



AlaFile E-Notice

03-CV-2008-900749.00

Judge: TRACY S MCCOOEY

To: ALLISON EICHENFELD NEAL
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DONNA BAKER ET AL v. BETH CHAPMAN ET AL
03-CV-2008-900749.00

The following matter was FILED on 7/21/2008 5:35:22 PM

C001 BAKER DONNA

C002 HALL KRISTEN

C003 MCWASHINGTON PRUITT ANNETTE

MOTION FOR CLASS CERTIFICATION

[Attorney: NEAL ALLISON EICHENFELD]

Notice Date: 7/21/2008 5:35:22 PM

MELISSA RITTENOUR
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL 36102

334-832-4950

STATE OF ALABAMA

Unified Judicial System

Revised 3/5/08

Case



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CV-2008-900749.00

CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

MELISSA RITTENOUR, CLERK

03-MONTGOMERY

District Court Circuit Court

CV20

DONNA BAKER ET AL V. BETH CHAPMAN ET AL

CIVIL MOTION COVER SHEET

Name of Filing Party: C003 - MCWASHINGTON PRUITT ANNETTE

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

ALLISON NEAL
207 MONTGOMERY STREET, SUITE 910
MONTGOMERY, AL 36104

Attorney Bar No.: NEA008

Oral Arguments Requested

TYPE OF MOTION

Motions Requiring Fee

Motions Not Requiring Fee

- Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative Summary Judgment(\$50.00)
Renewed Dispositive Motion(Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56(\$50.00)
- Motion to Intervene (\$297.00)
- Other _____
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 \$ _____

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other Motion for Class Certification
pursuant to Rule 23 (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees)

Date:
7/21/2008 5:32:22 PM

Signature of Attorney or Party:
/s ALLISON NEAL

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DONNA BAKER, et al.,

Plaintiffs,

v.

BETH CHAPMAN, et al.,

Defendants.

Civil Action No.

03-CV-2008-900749.00

MOTION FOR CLASS CERTIFICATION

For reasons stated below and in the supporting memorandum of law, Plaintiffs—residents of Alabama who have been disfranchised by the state because of their felony convictions, but who seek the right to register to vote—request that the Court certify this proceeding as a Class and Subclass action pursuant to Ala. Code § 6-5-641 and Ala. R. Civ. P. 23. The Putative Plaintiff Class to be maintained in this action consists of 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 that appear in Ala. Code § 15-22-36.1(g). The Putative Plaintiff Subclass consists of 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 that either appear in Ala. Code § 15-22-36.1(g) or the 2005 Attorney General Opinion, No. 2005-092. The Putative Plaintiff Subclass is by definition a subset of the broader proposed Plaintiff Class. The Putative Defendant Class consists of all voter registrars in the State of Alabama.

In support of this motion, and as explained in greater detail in the attached memorandum of law in support of this motion, Plaintiffs state the following:

1. The Putative Plaintiff Class and Plaintiff Subclass meet all the requirements of Rule 23(a) of the Alabama Rules of Civil Procedure:

a. The Putative Plaintiff Class and Plaintiff Subclass are so numerous that joinder of all members is impracticable. Thousands of individuals are part of this class and subclass, and the membership is constantly changing as new individuals enter the criminal justice system. Accordingly, joinder would be impracticable and the numerosity requirement of Rule 23(a)(1) is satisfied.

b. The relevant questions of law and fact are common to the Putative Plaintiff Class as a whole, and therefore the commonality requirement of Rule 23(a)(2) is satisfied. The relevant questions of law and fact are also common to the Putative Plaintiff Subclass as a whole, and therefore the commonality requirement of Rule 23(a)(2) is satisfied.

c. Lead Plaintiffs Baker's and Hall's claims are typical to the Putative Plaintiff Class as a whole, and therefore the typicality requirement of Rule 23(a)(3) is satisfied. Lead Plaintiff McWashington Pruitt's claims are typical to the Putative Plaintiff Subclass as a whole, and therefore the typicality requirement of Rule 23(a)(3) is satisfied.

d. Lead Plaintiffs Baker and Hall will fairly and adequately represent the Putative Plaintiff Class, and Lead Plaintiff McWashington Pruitt will fairly and adequately represent the Putative Plaintiff Subclass, as required by Rule 23(a)(4).

