

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BESSEMER DIVISION

MIKE HALE, as the duly elected Sheriff)
of Jefferson County, Alabama, and)
ALLEN FARLEY, Assistant Sheriff)
of Jefferson County)

Petitioners,)

v.)

JEFFERSON COUNTY, a political)
Subdivision of the State of Alabama;)
BETTYE FINE COLLINS, as a duly)
Elected Commissioner of Jefferson)
County, Alabama; WILLIAM A. BELL,)
as a duly elected Commissioner of)
Jefferson County, Alabama; JIM)
CARNES, as a duly elected Commissioner)
Of Jefferson County, Alabama; BOBBY)
HUMPHRYES, as a duly elected)
Commissioner of Jefferson County,)
Alabama; SHELIA SMOOT, as a duly)
elected Commissioner of Jefferson)
County, Alabama,)

Respondents.)

FILED IN OFFICE
BESSEMER DIVISION

09 JUL -7 P12:08

Civil Action No. 09-778

CLERK

CV 2009-2041

FILED IN OFFICE

JUL 13 2009

ANNE-MARIE ADAMS
Clerk

FIRST AMENDED VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER
("TRO"), PRELIMINARY INJUNCTION, PERMANENT JUNCTION, DECLARATORY
JUDGMENT, A COMMON LAW WRIT OF MANDAMUS,
AND A COMMON LAW WRIT OF PROHIBITION

Petitioners Mike Hale, as the duly elected Sheriff of Jefferson County, and Allen Farley,
Assistant Sheriff of Jefferson County, amend their original Petition as set forth herein:

A.

Petitioners amend paragraphs 2, 7, and 8 of their Petition.

B.

Petitioners add paragraph 8.1 to their Petition.

With the above-referenced amendments incorporated, Petitioners' Petition reads in its entirety as follows:

Pursuant to Alabama Rules of Civil Procedure 57 and 65, Petitioners Mike Hale, as the duly elected Sheriff of Jefferson County, Alabama ("Sheriff Hale"), and Allen Farley, Assistant Sheriff of Jefferson County, file pursuant to Ala. R. Civ. P. 65, this Verified Petition requesting that this Honorable Court (a) enter a Temporary Restraining Order ("TRO") immediately, (b) enter a preliminary and permanent injunction against the Respondents, and (c) declare that the amendments to Ala. Code § 11-8-3 enacted pursuant to House Bill 139, which purportedly authorize county commissions to amend budgets during the fiscal year, as unconstitutionally vague. Specifically, Petitioners request that this Court Order the Respondents and/or their employees to cease and desist immediately from any actions intended or designed to reduce or remove any funds from the 2008-2009 fiscal year budget of the Office of Sheriff of Jefferson County. Petitioners further request the additional relief against Respondents as set forth herein.

I. PARTIES, JURISDICTION, AND VENUE

1. Sheriff Hale is the duly elected Sheriff of Jefferson County, is over the age of 19 years, and is a resident of Jefferson County. Sheriff Hale maintains an office in the Bessemer cutoff and is obligated to perform the duties at issue in this action in this division of Jefferson County. Sheriff Hale files a bond and his oath in the Bessemer cutoff of Jefferson County.
2. Assistant Sheriff Allen Farley is over 19 years of age and is a resident of Jefferson County. Assistant Sheriff Farley assists Sheriff Hale in his responsibilities by overseeing the activities of the office of the Sheriff in Bessemer. Farley resides in the Bessemer cutoff.
3. Defendant Jefferson County is a political subdivision of the State of Alabama and is subject to this lawsuit.

4. Defendant Bettye Fine Collins is a duly elected Commissioner of Jefferson County, is over the age of 19 years, and is a resident of Jefferson County.

5. Defendant William A. Bell is a duly elected Commissioner of Jefferson County, is over the age of 19 years, and is a resident of Jefferson County.

