



3. Relief is sought pursuant to Ala. Code § 6-6-220, *et seq.* and Art. III, §§ 42 and 43 of the Alabama Constitution.

## II. Jurisdiction and Venue.

4. This Court has jurisdiction over this matter as the issues presented in this case involve the validity of a state statute under the Alabama Constitution. State court authority “to review challenges to acts of the Legislature on constitutional grounds is a bedrock principle of our State’s legal heritage.” *Rice v. English*, 835 So.2d 157 (Ala. 2002).

5. Plaintiff McInnish, a taxpayer of the State of Alabama, has standing to bring this action. (“The right of a taxpayer to challenge the unlawful disbursement of state funds likewise is unquestioned.” *Zeigler v. Baker*, 344 So.2d 761 (Ala. 1977) citing *Goode v. Tyler*, 186 So. 129 (Ala. 1939); *Hall v. Blan*, 148 So. 601 (1933); *Turnipseed v. Blan*, 48 So. 116 (1933).)

6. The Plaintiff has requested service upon the Attorney General of the State of Alabama as required by Ala. Code § 6-6-227.

7. Venue is proper in this circuit under Ala. Code § 6-3-2.

## III. Parties

8. Plaintiff Hugh McInnish is an adult resident citizen, registered voter, and taxpayer of the State of Alabama residing in Madison County, Alabama.

9. Defendant Bob Riley is sued in his official capacity as the Governor of the State of Alabama. At all times referred to herein, he is acting under color of state law.

10. Defendant Drayton Nabers is sued in his official capacity as the Director of the State of Alabama Department of Finance. At all times referred to herein, he is acting under color of state law.

11. Defendant Robert M. Childree is sued in his official capacity as the Comptroller of the State of Alabama Department of Finance. At all times referred to herein, he is acting under color of state law.

12. Defendant Kay Ivey is sued in her official capacity as the Treasurer of the State of Alabama. At all times referred to herein, she is acting under color of state law.

#### IV. Statement of Facts.

13. The Alabama Legislature passed Act No. 2004-456, as amended by Executive Amendment, on or about May 6, 2004. The Act was approved by the Governor on May 14, 2004. Select pages of Act No. 2004-456 are attached hereto as Exhibit A.

14. Act No. 2004-456 appropriates to the Joint Legislative Oversight Committee on Community Service Grants \$11,700,00 from the Education Trust Fund. See Exhibit A.

15. The Joint Legislative Oversight Committee on Community Service Grants was established by Alabama Code § 29-2-121.

16. The duties of the Joint Legislative Oversight Committee on Community Service Grants are set forth in Alabama Code § 29-2-123 as follows:

It shall be the duty of the committee to review applications and approve community service grants made from any funds appropriated to the committee by the Legislature for the purpose of awarding community service grants. **The committee may become a grant-making agency and receive and distribute any appropriations made by the Legislature to the Committee from the community services grant program pursuant to Chapter 24 of Title 41.** The committee shall evaluate grant proposals based on the relevance of such proposals to the purposes for which such grants shall be made; the extent to which such grant proposals advances the program objectives of the grant-making agency; the ability of the grant recipient to fulfill the objectives of the grant proposal; and the extent to which the grant proposal can benefit the greatest number of citizens, without excluding any geographic regions of the state. All of the above information may be ascertained by appropriate measures, which shall include interviews, audits, public hearings and recommendations by members of the Legislature. It shall also be the duty of the committee to ensure that, of any appropriations received by the committee, a minimum of the equivalent of 0.4% of such appropriations shall be distributed to each House district and 1.2% of such appropriations shall be distributed to each Senate district.

17. Ala. Code § 41-24-1 defines "grant-making agency" as follows:

A state agency of the State of Alabama, designated by the Legislature through an Alabama Community Service Grant Program appropriation, having authority to

approve grant proposals, direct and coordinate the expenditure of grant funds.

18. Ala. Code § 41-24-1(2) defines a "grant" as:

The award by a state grant-making agency of funds appropriated by the Legislature or from funds received as gifts or donations to a qualifying grant-recipient agency for expenditure according to the provisions of a grant proposal.

19. The separation of powers doctrine is set forth in the Alabama

Constitution:

The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Ala. Const. art. III § 42.

In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them to the end that it may be a government of laws and not of men.

Ala. Const. art. III § 43.