2. The Putative Defendant Class meets all the requirements of Rule 23(a):

a. The Putative Defendant Class of approximately 200 county registrars is so numerous that joinder would be impracticable and the numerosity requirement of Rule 23(a)(1) is satisfied.

b. The relevant questions of law and fact are common to the Putative Defendant Class as a whole, and therefore the commonality requirement of Rule 23(a)(2) is satisfied.

c. Lead Defendants Hunter's, Kirkland's, Rogers', and Jordan's defenses are typical to the class as a whole, and therefore the typicality requirement of Rule 23(a)(3) is satisfied.

d. Lead Defendants Hunter, Kirkland, Rogers, and Jordan will fairly and adequately represent the Putative Defendant Class, as required by Rule 23(a)(4).

3. Plaintiffs seek declaratory and injunctive relief against a systemic statewide policy of unlawful disfranchisement. No money damages are being sought. As such, certification is proper under Rule 23(b)(2).

For the reasons set forth in this motion and the supporting memorandum of law, Plaintiffs request this Court to certify this action pursuant to Ala. Code § 6-5-641(e) and Ala. R. Civ. P. 23 as a class action.

Date: July 21, 2008

Respectfully submitted,

s/ Allison E. Neal

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**Pro hac vice motions to follow*

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of July, 2008, an accurate and complete copy of the Motion for Class Certification was mailed via pre-paid First Class U.S.P.S. mail to the following individuals:

Beth Chapman, Alabama Secretary of State, P.O. Box 5616, Montgomery, Alabama 36103-5616;

Office of the Attorney General, Alabama State House, 11 South Union Street, Third Floor, Montgomery, AL 36130;

Nell Hunter, Registrar for Jefferson County, 716 Richard Arrington Jr Blvd N Ste A-410, Birmingham, Alabama 35203-0115;

M. David Barber, Jefferson County District Attorney, 801 Richard Arrington Jr. Boulevard North, Suite L-01, Birmingham, AL 35203;

Jean Kirkland, Registrar for Monroe County, P.O. Box 972, Monroeville, Alabama 36461-0972;

Beatrice Rogers, Registrar for Monroe County, P.O. Box 972, Monroeville, Alabama 36461-0972;

Donna Jordan; Registrar for Monroe County, P.O. Box 972, Monroeville, Alabama 36461-0972; and

Tommy Chapman, Monroe County District Attorney, P.O. Box 397, Monroeville, AL 36461-0397.

s/ Allison E. Neal
Allison E. Neal



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DONNA BAKER, et al.,

Plaintiffs,

v.

BETH CHAPMAN, et al.,

Defendants.

Civil Action No.

03-CV-2008-900749.00

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

INTRODUCTION

This voting rights lawsuit seeks declaratory and injunctive relief against Defendant Secretary of State Beth Chapman, Defendant Registrars Nell Hunter, Jean Kirkland, Beatrice Rogers, Donna Jordan, and a class of all other Alabama county registrars. This suit is brought to protect the fundamental voting rights of Lead Plaintiffs Donna Baker and Kristen Hall, and a Putative Plaintiff Class of all unregistered persons otherwise eligible to register to vote in Alabama who have a felony conviction which the Legislature has not declared to be disfranchising, but whom Defendants have nevertheless disfranchised. The suit is also brought on behalf of Lead Plaintiff Annette McWashington Pruitt and a Putative Plaintiff Subclass of all unregistered persons otherwise eligible to register to vote in Alabama who have a felony conviction which neither the Legislature nor the Attorney General has declared to be disfranchising, but whom Defendants have nevertheless refused to register and/or treated in an inequitable manner compared to other eligible elector-applicants because of the felony conviction. The Putative Plaintiff Subclass is a subset of the broader Putative Plaintiff Class.