6. Defendant Jim Carns is a duly elected Commissioner of Jefferson County, is over the age of 19 years, and is a resident of Jefferson County.

7. Defendant Bobby Humphreys is a duly elected Commissioner of Jefferson County, is over the age of 19 years, and is a resident of Jefferson County. Humphreys resides in the Bessemer cutoff at either 339 Toadvine Road, Bessemer, Alabama 35023 or 323 13th Place, Pleasant Grove, Alabama 35127.

8. Defendant Shelia Smoot is a duly elected Commissioner of Jefferson County, is over the age of 19 years, and is a resident of Jefferson County. Smoot resides in the Bessemer cutoff.

8.1 Defendants Humphreys, Bell, Smoot, and Carns each represent a portion of the Bessemer Cutoff in their official duties as Jefferson County Commissioners.

9. Upon proper service of the Summons and Petition, this Court has jurisdiction over all Respondents.

10. Venue is proper in this division of this County.

II. FACTUAL ALLEGATIONS

11. Sheriff Hale is a constitutional officer of the State of Alabama and is not merely a titular head of a department of the Jefferson County government. Article V, § 112, Alabama Constitution of 1901, provides, in part, that "[t]he executive department shall consist of . . . a Sheriff for each county." Pursuant to § 112, a Sheriff is an employee of the State, not a county. Hereford v. Jefferson County, 586 So. 2d. 209, 210 (Ala. 1991); Parker v. Amerson, 519 So. 2d.

442 (Ala. 1987).

12. A deputy Sheriff is the alter ego of the Sheriff of a county. Mosley v. Kennedy, 245 Ala. 448, 450, 17 So. 2d. 536, 537 (1944). Therefore, a deputy Sheriff is also a state employee. Whitten v. Lowe, 677 So. 2d. 778, 780 (Ala. Civ. App. 1995).

DUTIES OF THE SHERIFF

13. Alabama law imposes upon a Sheriff numerous legal duties. Sheriff Hale performs these duties by employing deputy Sheriffs and others to assist him in carrying out his duties. The Office of the Sheriff has 11 Captains who report to Sheriff Hale and/or Assistant Sheriff Farley. The Captains oversee the various departments in the Office of the Sheriff. The Captains supervise the Lieutenants, Sergeants, Deputies, and civilians who are employed to carry out the legal responsibilities of the Office of the Sheriff. (See attached Affidavits of Sheriff Hale, Assistant Sheriff Farley, and Captains of the Jefferson County Sheriff's Office).

14. The Sheriff has legal custody of the jail in his county and the prisoners therein. Ala. Code § 14-6-1.

15. A Sheriff must furnish support to those prisoners who cannot provide support for themselves. Ala. Code § 14-6-17.

16. A Sheriff must furnish necessary clothing and bedding, at the expense of the county, and must provide medicines and medical attention for prisoners who are sick or injured. Ala. Code § 14-6-19.

17. A Sheriff has a duty to feed the prisoners in the jail. Ala. Code § 14-6-40.

18. The County Commission must provide an adequate janitor service for the cleanliness of the jail and soap and towels as well as bedding and clothing for prisoners unable to provide such items for themselves. Ala. Code § 14-6-93.

19. A Sheriff has a duty to ensure that food for inmates of the jail is nutritious, clean, and wholesome, and of sufficient quantity and variety. Ala. Code § 14-6-97.

20. Each county jail must be of sufficient size and strength to contain and keep prisoners securely confined therein and must be fireproof, properly ventilated, sufficiently lighted day and night, adequately heated, and must contain adequate sanitary plumbing and sewer connections. Ala. Code § 14-6-103.

21. Prisoners cannot be confined in any jail when the jail is not provided with a deputy, watchman, or attendant whose duty is to watch the jail or prison at night for the prevention of escapes and fire, and to aid in case of sickness among the prisoners. A Sheriff is to appoint, direct, and control the deputy, watchman, or guard. Ala. Code § 14-6-105.

