

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

ELIJAH MONDY, JR., Plaintiff.

v. Case No. 2:2017–CV–104–JLH

Adrian Messina, et al.,. Defendant.

**REQUEST FOR HEARING ON TRO/
PRELIMINARY INJUNCTION MOTION**

Comes now, Elijah Mondy, Jr., and for his request for hearing states:

1. On or about June 22, 2017, this court entered an order to the following effect:

ORDER: To the extent plaintiff is requesting a temporary restraining order without notice, the 2 motion is denied. When the defendants appear and respond to the complaint and the supplemental petition, the Court will conduct a scheduling conference, either in person or by telephone, to ensure that the issues are decided expeditiously. Signed by Judge J. Leon Holmes on 6/22/2017. (ljb) (Entered: 06/22/2017).

2. That the Defendants have now answered the complaint and filed numerous pleadings seeking a dismissal of this case.
3. That the Defendants have not directly responded to the Supplemental Motion for TRO or Preliminary Injunction.
4. That the plaintiff is hereby requesting that the court consolidate the preliminary injunction hearing with the trial on the merits.
5. The issues are straightforward and have been briefed in the Motion to Dismiss

and response thereto.

6. Basically, the plaintiffs have a right to referendum and the city through its practice of failing to publish ordinances, has violated that right. Additionally, the city acted intentionally or with reckless disregard of the rights of the plaintiffs in claiming a non-real emergency into to effective defeat the right to the referendum.
7. To recap the important facts which are not in dispute:
 - a. Initiated Ordinance 1-2016 became law without dispute or challenge on December 8, 2016 after being voted on by the citizens at the November 8, 2016, federal election.
 - b. The city council voted on Ordinance 37-2016 on December 20, 2016 which was intended to repeal Initiated Ordinance 1-2016.
 - c. The city published, for the very first time, Ordinance 37-2016 on August 18, 2017.
 - d. That the city has a referendum law in its Code of Ordinances (2006) Section 1.36.01 which states that a referendum must be brought within 30 days of the passage of an ordinance. **See Exhibit A attached hereto.**
 - e. The city, in order for the citizens to know when a referendum can be had, must publish the ordinance within the 30 day time period and preferably as soon as possible after the passage of the ordinance.
 - f. That failure to publish the ordinance within that 30 day period makes the ordinance invalid. The ordinance would have had to be published before January 19, 2017 in order to comply with Amendment 7 and other state law.
 - g. That even had the ordinance been validly published, the emergency clause does not state a real emergency under state law.
 - h. That Initiated Ordinance 1-2016 is at its core, a redistricting ordinance which impacts the federal constitutional right to vote and have that vote count equally as to all counterparts.
 - i. The Amendment 7 grants the final say, on all matters of general or permanent nature, to the citizens through the referendum process. The citizens have an absolute or near absolute right to referendum city

council actions.

- j. The general and permanent nature of city council actions has been defined as simple this: an action touching upon the entire city is general and if the action endures until it is repealed, then it is permanent in nature.
 - k. That the city council has abdicated its duty to perform under Initiated Ordinance 1.2016 and the redistricting portion of the ordinance is now past due. It is time for the citizens to begin forming committees, filing preliminary papers building campaign apparatuses for the November 2018 election.
 - l. That the Plaintiff has presented a perfectly legal map which meets all of the federal guidelines for redistricting and it should be adopted by the court and placed into effect.
 - m. This lawsuit seeks to have this court to declare the that proposed map, which is attached to the complaint, complies with the principle “one-person, one-vote” and other redistricting factors and should be immediately used by the City of Helena-West Helena, Arkansas.
 - n. That the federal all writs act applies and this court should resolve these federal questions.
8. That the Defendants have not articulated any good reason for a dismissal of this case.
9. That the Plaintiffs will need time to get their demographer to town for the hearing on the merits in that he lives in Minnesota.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Elijah Mondy, Jr., prays that this Honorable Court will set a hearing as soon as is practicable. Additionally, Elijah Mondy, Jr., prays that this Honorable Court will grant to him any and all other relief to which he may be entitled.