As described in greater detail below, the Putative Plaintiff Class and Subclass meet all the requirements of class certification under Alabama Code § 6-5-641 and Rule 23 of the Alabama Rules of Civil Procedure. The Putative Plaintiff Class and Subclass are both so numerous as to make joinder impracticable, and thus the numerosity requirement of Rule 23(a)(1) is satisfied. The Putative Plaintiff Class and Subclass have common issues of law and fact that predominate over their unique characteristics, and thus the commonality requirement of Rule 23(a)(2) is satisfied. Lead Plaintiffs Baker's and Hall's claims are typical of the claims of the Putative Plaintiff Class as a whole, and Lead Plaintiff McWashington Pruitt's claims are typical of the claims of the Putative Plaintiff Subclass as a whole, satisfying Rule 23(a)(3). Finally, Plaintiffs Baker and Hall, and Plaintiff McWashington Pruitt, will fairly and adequately represent the Putative Class and Subclass, respectively, satisfying Rule 23(a)(4).

The Putative Defendant Class similarly satisfies the Rule 23(a) requirements: the class of over 200 registrars satisfies the numerosity requirement; the questions of law and fact are common to the class as a whole, Lead Defendants' claims are typical of the class as a whole, and the Lead Defendants will fairly and adequately represent the Putative Defendant Class. Finally, this action—seeking declaratory and injunctive relief only—is properly certifiable under Rule 23(b)(2).

ARGUMENT

I. THE PUTATIVE PLAINTIFF CLASS AND SUBCLASS SHOULD BE CERTIFIED.

Plaintiffs seek certification of a Putative Plaintiff Class, pursuant to Ala. R. Civ. P. 23, 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 that appear in Ala. Code § 15-22-36.1(g). Members of this class have never been found to be

disfranchised by the Legislature, but Plaintiffs allege that Defendants are nevertheless discriminating against and disfranchising this group.

Plaintiffs also seek certification of a Putative Plaintiff Subclass, pursuant to Ala. R. Civ. P. 23 and Rule 23(c)(4)(B), 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 that either appear in Ala. Code § 15-22-36.1(g) or the 2005 Attorney General Opinion, No. 2005-092. Members of this Subclass are a definite subset of the broader Putative Plaintiff Class. Members of this Subclass have never been found to be disfranchised by either the Legislature or the Attorney General, but Plaintiffs allege that Defendants are nevertheless discriminating against and disfranchising this group.

A. Numerosity: Members Of The Putative Plaintiff Class and Subclass Are So Numerous As To Make It Impracticable To Bring Them All Before This Court.

Plaintiffs satisfy the first element of Rule 23(a) for class treatment because members of the Putative Plaintiff Class and Subclass are so numerous as to make it impracticable to bring them all before this Court. “For purposes of Rule 23(a)(1), impracticability is not equated in impossibility, but relates to the difficulty or inconvenience in joining all class members.” Cheminova Am. Corp. v. Corker, 779 So. 2d 1175, 1179 (Ala. 2000) (quoting certification order). There is no “absolute minimum number,” and this Court “can accept commonsense assumptions in order to support a finding of numerosity, and estimates of the class size suffice for the purpose of this rule.” Id.