22. A Sheriff must execute and return the process and orders of the Courts of record of the State of Alabama with due diligence when delivered to him for that purpose, attend upon the Circuit Courts and District Courts in the county when in session, ferret out crime, apprehend and arrest criminals, and secure evidence of crimes in his or her county and also must present a report of the evidence so secured to the District Attorney or Assistant District Attorney for the county. A Sheriff must also perform such other duties as are or may be imposed by law. Ala. Code § 30-22-3.

23. A Sheriff must keep the jail in a county supplied with wholesome water for drinking and bathing, must keep drinking water accessible at all times to each prisoner, must keep the jail comfortably warm in cold weather, must keep the jail clean and free from offensive odors at all times, and must keep the jail provided with necessary restrooms, beds, bedding, and clothing for the use of prisoners. Ala. Code § 11-14-21.

DUTIES OF THE COUNTY

24. The counties must allow a Sheriff reasonable expenses for suitable books, stationary, postage stamps used for official business, and telephones. Ala. Code § 11-12-14.

25. Costs of heating the county jail, of supplying it with wholesome water for drinking and bathing, of keeping it in a clean condition free from offensive odors, and necessary restrooms and dry earth, beds, bedding, and clothing are all first priority claims against the county. Ala. Code § 11-12-15(a)(1). Janitor services for the jail also constitute a first priority claim. Id.

26. Compensation of the Sheriff, deputy Sheriffs, and jailers are second priority claims against the county. Ala. Code § 11-12-15(a)(2). For all of these priority claims, the county must set apart sufficient funds to pay these claims. Id. at 11-12-15(b).

27. The county is required to maintain the jail. Ala. Code § 11-14-10. Keeping the jail in a state of repair is an affirmative duty of the county. Lane v. Zoning Board of Adjustment, 669 So. 2d. 958 (Ala. Civ. App. 1995).

28. The county jail must be of sufficient size and strength to contain and keep securely the prisoners which may be confined there in and must be properly ventilated. Ala. Code § 11-14-13. A county is responsible for levying a county tax to repair the jail when repairs are necessary. Ala. Code § 11-14-14.

29. The County Commission must make an appropriation of such an amount as is necessary for the first priority claims set forth in Ala. Code § 11-12-15. Ala. Code § 11-14-20.

30. Once the appropriation is made by the county for this purpose, a sheriff "so far as such appropriation will enable him" must keep the jail supplied with wholesome water for drinking and bathing, must keep drinking water accessible at all times to each prisoner, must keep the jail comfortably warm in cold weather, must keep the jail clean and free from offensive odors at all

times, and must keep the jail provided with necessary restrooms, bed, bedding, and clothing for the use of prisoners. Ala. Code §11-14-21.

31. A county must furnish a Sheriff with the necessary quarters, books, stationary, office equipment, supplies, postage, and other conveniences, and equipment, including automobiles and the necessary repairs, maintenance, and all expenses incidental thereto as are reasonably needed for the proper and efficient conduct of the affairs of the Sheriff's office. Ala. Code § 36-22-18.

COUNTY'S BUDGETING RESPONSIBILITY

32. Alabama Code § 11-8-3 vests County Commissions with budgetary responsibility and authority. This statute imposes upon County Commissions the duty "to prepare and adopt a budget for the fiscal year beginning on October 1 of the current calendar year." *Id.* at § 11-8-3(a). This duty contemplates the County Commission ensuring that the "appropriations made in the budget shall not exceed the estimated total revenue of the county available for appropriations." *Id.* at § 11-8-3(b). Included in this statute requiring County Commissions to adopt budgets that include appropriations not to exceed estimated total revenue of the county is a provision requiring that such budgets "at a minimum, shall include any revenue required to be included in the budget under the provisions of Alabama law and reasonable expenditures for the operation of the offices of the Judge of Probate, tax officials, Sheriff, county treasurer, the county jail, the county courthouse, and other offices as required by law." *Id.* at § 11-8-3(c).

