

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN (HELENA) DIVISION

ELIJAH MONDY, JR., et al,
Plaintiffs

vs.

CASE NO.: 2:17-CV-104-BRW

ADRIAN MESSINA, et al.
Defendants.

SUPPLEMENTAL PETITION FOR TEMPORARY RESTRAINING ORDER
with Authorities Cited

COME NOW, Elijah Mondy, Jr., et al., Plaintiffs, by and through their counsel, James F. Valley and for their supplemental petition states:

1. On June 13, 2017, Elijah Mondy filed this complaint which included a request for a temporary restraining order.
2. On June 17, 2017, Adrian Messina was served with a copy of the Summons and Complaint filed herein. (See Delivery Confirmation for U.S.P.S attached as Exhibit 1).
3. On June 15, 2017, a Summons and Complaint were submitted to Honorable J. V. Hollowell, Jr., Mayor of Helena-West Helena, Arkansas for service upon the city and the aldermen sued in their official capacities.
4. That service will be had upon Jay Hollowell and the city very soon.
5. That this matters involves the right to vote, the right to choice a form of city government, as well as other rights including, but not limited the first amendments right to redress grievances of government.

6. The facts in this case are crystal clear and the lines have been unambiguously demarcated.
7. The citizens of Helena-West Helena, Arkansas, exercising their constitutional right to vote, expressed their desire to change city government. The citizenry adopted Initiated Order 1-2016 which reduced the city council from five wards down to three wards and from ten aldermen to six aldermen.
8. Part of the calculus by the citizens of Helena-West Helena was the steady decline in population over the last 60 years. The community has been losing citizens since the 1950 census. Larger cities in Arkansas and around the mid-south area have fewer people serving on their city councils. Nearly 62% of the voters cast favorable votes on this change and they are entitled to the benefit of a settled and unchallenged election. The City or anyone else could have challenged the Petition and Initiated Ordinance through the election process in court or at the ballot. However, when more than twenty (20) days passed from and after the results were certified, the results became permanent fixed and unchangeable except through another election to repeal the Initiated Ordinance.
9. There is no dispute that the election was legal and the adopted ordinance was and is final.
10. The city council, which gets its power from the people, using an unconstitutional application of Amendment Seven to the Arkansas Constitution, voted to “repeal the vote of the people” on December 6, 2016 and later on December 20, 2016, the council voted on Ordinance 37-2016 to repeal Initiated Ordinance 1-2016. The legality of both of those meetings need to be tested.

11. That the City of Helena-West Helena, Arkansas is, and has been at all times relevant to this case, under an obligation to publish all passed ordinances in either *The Helena World* newspaper or *The Arkansas Democrat-Gazette* newspaper.
12. Mrs. Sandra P. Ramsey, City Clerk for Helena-West Helena, Arkansas, certified, under oath, in an exhibit attached to the complaint, that the city had not paid any fee for publication of Ordinance 37-2016 in either of the two relevant newspapers. (Petitioner believes and hereby asserts that the publication has not occurred anywhere else either).
13. Arkansas Code Annotated Section 14-55-101 states in relevant portion: “Municipal corporations shall have the power to make and publish from time to time bylaws or ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers or duties conferred by the provisions of this subtitle.”
14. Arkansas Code Annotated Section 14-55-206 states: “(a)(1)(A) All bylaws or ordinances of a general or permanent nature and all those imposing any fine, penalty, or forfeiture shall be published in some newspaper published in the municipality.”
15. The Arkansas Supreme Court has once addressed a case involving this code section. See *Phillips v. City of Eureka Springs*, 312 Ark. 57, 847 S.W.2d 21 (1993).
16. In that case the Arkansas Supreme Court held that the ordinance, which had been published by an individual citizen, was invalid because only the municipal corporation could cause the ordinance to be published and because the publication had not occurred, the ordinance was invalid. *Phillips v. City of Eureka Springs*, 312 Ark. At 60, 847 S.W.2d at 23. The city had to cause the publication to occur in order for it to have been validly published.

17. Secondly, the emergency clause attached to the ordinance, for the purpose of denying the people a right to hold a referendum on the repeal of the vote of the people, is invalid. The ordinance is fatally defective. Ordinarily, the defeat of the emergency clause would only delay the effective date of the ordinance. Here, however, because the publication was never had, then the ordinance must be declared and treated as invalid.
18. "The significance of an emergency clause is its effect on the people's reserved right of referendum." *Priest v. Polk*, 322 Ark. 673, [912 S.W.2d 902](#) (1995); *Burroughs v. Ingram*, 319 Ark. 530, [893 S.W.2d 319](#) (1995). The improper emergency clause attached to Ordinance 37-2016 was there for no reason other than to defeat a possible referendum action.
19. The Arkansas Supreme Court has made it plain that an emergency clause is only valid when a "real emergency" exists with emergency being defined as a sudden unexpected action or occurrence.