Plaintiffs cannot provide a precise number of the members in the Putative Plaintiff Class and Subclass, reflecting the difficulty a joinder-requirement would impose. However, Plaintiffs can point to sufficient factors to show the classes are too large for joinder to be practicable. For example, between the years 2004–2006, the Alabama Department of Corrections admitted an

average of 319 inmates per year for the felony offense of receiving stolen property. See Ala. Sentencing Comm’n 2007 Report, page 61 fig. 13 (“Prison Admissions—Top 25”) (attached as Ex. A). Lead Plaintiff McWashington Pruitt has a conviction for receiving stolen property, which neither the Legislature nor the Attorney General has declared is a disfranchising felony. The Putative Plaintiff Subclass would include all these individuals, and a commonsense assumption would be that the Subclass would actually be much larger because (1) this Sentencing Commission statistic cited above only includes those actually admitted to prison, whereas the Subclass includes all individuals convicted of the offense; (2) this Sentencing Commission statistic only includes convictions from 2004–2006, whereas the Subclass would also include those persons with convictions from prior years, and (3) many other felony categories will also be included in the Putative Plaintiff Subclass. While the Subclass is therefore quite large, the Putative Plaintiff Class is even larger, for the definition of the Putative Class includes all members of the Subclass, and many more individuals who have other types of felony convictions.

Joinder of so many plaintiffs is clearly impracticable. As the Eleventh Circuit has noted in interpreting the numerosity requirement of Federal Rule of Civil Procedure 23(a), which uses identical language to the Alabama rule,¹ “generally less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors.” Cox v. Am. Cast Iron Pipe Co., 784 F.2d 1546, 1553 (11th Cir. 1986). Plaintiffs satisfy this numerical standard. Furthermore, the fluidity of the Putative Plaintiff Class and Subclass emphasizes the impracticability of joining all class members. Class membership is constantly growing as new

¹ Compare Fed. R. Civ. P. 23(a)(1) (“the class is so numerous that joinder of all members is impracticable”) with Ala. R. Civ. P. 23(a)(1) (“the class is so numerous that joinder of all members is impracticable”).

individuals receive criminal convictions. It is impossible to predict the identity of these future individuals. Such uncertainty of specific identities shows that joinder is impracticable.

B. Commonality: Questions Of Law And Fact Are Common To The Putative Plaintiff Class and Subclass Members.

Plaintiffs satisfy the second element of Rule 23(a) for class treatment because there are questions of law and fact common to the classes. The commonality requirement does not require absolute uniformity among class members; a “common nucleus of operative facts is usually enough to satisfy the commonality requirement of Rule 23(a)(2).” Cheminova, 779 So. 2d at 1180.

Relevant facts common to all members of the Putative Plaintiff Class are that (1) each has been convicted of a felony that does not appear in Ala. Code § 15-22-36.1(g) and (2) county registrars will not register these individuals in the same manner as other eligible elector-applicants because of these felony convictions. Compl. ¶¶ 20; 61, 63 (Doc. # 1). It is these common facts that give rise to the Putative Plaintiff Class’s claims for legal relief, including whether registrars can lawfully deny the franchise to individuals who have never been deemed by the Legislature to be disqualified from voting. Compl. Counts 1–4.

Members of the Putative Plaintiff Subclass share the same factors and legal claims as members of the Putative Plaintiff Class. The felony convictions of members of the Subclass also do not appear in the 2005 Attorney General Opinion, No. 2005-092. Compl. ¶¶ 20, 62, 63, 73 (Doc. # 1). It is these common facts that give rise to the Putative Plaintiff Subclass’s claims for legal relief, including whether registrars can lawfully deny the franchise to individuals who have never been deemed by the Legislature, nor even by the Attorney General, to be disqualified from voting. Compl. Counts 1–4.

C. Typicality: Lead Plaintiffs' Claims Are Typical of the Claims of the Putative Plaintiff Class and Subclass.

Lead Plaintiffs Baker and Hall satisfy the third element of Rule 23(a) for class treatment because their legal claims are typical of the claims of the Putative Plaintiff Class and as a whole. The same is true for Lead Plaintiff McWashington Pruitt and the Putative Plaintiff Subclass.