20. The granting or awarding of funds appropriated under Act 2004-456, for expenditure by a committee of the legislature, as set forth in Ala. Code § 29-2-

123, constitutes encroachment of the executive powers specifically reserved to the executive branch of government by the Alabama Constitution and violates Ala. Const. art. III § 42 and 43. (“[T]he core power of the legislative branch is to declare policy through enacting legislation, and the core power of the executive branch is to carry out those legislative policies with a certain degree of executive discretion.” *Opinion of the Justices No. 380*, 2004 WL 693131\*2 (March 31, 2004.)

21. If these unconstitutional disbursements are allowed to occur at the direction of the Joint Legislative Oversight Committee on Community Services Grants, the rights of Plaintiff McInnish and the taxpayers of Alabama will be irreparably harmed.

22. Plaintiff McInnish therefore, seeks immediate relief from the Court to remedy the violations of the Alabama Constitution caused by Ala. Code § 29-2-123 and Act 2004-456, including enjoining the Defendants from taking any action which would facilitate the disbursement of funds appropriated to the Joint Legislative Oversight Committee on Community Services Grants Program.

23. This litigation will benefit all taxpayers of Alabama as each taxpayer of the State has an interest in seeing that state funds are expended lawfully. This litigation constitutes public service litigation benefiting thousands of Alabama citizens, in addition to the Plaintiff. Alabama's common benefit doctrine,

therefore, requires an award of litigation costs, expenses, and attorneys' fees to the Plaintiff. *Brown v. State*, 565 So.2d 585 (Ala. 1990); *Ex Parte Horn*, 718 So.2d 694, 706 (Ala. 1998).<sup>1</sup>

#### V. Violations of Law.

24. Alabama Code § 29-2-123 is an unconstitutional attempt by the legislature to usurp the executive power by creating a legislative committee which is simultaneously a "grant-making agency" to expend appropriations made to that committee by the legislature.

25. Insofar as Act No. 2004-456 appropriates money to the Joint Legislative Oversight Committee on Community Service Grants and, thus, facilitates the unconstitutional usurpation of the executive power by that legislative committee described in Ala. Code , that Act is unconstitutional.

26. Alabama Code § 29-2-123 and Act No. 2004-456 are unconstitutional violations of the separation of powers doctrine prescribed in the Alabama Constitution as they create a scheme to grant power to individual legislators.<sup>2</sup>

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<sup>1</sup> Also see a discussion of Alabama's common benefit doctrine by the Eleventh Circuit Court of Appeals in *Smith v. GTE Corporation*, 236 F.3d 1291 (11<sup>th</sup> Cir. 2001).

<sup>2</sup> See Attorney General Opinion of September 19 2003 ("[T]his office is aware of no legal authority for an individual legislator to control and direct the use of any state funds or local sales tax funds at his or her discretion. Indeed, it is the opinion of this Office that such a scheme would most likely violate the separation of powers doctrine of our state constitution. Ala. Const. art. III, § 42.")

VII. Relief Requested.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays that this Court will render judgment against the Defendants and provide the following relief:

- A. Enter declaratory relief that this Court has jurisdiction over the issues presented in this Complaint and to issue appropriate orders and grant relief caused by the enactment of Act No. 2004-456, which appropriated \$11,700,000 to the Joint Legislative Oversight Committee on Community Service Grants;
- B. Enter declaratory relief that Alabama Code § 29-2-123 is unconstitutional as violative of the separation of powers provisions of the Alabama Constitution;
- C. Enter declaratory relief that Act 2004-456, insofar as it appropriates \$11,700,000 to the Joint Legislative Oversight Committee on Community Service Grants is unconstitutional as violative of the separation of powers provisions of the Alabama Constitution;
- D. Enter declaratory relief that only the executive branch may distribute and/or expend the funds appropriated in Act No. 2004-456 to the Joint Legislative Oversight Committee on Community Service Grants;

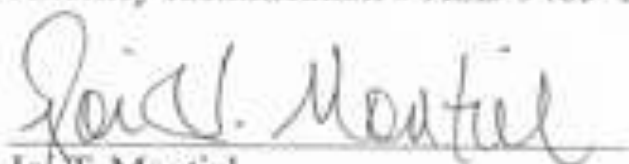
- E. Enter injunctive relief prohibiting the Defendants from taking any action which might facilitate the distribution and/or expending of funds by the Legislative Joint Legislative Oversight Committee on Community Service Grants;
- F. Advance this matter forward for a hearing on the merits on this Complaint;
- G. Issue an Order awarding to the Plaintiff court costs, litigation costs, and expenses of this action, including reasonable attorneys' fees and all expenses pursuant to Alabama law;
- H. Grant further and different relief as this Court may deem appropriate.

Respectfully submitted this the 26<sup>th</sup> day of May 2004.



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