In *Burroughs vs. Ingrams*, 319 Ark. 530, [893 S.W.2d 319](#) (1995). the court stated: "An emergency clause in a city ordinance has a significant effect on the people's right of referral, and, as a result, the subject of emergency clauses is expressly provided for in the Initiative and Referendum Amendment. See Ark. Const. amend. 7. It provides that the people reserve unto themselves the power to repeal all "municipal legislation of every character." *Id.* The people are given "not less than thirty nor more than ninety days after the passage" to refer an ordinance to the people, and, if referred, an ordinance does not become effective until it is approved by the people, unless it contains an emergency clause. *Id.* City councils are authorized to enact an emergency clause and make an ordinance effective immediately only when it is "necessary for the public peace, health and safety," and, in that event, "a measure shall become effective without delay." *Id.* Significantly, the Amendment states that "[i]t shall be necessary, however, to state the fact which constitutes such emergency." *Id.* It is necessary that two-thirds of all members of a city council vote separately on the ordinance going into effect immediately. *Id.*; see also *Cunningham v. Walker*, 198 Ark. 928, 930-31, 132 S.W.2d 24, 25 (1939).

Prior to the adoption of Amendment 7, an emergency clause was attached to almost all laws enacted. To prevent the practice, the framers of Amendment 7 expressly inserted in the Amendment the requirement that facts constituting the emergency be expressly stated. *Gentry v. Harrison*, 194 Ark. 916, 110 S.W.2d 497 (1937). Since that time, we have said that it is a matter of legislative determination whether [893 S.W.2d 321] an emergency exists that requires the enactment of an emergency clause, but pursuant to Amendment 7, it is a judicial determination whether facts constituting an emergency are stated. *Cunningham*, 198 Ark. at 931-32, 132 S.W.2d at 26. In *Jumper v. McCollum*, 179 Ark. 837, 18 S.W.2d 359 (1929), we held that an emergency clause which does not state a fact that constitutes an emergency is invalid. In *Gentry*, we said there must be some statement of fact to show that "a real emergency existed." *Gentry*, 194 Ark. at 920, 110 S.W.2d at 501.

In *Cunningham*, we said the "academic declaration of a known governmental requirement" is not a statement of a real emergency, and the statement of some "administrative truism" is not the statement of a real emergency. *Cunningham*, 198 Ark. at 932, 132 S.W.2d at 26.

In *Mann v. Lowry*, 227 Ark. 1132, 303 S.W.2d 889 (1957), and in *Cunningham*, we set out the test for determining if a real emergency has been stated. We said that if reasonable people might disagree about whether the enunciated fact states an emergency, the clause will be upheld. However, if reasonable people would not think that the facts stated constitute an emergency, then the legislative body has acted arbitrarily and in violation of Amendment 7, and the courts will set the emergency clause aside. The test is analogous to that applied in sustaining the verdict of a jury. *Cunningham*, 198 Ark. at 932, 132 S.W.2d at 26."

20. The city never, at any point, gave the citizens notice or an opportunity to respond to the city's desire to overthrow the will of the people by repealing an ordinance before it became effective.
21. That a question or fact exists and remains as to whether the purported repeal of the citizen initiated ordinance was ineffective because it was premature. The counsel attempted to repeal the vote on December 6, 2016. The ordinance became effective on December 8, 2016. The later action on December 20, 2016 was a mere ratification of the wrong action taken on December 6, 2016.

22. With the emergency clause being useless and the ordinance being invalid for lack of publication, we now have Initiated Ordinance 1-2016 which is ready for enforcement.
23. Initiated Ordinance 1-2016 is ministerial in its directives to the city council of the City of Helena-West Helena, Arkansas. The council was directed to hire a local person or firm and put in place a new ward map before the expiration of 180 days from the passage of the ordinance.
24. Election Day was November 8, 2016. The ordinance passed by the vote of the people on November 8, 2016. More than 180 days have lapsed since the passage of the ordinance and the city council has failed and refused to comply with the ordinance.
25. Under state law, a writ of mandamus is appropriate.
26. However, because this matter involves voting rights, civil rights, actions taken under color of state law by the city council membership including the Mayor, this matter should be decided by the federal court.
27. The court should approve the map presented by the Petitioners or direct that the city council adopt the map presented. Petitioners do not believe that the city council would comply with a federal court order and would hate to see individuals incarcerated for contempt of court, therefore, Petitioners are requesting that the court order that the map be used in the upcoming elections in the fall of 2018. The time for candidates to begin forming committees and raising funds is imminent and any further delay will only hinder the people's right to have the type and form of government to which they are entitled.
28. There are four factors for the court to consider when deciding on a preliminary injunction: (1) the movant's likelihood of success on the merits; (2) the threat of

irreparable harm to the movant; (3) the balance between the harm to the movant and the injury that granting an injunction would cause other interested parties; and (4) the public interest. *Stevenson v. Blytheville School District No. 5*, 955 F.Supp.2d 955, 958.(2013).