The typicality requirement “focuses on the interests of the class representatives.” Ex parte Gov’t Employees Ins. Co., 729 So. 2d 299, 304 (Ala. 1999); see also Warehouse Home Furnishing Distrib., Inc. v. Whitson, 709 So. 2d 1144, 1149 (Ala. 1997) (“[t]ypicality exists when a plaintiff/class representative's injury arises from or is directly related to a wrong to a class and that wrong to the class includes the wrong to the plaintiff”); Cheminova, 779 So. 2d at 1180 (where “the party seeking certification alleges that the same unlawful conduct was directed at the class representatives and the class itself, the typicality requirement is usually met irrespective of the varying fact patterns which underlie individual claims.”) (quotation omitted).

Lead Plaintiffs Baker and Hall and the Putative Plaintiff Class they seek to represent all have felony convictions that the Legislature has never stated are disfranchising. Nevertheless, Defendants will not permit them to register to vote. Plaintiffs allege that this is in contravention of Alabama’s separation of powers doctrine and the equal protection, privileges and immunities, and due process clauses of the United States and Alabama Constitutions. Compl. Counts 1–4. Because Plaintiffs are alleging that “the same unlawful conduct was directed at the class representatives and the class itself,” typicality is satisfied. Cheminova, 779 So. 2d at 1180.

Lead Plaintiff McWashington Pruitt and the Putative Plaintiff Subclass she seeks to represent all have felony convictions that neither the Legislature nor the Attorney General has ever stated are disfranchising. Nevertheless, Defendants will not permit the Lead Plaintiff McWashington Pruitt and the Putative Plaintiff Class to register to vote. Plaintiffs allege that

this is in contravention of Alabama’s separation of powers doctrine and the equal protection, privileges and immunities, and due process clauses of the United States and Alabama Constitutions. Compl. Counts 1–4. Because Plaintiffs are alleging that “the same unlawful conduct was directed at the class representatives and the class itself,” typicality is satisfied. Cheminova, 779 So. 2d at 1180.

D. Adequacy: Lead Plaintiffs Baker, Hall, and McWashington Pruitt Will Fairly And Adequately Represent The Putative Plaintiff Class and Subclass.

The fourth element of Rule 23(a) for class treatment because Lead Plaintiffs will fairly and adequately represent the interests of the Putative Plaintiff Class and Subclass. The adequacy requirement “has two aspects: (1) whether the named Plaintiffs have interests antagonistic to those of the rest of the class; and (2) whether Plaintiffs' counsel are qualified, experienced and generally able to conduct the proposed litigation.” Cheminova, 779 So. 2d at 1181 (quoting Kirkpatrick v. J.C. Bradford & Co., 827 F.2d 718, 726 (11th Cir.1987)).

Lead Plaintiffs have no interests antagonistic to the rest of the Putative Plaintiff Class or Subclass. Plaintiff Baker’s, Halls, and McWashington Pruitt’s claims present no possibility of a conflict since all Class members have a common interest in obtaining the same relief sought—i.e., declaratory and injunctive relief permitting them to register to vote. The relief sought cannot be contrary to any interest of the putative class members.

Class counsel have many years of experience in civil rights and class action litigation. Plaintiffs’ attorneys, the American Civil Liberties Union Foundation (“ACLU”) Voting Rights Project, the ACLU of Alabama, and the law firm of Copeland, Franco, Screws & Gill P.A. have the requisite expertise and knowledge, and have adequate financial resources to litigate this matter.

E. Certification Is Proper Under Rule 23(b)(2).

In addition to satisfying the four requirements of Rule 23(a), Plaintiffs must also satisfy one of the three elements of Rule 23(b). Plaintiffs satisfy Rule 23(b)(2) for class treatment because Defendants have refused to act on grounds generally applicable to the class and subclass as a whole, and declaratory and injunctive relief as to the class and subclass as a whole is appropriate.

This case fits precisely the standard set out in Rule 23(b)(2). Plaintiffs allege that Defendants have “acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Courts have found that Federal Rule of Civil Procedure 23(b)(2), which uses language substantively indistinguishable from the Alabama rule,² “was intended primarily to facilitate civil rights class actions, where the class representatives typically sought broad injunctive or declaratory relief against discriminatory practices.” Penson v. Terminal Transport Co., Inc., 645 F.2d 989 (5th Cir. 1981).