HIRING AND PAYMENT OF DEPUTIES

33. A Sheriff is obligated to hire deputies under Alabama law. Alabama law provides that prisoners shall not be confined in any jail when the jail is not provided with a deputy, watchman, or attendant whose duty it shall be to watch the jail or prison at night for the prevention of escapes and fire and to aid in case of sickness among prisoners. Ala. Code § 14-6-105.

34. The Ala. Code also authorizes the payment of overtime to deputy Sheriffs. Sheriff Hale makes no allegation in this action regarding whether Ala. Code § 36-21-4 or 36-21-4.1 applies to the payment of overtime to deputy Sheriffs. Regardless of which statute applies, the payment of overtime to deputy Sheriffs is authorized by Alabama law.

AGREEMENT REGARDING ROLE OF SHERIFF

35. Defendant Jefferson County has previously acknowledged that it exercises no statutory control over the operation of the Jefferson County Sheriff's Office. Commissioner Mary M. Buckalew, who was then President of the Jefferson County Commission, submitted an Affidavit in Streater v. Woodward, 7 F. Supp. 2d, 1215 (N.D. Ala. 1998). Commissioner Buckalew averred that, although Jefferson County provides funds to the Jefferson County Sheriff's Office, "[t]he Sheriff controls the operation of the Jefferson County Sheriff's Department and applies the funds allocated to his department as he sees fit." Id. at 1216 n.1.

36. On July 15, 2001, the Attorney General of the State of Alabama issued an opinion answering questions posed by Baldwin County. Attorney General Opinion No. 2001-215. One of the questions was whether the Baldwin County Commission was legally liable to pay for contracts of employment entered into between the Sheriff and the individuals that had not been approved by the County Commission and to which the County Commission was not a party.

The Attorney General opined as follows:

Baldwin County is legally liable for employment contracts entered into between the Sheriff of Baldwin County and jailers, although the county did not approve such contracts. Under § 14-6-1 of the Code of Ala., Sheriffs have the sole power to hire and dismiss jailers working for the county jail as he had the legally custody and charge of the jail. Although the county has no authority to approve or reject the contract between the Sheriff and the jailer, the county is legally liable for the compensation due the jailer under contract. Under § 11-12-15 (a) Supp. 2 of the Code of Ala., the county must pay the compensation of the Sheriff, deputy Sheriff, and jailers for services performed. Therefore, . . . Baldwin County is legally liable under Alabama law to pay the compensation of jailers hired by the

Sheriff, even when the County Commission did not approve such contracts.

III. JEFFERSON COUNTY'S PLANNED BUDGET CUTS FOR FISCAL YEAR 2008-2009 TO OFFICE OF SHERIFF ARE ARBITRARY AND CAPRICIOUS AND WILL CAUSE IMMEDIATE AND IRREPARABLE HARM.

37. On January 13, 2009, Judge David Rains ruled in Edwards v. Jefferson County Commission, CV-07-900873, that the previous repeal of the occupational tax had been improperly overturned. Jefferson County is currently appealing that decision. Jefferson County requested that Judge Rains stay his Order and allow Jefferson County to continue to collect and spend the occupational tax while this case was on appeal. That request was denied.

38. Jefferson County appealed Judge Rains' denial of the Motion to Stay to the Alabama Supreme Court. The Alabama Supreme Court also denied Jefferson County's request for a Stay of Judge Rains' Order. Based on the actions of Judge Rains and the Alabama Supreme Court, as well as the inaction of the Alabama Legislature, the Jefferson County Commission has indicated that it intends to pass a resolution cutting approximately one-third of the remaining 2008-2009 budget of various departments under the authority and control of the Jefferson County Commission, and one-third of the remaining budget of the Office of the Sheriff, which is not under the authority and control of the Jefferson County Commission.