Respectfully submitted,

/s/ James F. Valley

James F. Valley, Attorney AR BAR 96052
J F VALLEY ESQ P A
P O BOX 451
423 Rightor Street
Helena-West Helena, AR 72342-0451
(888)225-0811 Phone and Fax
(870)619-1750 Direct Dial
(870)619-1760 Fax
JAMES@JAMESFVALLEY.COM EMAIL

Certificate of Service

I, James F. Valley, do hereby certify that I have served a copy of the foregoing document upon the person(s) listed below in compliance with Rule 5 of the Rules of Civil Procedure on August 21, 2017

Andre K. Valley
226 Perry Street
P O Box 248
Helena, AR 72342

Via fax, email or U. S. Mail.

/s/ James F. Valley

James F. Valley

1.32.01 General penalty. Whenever in this Municipal Code the doing of any act or the omission to do any act or duty is declared unlawful, and further, whenever the amount of the fine shall not be fixed and no penalty declared, any person convicted for a violation of such provision of this code shall be adjudged to pay a fine of not more than Five Hundred Dollars (\$500.00) or double that sum for each repetition of such offense or violation and if the act is continuous, not more than Two Hundred and Fifty Dollars (\$250.00) for each day of continuance. Provided, for any offense committed against the code for which there is set forth by state law a similar offense the penalty therefore shall be no less nor greater than that set forth by state law.

REFERENCE-See A.C.A. 14-55-502.

CHAPTER 1.36

REFERENDUM PETITIONS

Sections:

- | | |
|---------|---------------------------|
| 1.36.01 | Filing date |
| 1.36.02 | Notice by publication |
| 1.36.03 | Ordering special election |
| 1.36.04 | Upon defeat of ordinance |

1.36.01 Filing date. All referendum petitions under Amendment No. 7 to the Constitution of the state of Arkansas, must be filed with the City Clerk within thirty (30) days after the passage of any such ordinance.

1.36.02 Notice by publication. Whenever any referendum petition is filed, the Mayor, acting on behalf of the City Council, shall give notice by publication for one (1) insertion in a newspaper having a general circulation in the city of Helena-West Helena and by posting in five (5) public places in the city of Helena-West Helena of a time not less than-five (5) days after the publication of such notice, at which time the City Council will hear all persons who wish to be heard on the question whether such petition is signed by the requisite number of petitioners. At the time named, the City Council shall meet, at its regular place of meeting, and hear all who wish to be heard on the question, and its decision shall be final, unless suit is brought in the Circuit Court of Phillips County, Arkansas within thirty (30) days to review its action.

1.36.03 Ordering special election. If the City Clerk finds that such petition is signed by the requisite number of qualified petitioners, the City Council shall order a special election to determine by a vote of the qualified electors whether the ordinance or resolution shall stand or be revoked, and fix a date which shall not be less than thirty (30) days after the date of the action of the council calling the election. The Mayor shall publish a notice of the call of such election in

not less than one (1) issue of a newspaper having a general circulation in the city of Helena-West Helena, and posting in five (5) public places in the city of Helena-West Helena not less than five (5) days prior to the date of the election. Such notice shall designate by its number, caption, and date of passage, the ordinance which has been referred to the people for approval or rejection by their vote at such election. Otherwise, subject to the provisions of Amendment No. 7 to the Constitution of Arkansas, and other applicable laws, said election shall be conducted in the manner provided for by law for the conduct of a regular municipal election.

1.36.04 Upon defeat of ordinance. If any ordinance referred to the people is defeated at the polls, the City Council shall make note of such fact and shall expunge such ordinance from its files by striking through the same with red ink.

REFERENCE: Ark. Const., Amendment 7; Ord. No. 753