As allegations in the Complaint make clear, Plaintiffs challenge actions and failures to act that apply to the entire class. Defendants’ policy of disfranchising individuals for convictions that the Legislature never stated are disfranchising effects the Class as a whole. Defendants’ policy of disfranchising individuals for convictions that neither the Legislature nor the Attorney General ever stated are disfranchising affects the Subclass as a whole. Plaintiffs are seeking

² Compare Fed. R. Civ. P. 23(b)(2) (“the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole”) with Ala. R. Civ. P. 23(b)(2) (“the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole”).

injunctive and declaratory relief which will be the only way to resolve this harm to the Putative Plaintiff Class and Subclass. Thus, Rule 23(b)(2) is satisfied.

F. Certification Is Proper Under Alabama Code § 6-5-641.

Plaintiffs have adequately shown why class certification should be approved in this case. After an analysis of the nature of the claims to be certified, the elements of the claims, and the prerequisites of class certification, the Court should enter an order certifying the Plaintiff Class and Subclass which sets forth the Court's findings that class certification is proper in this case, pursuant to Ala. Code § 6-5-641(e). See e.g., Mayflower Nat'l Life Ins. Co. v. Thomas, 894 So. 2d 637 (Ala. 2004).

II. THE PUTATIVE DEFENDANT CLASS SHOULD BE CERTIFIED.

Plaintiffs seek certification of a Putative Defendant Class defined as: All voter registrars in the State of Alabama.

A. Numerosity: Members Of The Putative Defendant Class Are So Numerous As To Make It Impracticable To Bring Them All Before This Court.

The first element of Rule 23(a) is satisfied here. "For purposes of Rule 23(a)(1), impracticability is not equated in impossibility, but relates to the difficulty or inconvenience in joining all class members." Cheminova, 779 So. 2d at 1179. While there is no "absolute minimum number," id., federal courts have recognized that "generally less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors." Cox, 784 F.2d at 1553.

The Putative Defendant Class, defined as "all voter registrars in the State of Alabama," meets this requirement. Each of Alabama's 67 counties has a board of three voter registrars unless otherwise prescribed by law. Ala. Code § 17-3-2(a). The only exceptions to this rule are Barbour, Clarke, and Talladega Counties, which have four registrars, and Jefferson County,

which has only one registrar. Thus, to formally include each register would require joinder of over 200 defendants to this action, which is by definition impracticable. Cox, 784 F.2d at 1553.

B. Commonality: Questions Of Law And Fact Are Common To The Putative Defendant Class Members.

The second element of Rule 23(a) is satisfied here. The commonality requirement does not require absolute uniformity among class members; a “common nucleus of operative facts is usually enough to satisfy the commonality requirement of Rule 23(a)(2).” Cheminova, 779 So. 2d at 1180.

As described supra in Section I.B, the sole relevant facts are whether county registrars are permitting individuals with felony convictions that do not appear in Ala. Code § 15-22-36.1(g) and/or the 2005 Attorney General Opinion, No. 2005-092 to register to vote in the same manner as otherwise-qualified applicants. It is these common facts that give rise to the Putative Plaintiff Class’s and Subclass’s claims for legal relief. Compl. Counts 1–4.

C. Typicality: Lead Defendants’ Defenses Are Typical of the Claims of the Putative Defendant Class.

The third element of Rule 23(a) is satisfied. The typicality requirement specifies that to maintain a class, the “claims or defenses of the representative parties are [to be] typical of the claims or defenses of the class.” Ala. R. Civ. P. Rule 23(a)(3). The emphasis of this element is to “focus[] on the interests of the class representatives.” Ex parte Gov’t Employees Ins. Co., 729 So. 2d at 304. In this action, Defendants’ interests and legal defenses are perfectly harmonious. Plaintiffs are alleging that Putative Defendant Class members’ act of not treating the Putative Class and Subclass Members in the same manner as otherwise-eligible applicants for voter registration is in violation of the state and federal constitutions. Any defenses defendants can raise will be common to all defendants. There is no reason to believe that the Lead Defendants

have any interests that would be contrary to that of the other defendant class members. As such, the typicality requirement is satisfied.