39. Furthermore, the County Commission informed the Office of the Sherriff to submit a budget for fiscal 2009-2010 that would be approximately one-third of the budget that was required to operate the Office of the Sheriff during fiscal year 2008-2009.

40. By imposing these "across the board" budget cuts in fiscal year 2008-2009 to Jefferson County departments and to the office of Sheriff by amending the previously approved budget, and by informing the Office of the Sheriff that it must submit a proposed budget for fiscal year 2009-2010 of one-third less than the fiscal year 2008-2009 budget, the County Commission has

acted arbitrarily and capriciously with no regard whatsoever for the various needs of the Office of the Sheriff and without regard for any constitutional or statutory obligations imposed upon the Office of the Sheriff.

41. By imposing these drastic budget cuts on the Office of the Sheriff, Respondents have ignored the fact that Alabama law imposes upon Sheriff Hale's office numerous duties as outlined herein and as set forth in the attached Affidavits. Additionally, Respondents have made no attempt to identify what Respondents contend to be necessary cost savings in county departments on which no constitutional or statutory duties have been imposed.

42. If the budget cuts planned to be implemented by Respondents are allowed to be passed and to go into effect, Sheriff Hale and Assistant Sheriff Farley will be unable to discharge their legal obligations, will be unable to ensure that the Jefferson County Jail is properly staffed and that the prisoners are fed, clothed, and cared for as required by law, will be unable to pay deputy Sheriffs amounts to which they are entitled under applicable law and overtime pay as is required by federal, will be unable to ferret out crime effectively, and generally will be unable to ensure that law and order in unincorporated Jefferson County and in those municipalities with no police force is maintained. (See attached Affidavits of Sheriff Hale, Assistant Sheriff Farley, and the Captains of the Jefferson County's Sheriff's Office).

IV. TRO AND PRELIMINARY AND PERMANENT INJUNCTION

43. The Petitioners incorporate by reference Paragraphs 1 - 42 of their Petition For TRO, Preliminary Injunction, Permanent Junction, A Common Law Writ of Mandamus, and A Common Law Writ of Prohibition and Declaratory Judgment and restate them as if fully set forth herein.

44. A TRO must be issued to prevent immediate and irreparable harm to the Office of the Sheriff.

45. Sheriff Hale alleges that Respondents have indicated that they plan to take affirmative action in violation of Alabama law to cut Sheriff Hale's budget drastically during fiscal year 2008-2009 to the point where the Jefferson County Sheriff's Office cannot perform its duties as imposed upon it by Alabama law.

46. The cuts proposed would result in putting Sheriff Hale in a position that he would be in violation of his duties under state and federal law. The proposed cuts would result in insufficient funds to cover 911 phone calls adequately, to provide the necessary personnel to patrol the streets and respond to the calls to the Office of Sheriff, to feed the prisoners, to book and release prisoners, to investigate and ferret out crime, to provide deputy services to monitor Jefferson County schools, to respond to federal litigation, to investigate and solve crimes committed, to investigate illegal drug activity and make arrests, and to respond to the other duties that are set forth in the Affidavits of Sheriff Hale, Assistant Sheriff Farley, and the Captains of the Sheriff's Office, which are attached hereto.

47. None of the Respondents have a statutory duty or any other duty to inmates in the jail other than as alleged herein. These Respondents also have no statutory or legal authority over Sheriff Hale regarding discharging these duties.

48. The Respondents will not suffer any harm as a result of a TRO or a preliminary or permanent injunction as Sheriff Hale and Assistant Sheriff Farley seek an injunction that does nothing more than require Respondents to comply with Alabama law and to fund the Jefferson County Sheriff's Office in the amount originally funded in the 2009-2010 fiscal year. In other words, Petitioners ask that the status quo be maintained.