29. The facts set out in the verified complaint clearly establish the rights of the Plaintiffs in this matter. State law permitted the adoption of the Initiated Ordinance. The plaintiffs have the right to see the ordinance implemented. The city's attempt to repeal the Initiated Ordinance has grossly failed. The emergency clause was improper and the ordinance is invalid for lack of publication.
30. The irreparable harm to be done here is the election of a set of leaders based upon the newly draw and soon to be implemented map. Furthermore, permitting the city council and the mayor to trample upon the voting rights of the parties is also immediate and irreparable harm.
31. No one will be harmed by the court issuing a preliminary injunction or a temporary restraining order as the case may be. The parties on the other side of this litigation are a governmental official and the City of Helena-West Helena, Arkansas. The elected official will not see any harm as the request is for an election to take place at the next regularly scheduled election. The Defendant, Adrian Messina, will have every right to seek office based upon the newly drawn map at the election which will occur in November 2018.
32. The public interest in this matter is great. Public interest, in this matter, is second in importance only to the rights of the individuals to freely associate, petition and vote upon the form of government and the leaders of that form of government. Nearly 900 people signed the petitions to get the ordinance on the ballot. Nearly 4,000 votes were cast in the

election and more than 2,400 people voted for the change. These numbers, of themselves, are compelling.

33. The plaintiffs are clearly entitled to the relief request and perhaps more.

34. The complaint filed in this case is a verified petition. Taking the averments from the complaint as true and viewing them in the light most favorable to the Defendants, there is no factual dispute worthy of consideration. Remedy is the only issue remaining based upon these facts.

35. The Helena-West Helena City Council, to protect their jobs selfishly circled the wagon and invoked a bogus emergency clause when no emergency existed to meet the test of a defined emergency.

WHEREFORE, PREMISES CONSIDERED, Elijah Mondy, Jr., prays for a hearing on either a temporary restraining order or preliminary injunction which requires that the next election in the City of Helena-West Helena, Arkansas use a three (3) ward map which complies with federal and state law. Elijah Mondy, through counsel, is serving a copy of this pleading upon Adrian Messina and Mayor J. V. Hollowell, Jr., via U. S. Mail, electronic mail and Fax such that this matter can be expedited.

Respectfully submitted,

/s/ James F. Valley

James F. Valley, Attorney at Law

J. F. VALLEY, ESQ., P.A.

P O BOX 451

HELENA-WEST HELENA, AR 72342

(888)225-0811 Toll Free Telephone/Facsimile

(870)228-9002 Office

(870)619-1760 Fax
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james@jamesfvalley.com Email

Certificate of Service

I, James F. Valley, do hereby certify that I have served a copy of this pleading via email and U. S. Mail, first class, postage prepaid on the 20th day of June, 2017, by sending a copy to the following persons as addressed below:

Mr. Adrian Messina
307 Porter Street
Helena-West Helena, AR 72342
messinarealestate@suddenlink.net Email
w2p2@helena-westhelena.us Email

Honorable J. V. Hollowell, Jr., Mayor
CITY OF HELENA-WEST HELENA, ARKANSAS
P O Box 248
Helena-West Helena, AR 72342
mayor@helena-westhelena.us Email
cityclerk@helena-westhelena.us Email
chiefstaff@helena-westhelena.us Email

/s/ James F. Valley

James F. Valley

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See tracking for related item: 9590940220306123839315 (/go/TrackConfirmAction?tLabels=9590940220306123839315)

DATE & TIME	STATUS OF ITEM	LOCATION
June 17, 2017, 10:40 am	Delivered	HELENA, AR 72342
Your item was delivered at 10:40 am on June 17, 2017 in HELENA, AR 72342.		
June 16, 2017, 9:37 am	Available for Pickup	HELENA, AR 72342
June 16, 2017, 8:16 am	Out for Delivery	HELENA, AR 72342
June 16, 2017, 8:06 am	Sorting Complete	HELENA, AR 72342
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