

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JAMES HALL, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	2:13-CV-663
)	
JIM BENNETT, Alabama Secretary)	
of State, in his official capacity,)	
)	
Defendant.)	

SECRETARY BENNETT’S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), Secretary Bennett moves to dismiss the Complaint for failure to state as claim. In support of this motion, Secretary Bennett states as follows:

1. Plaintiffs James Hall and Clint Moser challenge Alabama’s ballot access requirements for independent candidates wishing to participate in the special election to fill the vacancy in the 1st Congressional District. Doc. 2, generally.

2. It is entirely appropriate for Alabama to have ballot access requirements. “[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Storer v. Brown*, 415 U.S. 724, 730 (1974).

3. And it is appropriate for those requirements to demand “reasonabl[e] diligen[ce],” *Storer*, 415 U.S. at 742, *see also Libertarian Party of Florida v. Florida*, 710 F.2d 790, 793 (11th Cir. 1983), from independent candidates seeking ballot access.

4. For ballot access in the special Congressional race, Alabama required independent candidates to submit, by September 24, 2013, petitions containing 5,938 signatures of “electors

qualified to vote in the election to fill the office.” Ala. Code § 17-9-3(a)(3); *see also* doc. 2 at 1-2 (recognizing the petition requirement and deadline).

5. Plaintiffs argue that these requirements violated their First, Fourteenth, and Fifteenth Amendment rights.

6. The Supreme Court has explained, “When deciding whether a state election law violates First and Fourteenth Amendment associational rights, we weigh the character and magnitude of the burden the State’s rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary. Regulations imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions. No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358-59 (1997) (internal citations and quotation marks omitted).

7. Plaintiffs allege that they are qualified for the office of United States Congressman for Alabama’s 1st Congressional District and that they wish to run for that office in the special election as independent candidates. Doc. 2 at ¶¶ 8-11. The Complaint is devoid of any specific facts about their efforts to achieve ballot access and how they have been burdened. *Id.*, generally. There is nothing about when they started petitioning, whether they used volunteers or paid petitioners, when and where signatures were gathered, how many man-hours had been spent petitioning, and how many signatures had been collected, for instance. Instead, the Complaint contains only their own conclusion that they have acted diligently in collecting

signatures but will fail to collect a sufficient number by the deadline. *Id.* at ¶¶ 17-18. Fed. R. Civ. P. 8 requires more.

8. Fed. R. Civ. P. 8(a)(2) provides: “A pleading that states a claim for relief must contain: . . . (2) a short and plain statement that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).

9. “[T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations and quotation marks omitted); *see also id.* (“Nor does a complaint suffice if it tenders naked assertion[s] devoid of further factual enhancement.”) (internal citations and quotation marks omitted; alteration by the Court).

10. “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . .” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (second alteration by the Court); *see also Iqbal*, 556 U.S. at 681 (“As such, the allegations are conclusory and not entitled to be assumed true.”); *id.* (“It is the conclusory nature of respondent’s allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth.”).

11. Thus, with respect to the First and Fourteenth Amendment claims, the Complaint fails to meet the standard of Fed. R. Civ. P. 8, as explicated by the Supreme Court because it is conclusory and lacks a factual basis.

12. With respect to the Fifteenth Amendment claim, Plaintiffs include neither facts nor conclusory allegations that might, at least, explain the claim. The Fifteenth Amendment

provides that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” U.S. Const. Amend. XV. The Complaint makes no mention of “race, color, or previous condition of servitude” and provides no clue as the basis for this claim.

13. For these reasons, Plaintiffs have failed to state a claim under Fed. R. Civ. P. 8, and the Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

Respectfully submitted,

LUTHER STRANGE
(ASB-0036-G42L)
Attorney General

BY:

s/ Misty S. Fairbanks Messick
Misty S. Fairbanks Messick (ASB-1813-T71F)
James W. Davis (ASB-4063-I58J)
Assistant Attorneys General

OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, Alabama 36130
Telephone: (334) 242-7300
Facsimile: (334) 353-8440
mmessick@ago.state.al.us
jimdavis@ago.state.al.us

Attorneys for the State Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of September 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

David I. Schoen
Attorney at Law
2800 Zelda Road, Suite 100-6
Montgomery, Alabama 36106
Telephone: (334) 395-6611
Facsimile: (917) 591-7586
david@schoenlawfirm.com

s/ Misty S. Fairbanks Messick
Of Counsel