D. Adequacy: Lead Defendants Will Fairly And Adequately Represent The Putative Defendant Class.

The fourth element of Rule 23(a) is clearly satisfied in this case. There is no reason to believe that the Lead Defendants will not adequately pursue all relevant defenses that would be available to all class members under state law. The defendant class will also be more than adequately represented in this action; Lead Defendants will be represented by competent and capable counsel from the county attorneys' offices in Jefferson and Monroe Counties, and because the Secretary of State's actions are challenged in this action, counsel from the Alabama Attorney General's office will also necessarily represent the state defendants. There can be no suggestion that plaintiffs have strategically picked weak defendants. See, 7A Wright & Miller, Federal Practice & Procedure § 1770 (noting concern that plaintiffs could "seek out weak adversaries to represent the [defendant] class"). Adequacy is satisfied.

E. Certification Is Proper Under Rule 23(b)(2).

As described supra in Section I.E, Rule 23(b)(2) is satisfied. Plaintiffs allege that the Putative Defendant Class has refused to act on grounds generally applicable to the class and subclass as a whole, and declaratory and injunctive relief as to the class and subclass as a whole is appropriate. Plaintiffs are not seeking monetary damages, only equitable relief.

F. Certification Is Proper Under Alabama Code § 6-5-641.

Plaintiffs have adequately shown why defendant class certification should be approved in this case. After an analysis of the nature of the claims to be certified, the elements of the claims, and the prerequisites of class certification, the Court should enter an order certifying the Defendant Class which sets forth the Court's findings that class certification is proper in this

case, pursuant to Ala. Code § 6-5-641(e). See e.g., Mayflower Nat'l Life Ins. Co. v. Thomas, 894 So. 2d 637 (Ala. 2004).

CONCLUSION

For the foregoing reasons, Plaintiffs move this Court to certify the Putative Plaintiff Class, Putative Plaintiff Subclass and Putative Defendant Class pursuant to Ala. Code § 6-5-641(e).

Exhibits

The following Exhibits are attached in the Appendix to this Memorandum of Law in Support of Plaintiff's Motion for Class Certification:

Exhibit A. Ala. Sentencing Comm'n 2007 Report, page 61 fig. 13 ("Prison Admissions—Top 25").

Date: July 21, 2008

Respectfully submitted,

s/ Allison E. Neal

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AMERICAN CIVIL LIBERTIES UNION

VOTING RIGHTS PROJECT

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**Pro hac vice motions to follow*

ATTORNEYS FOR PLAINTIFFS

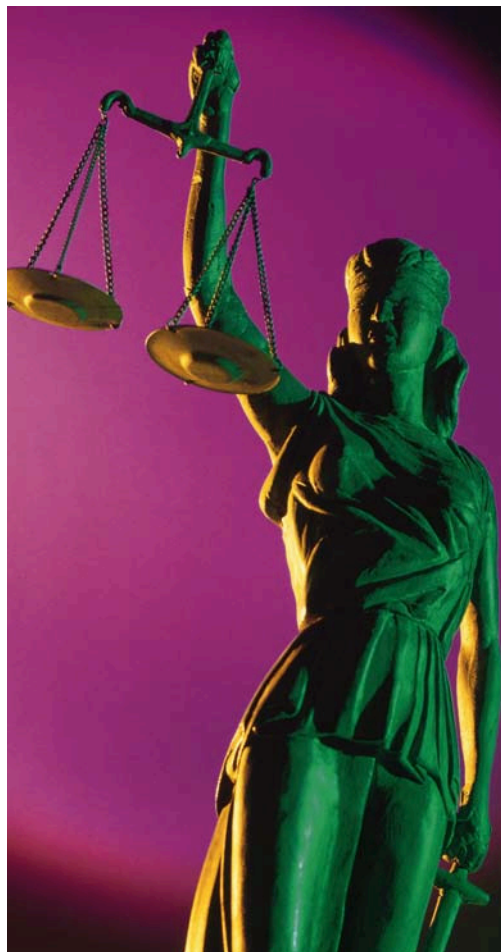
Appendix to
Memorandum of Law in Support of
Plaintiffs' Motion for Class Certification