49. No notice is necessary for entry of a TRO, although Petitioner's undersigned counsel certifies that it has provided notice of this Petition to all Respondents. The undersigned counsel has provided a copy of this Petition with the attached Affidavits to each of the individual Respondents as well as to the attorney for Jefferson County. A TRO may be granted without written or oral notice to the adverse party or that party's attorney if it clearly appears from specific facts shown by Affidavit, or by the Verified Complaint, that immediate and irreparable injury will result to the applicant before the adverse party or that party's attorney can be heard in opposition and the applicant's attorney certifies to the Court in writing the efforts, if any, that have been made to give the notice and the reasons supporting his claim that notice should not be required. Ala. R. Civ. 65(b). While the Court may act regardless of whether notice has been given, Petitioners state that a copy of this petition has been provided to Mr. Jeff Sewell, who is counsel for the Respondents.

50. Petitioners request that this Court grant Petitioners' request for a TRO to avoid irreparable harm and injury to Petitioners and the Office of Sheriff. Petitioners further request that the TRO requested herein be converted into a Preliminary Injunction in the form and manner as prescribed by Alabama law.

51. Additionally, no security should be required with regard to this Petition because Petitioners are officers of the State. Ala. R. Civ. P. 65(c). Furthermore, Petitioners are seeking only to have Respondents refrain from cutting funds that have been allocated to the Office of the Sheriff and previously approved in the Sheriff's fiscal year 2008-2009 budget.

V. COMMON LAW WRIT OF MANDAMUS

52. The Petitioners incorporate by reference Paragraphs 1 - 51 of their Petition For TRO, Preliminary Injunction, Permanent Junction, A Common Law Writ of Mandamus, A Common

Law Writ of Prohibition, and Declaratory Judgment and restate them as if fully set forth herein.

53. Sheriff Hale is statutorily required to provide certain goods and services to the inmates of the jail. Sheriff Hale's deputies are statutorily entitled to overtime pay. Sheriff Hale is statutorily obligated to perform such other duties as set forth herein and as otherwise imposed by Alabama law.

54. On the basis of the statutes, case authorities, and Attorney General opinions noted in the preceding paragraphs, Sheriff Hale alleges that he is entitled to a common law writ of mandamus compelling Respondents and any employees of Jefferson County who are responsible for disbursing funds to the Office of the Sheriff to disburse funds budgeted to Sheriff Hale in the original 2008-2009 fiscal year budget for the Jefferson County Sheriff's Office.

55. WHEREFORE, premises considered, Sheriff Hale requests this Court to issue a common law Writ of Mandamus to Respondents directing and/or requiring Respondents to release funds originally budgeted to Sheriff Hale in the 2008-2009 fiscal year budget for the Jefferson County Sheriff's Office.

VI. COMMON LAW WRIT OF PROHIBITION

56. The Petitioners incorporate by reference Paragraphs 1 - 55 of their Petition For TRO, Preliminary Injunction, Permanent Junction, A Common Law Writ of Mandamus, and A Common Law Writ of Prohibition and Declaratory Judgment and restate them as if fully set forth herein.

57. Sheriff Hale is statutorily required to provide certain goods and services to the inmates of the jail, Sheriff Hale's deputies are statutorily entitled to overtime pay, and Sheriff Hale is statutorily obligated to perform such other duties as set forth herein and as otherwise imposed by Alabama law.

58. On the basis of the statutes, case authorities, and Attorney General opinions noted in the preceding paragraphs, Sheriff Hale alleges that he is entitled to a Common Law Writ of Prohibition that prohibits the Respondents and any employees of Jefferson County who are responsible for disbursing funds to the Office of the Sheriff from refusing or failing to provide funds to the Jefferson County Sheriff's Office sufficient for Sheriff Hale to meet all contractual obligations to which he has entered for the 2008-2009 fiscal year and such other costs associated with carrying out the duties of his office.

