register them to vote.

Count Five

88. Plaintiffs hereby re-allege and incorporate by reference all the facts stated above.

89. The Defendants and persons acting in concert with them or at their direction have denied the rights of the members of the Plaintiff Class to register to vote because of an error which is not material in determining whether members of the Plaintiff Class are qualified to vote under the laws of Alabama.

90. The Defendants have violated 42 U.S.C. § 1971(a)(2)(B).

91. This Court has jurisdiction to hear this claim under 42 U.S.C. § 1983 and the Supremacy Clause of the United States Constitution.

Count Six

92. Plaintiffs hereby re-allege and incorporate by reference all the facts stated above.

93. The promulgation and use of voter registration forms with the statement “To register to vote in the State of Alabama, you must: . . . have not been convicted of a felony, or if you have been convicted, you must have had your civil rights restored” is misleading and serves to discourage registration of persons who have been convicted of felonies not involving moral turpitude.

94. The promulgation and use of voter registration forms with the statement “To register to vote in the State of Alabama, you must: . . . have not been convicted of a disqualifying felony, or if you have been convicted, you must have had your civil rights restored” is misleading and serves to discourage registration of persons who have been convicted of felonies not involving moral turpitude.

95. The Secretary of State violates Section 177 of the Constitution of the State of Alabama by the promulgation and use of voter registration forms as described in this Count.

96. The Secretary of State violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and Section 1 of the Constitution of the State of Alabama by the promulgation and use of voter registration forms as described in this Count.

97. This Court has jurisdiction to hear this claim under 42 U.S.C. § 1983 and the Supremacy Clause of the United States Constitution.

PRAYER FOR RELIEF

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

98. Plaintiff Gooden requests an order under Ala. Code § 17-4-124 reversing the Defendants' refusal to register him.

99. Plaintiff Thomas requests an order under Ala. Code § 17-4-124 reversing the Defendants' refusal to register her.

100. Plaintiffs seek declaratory judgment that individuals convicted of felonies not involving moral turpitude, as enumerated by the Attorney General and grounded in Alabama case law, are eligible to register and vote under Alabama law, and that, accordingly, individuals with felony convictions not involving moral turpitude need not apply to the Board of Pardons and Paroles for a Certificate of Eligibility as a prerequisite to registering or voting in Alabama.

101. Plaintiffs request an injunction to require Defendant Secretary of State to provide effective notice to the Defendant Registrar and the voter registrars

of each of the other counties promptly that individuals with felony convictions not involving moral turpitude, as enumerated by Alabama law and the Attorney General, are eligible to register and vote, and are not required to apply for or obtain a Certificate of Eligibility from the Board of Pardons and Paroles.

102. Plaintiffs request an injunction to require Defendant Secretary of State to direct the Defendant Registrar and the voter registrars of each of the other counties promptly to permit individuals with felony convictions not involving moral turpitude to register to vote and expressly state that such individuals are not required to apply for or obtain a Certificate of Eligibility from the Board of Pardons and Paroles.

103. Plaintiffs request a mandatory injunction to require Defendant Secretary of State to give full and appropriate notice to the public in general, and to citizens of Alabama with felony convictions not involving moral turpitude in particular, of the relief granted by this Court. Plaintiffs suggest that an appropriate public notice would be publication in each daily newspaper of general circulation in Alabama and the following newspaper 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); and that such publication be at least 2 columns by 4 inches and run once a week for three weeks.

104. Plaintiffs request a mandatory injunction to require Defendant Secretary of State to modify the voter registration forms to state that a person convicted of a felony involving moral turpitude is not eligible to vote.

105. Plaintiffs request a mandatory injunction to require Defendant Secretary of State to give notice to the voter registrars of all felonies that have been declared to be crimes involving moral turpitude and all felonies that have been declared not to be crimes involving moral turpitude.

106. Plaintiffs request the award of reasonable attorneys' fees, expenses, and costs under 42 U.S.C. §§ 1973l(e) and 1988.

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

Exhibits

108. The following Exhibits are in the Appendix to the original complaint and are adopted by reference:

- a. Attorney General Opinion, *see* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.).
- b. Press Release Issued by the Alabama Board of Pardons and Paroles dated May 17, 2005.
- c. Letter from Ryan P. Haygood, Assistant Counsel, NAACP Legal Defense & Educational Fund, Inc. to Nancy Worley, Alabama Secretary of State, dated September 23, 2005.
- d. Letter from Nancy Worley, Alabama Secretary of State to Troy King, Alabama Attorney General, dated May 11, 2005.

109. The following Exhibits are in the Appendix to the First Amended Complaint and are adopted by reference:

- e. Letter from Alabama Board of Pardons and Paroles to Andrew Jones, dated June 20, 2005.
- f. Letter from Defendant Jefferson County Registrar to Andrew Jones, dated June 30, 2005.

- g. Voter Registration Card mailed from Defendant Jefferson County Registrar to Andrew Jones.

110. The following Exhibits are in the Appendix to the Second Amended Complaint and are adopted by reference:

- h. Letter of transmittal by the Secretary of State to the Supreme Court of Alabama with new voter registration forms.
- i. Order of the Alabama Supreme Court.

Submitted by,

/s/ Edward Still

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CERTIFICATE OF SERVICE

I certify that on 9 June 2006 I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing to the following attorneys:

Margaret L. Fleming, Esq.
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and a copy of the foregoing was delivered by facsimile, email, and/or first class mail to the following:

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T.A. Lawson, II, Esq.
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/s/ Edward Still