Exhibit A. Ala. Sentencing Comm'n 2007 Report, page 61 fig. 13 ("Prison Admissions—Top 25").

Exhibit A

Ala. Sentencing Comm'n 2007 Report, page 61 fig. 13 (“Prison Admissions—Top 25”).

Alabama Sentencing Commission



2007 Report

Collaborative Success:

Alabama Implements Sentencing Standards

ALABAMA
SENTENCING
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2007 Report

Collaborative Success:
Alabama Implements Sentencing Standards

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Prison Admissions - Top 25

Prison admissions for new offenses increased by 411, or 5 percent, from last year. The top 25 offenses responsible for new commitments also increased in 2006, by 396 new commitments (6 percent). The top 25 offenses responsible for new commitments are responsible for 88 percent of all new prison commitments. Drug offenses comprise 45 percent, property offenses 34 percent, and drug offenses 21 percent of this top 25 list's admissions. Possession of a controlled substance and distribution of a controlled substance offenses accounted for nearly 1 out of every 4 (23 percent) prison admissions for new offenses in 2006. Twelve offenses rose in the top 25 rankings - murder, receiving stolen property 2nd, and burglary 2nd, all jumped four spots. Seven offenses fell in the top 25 rankings - the largest drop was breaking/entering a vehicle which fell six spots to #19.

Prison admissions for new offenses increased 5% in 2006.

Figure 13.

Prison Admissions for New Offenses June 1, 2003 - May 31, 2006

	2004	2005	2006
Possession of Controlled Substance	1 1,236	1 1,176	1 1,229
Distribution of Controlled Substance	2 701	2 670	2 689
Burglary 3rd	4 544	3 573	3 587
Felony DUI	3 581	4 519	4 541
Robbery 1st	6 415	6 364	5 494
Theft of Property 1st	5 486	5 399	6 410
Theft of Property 2nd	8 329	9 257	7 364
Possess Marijuana 1st	7 348	7 360	8 340
Trafficking Drugs	12 214	10 218	9 254
Poss Forged Instrument 2nd	9 284	8 267	10 246
Robbery 3rd	14 192	12 205	11 216
Murder	16 167	16 138	12 187
Assault 2nd	10 232	11 206	13 184
Receiving Stolen Property 1st	15 185	14 186	14 170
Burglary 1st	18 150	17 128	15 150
Receiving Stolen Property 2nd	17 163	20 111	16 141
Burglary 2nd	21 123	21 110	17 135
Manufacturing Controlled Substance 2nd	0	18 123	18 133
Breaking/Entering a Vehicle	11 216	13 195	19 129
Robbery 2nd	T19 135	22 104	20 125
Manufacturing Controlled Substance 1st	13 205	15 150	21 117
Manslaughter	24 93	23 103	22 109
Sexual Abuse 1st	22 112	25 91	23 108
Forgery 2nd	T19 135	19 119	24 107
Rape 2nd	25 82	73	25 96
Assault 1st	23 105	24 93	71
Top 25 Offenses	7,433	6,865	7,261
Other Offenses	1,230	971	986
Total Prison Admissions for New Offenses	8,663	7,836	8,247

CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of July, 2008, an accurate and complete copy of the Memorandum of Law in Support of Plaintiff's Motion for Class Certification was mailed via pre-paid First Class U.S.P.S. mail to the following individuals:

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s/ Allison E. Neal

Allison E. Neal