59. WHEREFORE, premises considered, Sheriff Hale requests this Court to issue a Common Law Writ of Prohibition to Respondents and Respondents' employees from reducing the 2008-2009 fiscal year budget for the Jefferson County Sheriff's Office and that otherwise prohibits Respondents and Respondents' employees from refusing or failing to fund the Jefferson County Sheriff's Office so that Sheriff Hale may pay all obligations to which he is contractually obligated for the 2008-2009 fiscal year and such other costs associated with carrying out the duties of his office.

VII. DECLARATORY JUDGMENT

60. The Petitioners incorporate by reference Paragraphs 1 - 59 of their Petition For TRO, Preliminary Injunction, Permanent Junction, A Common Law Writ of Mandamus, A Common Law Writ of Prohibition and Declaratory Judgment and restate them as if fully set forth herein.

61. Sheriff Hale submits that a justiciable controversy exists regarding his right and authority as a constitutional officer, a state officer, and an official elected by popular vote and under state law, both statutory and common law, the obligations imposed upon Sheriff Hale under Alabama law, and the obligations imposed under Defendants to fund Sheriff Hale's department and the County Jail as well as Jefferson County's obligation and civil liability for the payment of Sheriff

Hale's contracts under Alabama law.

62. Sheriff Hale is entitled to and seeks a declaratory judgment against Respondents as follows:

a. Declaring that Defendant Jefferson County is liable for and is required to allocate adequate budgeting for all employment contracts entered into between Sheriff Mike Hale and employees of the Jefferson County Sheriff's Office and all necessary costs associated with providing the services he is required to provide by law as set forth in this Petition for the fiscal year 2008-2009;

b. Declaring that Defendant Jefferson County is liable for and is required to allocate adequate budgeting for all employment contracts entered into between Sheriff Mike Hale and employees of the Jefferson County Sheriff's Office and all necessary costs associated with providing the services he is required to provide by law as set forth in this Petition for fiscal year 2009-2010;

c. Declaring that Defendants have no right or authority to amend the 2008-2009 fiscal year budget for the Jefferson County Sheriff's Office;

d. Declaring that the amendments to Ala. Code § 11-8-3 enacted pursuant to House Bill 139 regarding the Commission's authority to amend a County's budget are unconstitutionally vague;

e. Declaring that any amendment to the 2008-2009 fiscal year budget for the Jefferson County Sheriff's Office adopted by the Jefferson County Commission is void;

f. Declaring that the 2008-2009 fiscal year budget for the Jefferson County Sheriff's Office shall be not be cut or shall be reinstated if cut and that the Jefferson County Sheriff's Office shall be budgeted in the amount originally set forth in the 2008-2009 fiscal year budget

except to the extent that the parties have agreed among themselves to a reduced budgeted amount prior to the filing of this Petition;

g. Declaring that any resolution adopted by Defendant Jefferson County to cut the budget of the Office of the Sheriff is void and unenforceable as a violation of Alabama law and as a usurpation of the authority of Sheriff Hale;

h. Declaring that the County provides adequate funding for the legal responsibilities of the Office of Sheriff and the County as set forth above in paragraphs 14-34.

ALA. CODE § 11-8-3(g) REGARDING AMENDMENTS TO BUDGETS DURING A FISCAL YEAR IS UNCONSTITUTIONALLY VAGUE AS APPLIED IN THIS CASE.

63. Ala. Code § 11-8-3 was amended in 2007 with House Bill 139, entitled the "House, County, and Municipal Government Committee Engrossed Substitute Bill." The amendment to § 11-8-3, *inter alia*, authorized County Commissions to amend the budget during the fiscal year "as determined necessary by an affirmative vote of a majority of the members of the County Commission." *Id.* at § 11-8-3(g). Petitioners anticipate that Respondents will use this statute as its authority to amend the budget of the Office of the Sheriff.

