



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JIM ZEIGLER)	
As a taxpayer and voter and)	
As State Auditor of Alabama)	
)	
TOMMY CHAPMAN)	
As a taxpayer and voter and)	
As Chairman of the Democratic)	
Executive Committee of Conecuh County)	
)	
Plaintiffs)	Civil No. 2017-
)	
vs.)	
)	
HON. ROBERT BENTLEY,)	
As Governor of Alabama)	
In his official capacity)	
)	
Defendant.)	

**BIPARTISAN COMPLAINT AGAINST ILLEGAL SETTING
 OF U.S. SENATE SPECIAL ELECTION**

This bipartisan civil action seeks (1) a declaration that Governor Robert Bentley's scheduling of a special election for November 2018 to fill the U.S. Senate seat formerly held by Senator Jeff Sessions is contrary to Alabama law, and (2) a mandatory injunction requiring Gov. Bentley to schedule the election in conformity with § 36-9-8, Ala. Code 1975.

I. Parties

1. Plaintiff Jim Zeigler is a citizen, voter and taxpayer of the state of Alabama residing at 500 Adams Avenue, Montgomery, Alabama. He is the elected State Auditor, a statewide constitutional officer who by law appoints Voter Registrars in each county. Those Registrars compile the voter lists for regular and special elections.

2. Plaintiff Tommy Chapman is a citizen, voter and taxpayer of the state of Alabama residing in Evergreen, Alabama. He is the retired District Attorney for Conecuh and Monroe Counties. He is Chairman of the Democratic Executive Committee of Conecuh County and has been for 25 years. He was elected District Attorney as a Democratic nominee.
3. Defendant Robert Bentley is Governor of Alabama. He is a resident and voter of Alabama.

II. Background

4. On, February 14, 2017, upon being confirmed as Attorney General of the United States, Jeff Sessions resigned the office of United States Senator from the State of Alabama, thus creating a vacancy in that office.
5. On the same day, Gov. Bentley appointed Hon. Luther Strange as temporary United States Senator from the State of Alabama.
6. Governor Bentley then scheduled an election to fill the vacancy occasioned by the Sessions resignation to be held at the same time as the November 2018 general election cycle.

III. Relevant Law

7. Section 36-9-8, Ala. Code 1975,¹ clearly and specifically mandates three scenarios for the setting of a special election for U.S. Senate:

Scenario One: If the vacancy occurs within 60 days of a regular election, the special election shall be set on the first Tuesday after 60 days from the date of the vacancy.

Scenario Two: If the vacancy occurs within four months of a regular election but not within 60 days of it, the election shall be held at the time of the regular election.

¹ See Appendix A for the text of § 36-9-8.

Scenario Three: If the vacancy occurs more than four months from the next regular election, the special election shall be set *forthwith*.

8. Because the vacancy in the U.S. Senate seat occurred 21 months before the next regular election scheduled for November, 2018, Scenario Three governs, and Governor Bentley has a ministerial duty to schedule an election to fill the vacant seat forthwith. Instead, Governor Bentley, in defiance of the statute, has used Scenario Two, which applies only when the vacancy occurs within four months of the next regular election.
9. The official agency which gives legal advice and guidance to the Alabama Legislature, the Legislative Reference Service, researched this issue and reached the same position as the plaintiffs in this action. The LRS issued a detailed Memorandum on February 17, 2017 that found:

It appears that Section 36-9-8, Code of Alabama 1975, requires Governor Bentley to hold a special election to fill the vacancy of Senator Jeff Sessions without delay at some point prior to the 2018 General Election.

(The Memorandum of the Legislative Reference Service is attached as part of this Complaint in Appendix B and is incorporated hereinto by reference.)

CAUSE OF ACTION

10. Plaintiffs have standing as Alabama voters whose franchise is being diminished by the refusal of the Governor to set an election according to law to fill the vacancy in the U.S. Senate. Rather than being able to vote for a replacement U.S. Senator in a timely manner, they must suffer a Bentley appointee to hold the seat for nearly two more years. As aggrieved voters and based on the facts stated in ¶ 1-9, plaintiffs have a cause of action for declaratory and injunctive relief to compel Governor Bentley to follow Alabama law as set forth in § 36-9-8, Ala. Code 1975.

RELIEF REQUESTED

Plaintiffs request the following:

1. A declaratory judgment that § 36-9-8 requires Governor Bentley to schedule an election to take place as expeditiously as possible to fill the U.S. Senate seat vacated by Senator Sessions resignation.
2. Preliminary and permanent injunctive relief ordering Governor Bentley to schedule an election to take place, forthwith, for the purposes of electing a United States Senator from the State of Alabama to fill the unexpired term of former Senator Jeff Sessions.
3. That the Court order such additional and further relief as may be appropriate.
4. That the Court will retain jurisdiction over this matter until after defendant Bentley complies with this Court's orders and actually calls the special election for U.S. Senate as ordered, because the Governor has defied Alabama law and defied the opinion of the Legislative Reference Service.

L/S *William T. Chapman*

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