64. An additional amendment to Ala. Code § 11-8-3 provides that, after the budget is adopted, "no obligation incurred by any county official or office over and above the amount or amounts approved and appropriated by the county commission shall be an obligation of the county unless the obligation is approved by an affirmative vote of a majority of the members of the county commission." *Id.* at § 11-8-3(f). The statute does not speak to the issue of when a department, or separate office such as that of the Sheriff, that is funded by the county has incurred obligations that were not beyond the amount approved in the original budget, but are now beyond the funding amount for a department under a new amended budget.

65. Sheriff Hale alleges that he has incurred obligations pursuant to and in accordance with the original 2009-2010 fiscal year budget for the Jefferson County Sheriff's Office adopted by Respondents. Even if one assumes that the Commissioners have the authority amend the Sheriff's budget, Sheriff Hale and Assistant Sheriff Farley will be unable to meet all of the financial obligations and legal obligations to which they are obligated during the 2009-2010 fiscal year.

66. If the Court believes that this statute gives the Commission the authority to amend the Sheriff's budget after it has been adopted, Sheriff Hale alleges that Ala. Code § 11-8-3, as amended, is unconstitutionally vague in that it contains no provision for those situations in which a county does what Jefferson County is attempting to do and the end result is that, as would occur in the present case, the Office of Sheriff is unable to meet incurred obligations that were within the original budget for the fiscal year. The statute does not address the issue of what the Commission may do when there is a reduction in the original budget by amendment during a fiscal year to the point where obligations incurred under the original budget cannot be met. As the statute is silent on the appropriate remedy or operation of law in circumstances such as those before this Court, the statute as amended is unconstitutionally vague, and subsections (f) and (g) should be stricken from the law.

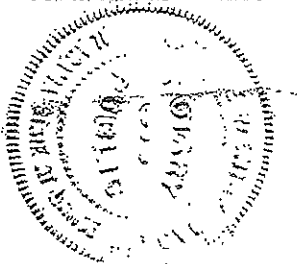
WHEREFORE, Petitioners request a ruling that Ala. Code § 11-8-3 subsections (f) and (g) are unconstitutionally vague and cannot be used as authority to amend the 2008-2009 fiscal budget of the Office of the Sheriff.

Mike Hale

Sheriff Mike Hale

IN THE STATE OF ALABAMA)
JEFFERSON COUNTY)

In Jefferson County, Alabama, on the 7th day of July, 2009 before me, a Notary Public in and for the above-state and county, personally appeared Sheriff Mike Hale, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.



Natalie Baskin

Notary Public

My commission expires on: 03/02/10

Allen Farley

Assistant Sheriff Allen Farley

IN THE STATE OF ALABAMA)
JEFFERSON COUNTY)

In Jefferson County, Alabama, on the 7th day of July, 2009 before me, a Notary Public in and for the above-state and county, personally appeared Assistant Sheriff Allen Farley, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.



Natalie Baskin

Notary Public

My commission expires on: 03/02/10

Robert R. Rife, Jr.

Robert R. Rife, Jr. (RIF012)

Keith Jackson

Keith Jackson (JAC067)

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OF COUNSEL:

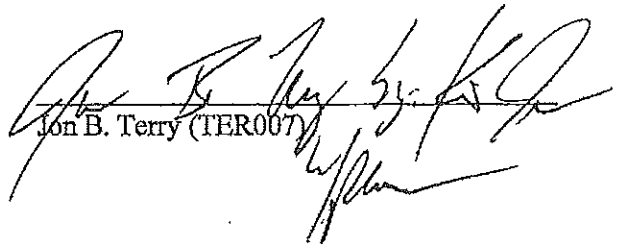
BAINS & TERRY

1813 3rd Avenue North

Bessemer, AL 35020

Tel: (205) 425-1606

Fax: (205) 426-3200


Jon B. Terry (TER007)

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 2009, I have electronically filed the above and foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record if registered as a participant in the System, or if not registered by placing a copy of same in the United States First Class Mail, postage prepaid, on the 7th day of July, 2009, as follows:

Troy King, Esq.
Alabama Attorney General Office
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OF COUNSEL