

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
)	Case No. 11-05736-TBB9
JEFFERSON COUNTY, ALABAMA,)	
a political subdivision of the State of)	Chapter 9 Proceeding
Alabama,)	
)	
Debtor.)	

**MEMORANDUM BRIEF OF INTERESTED PARTY
CIRCUIT CLERK ANNE-MARIE ADAMS IN SUPPORT
OF MOTION FOR ORDER TO SHOW CAUSE**

In support of her motion for a show cause order, Interested Party Petitioner maintains that the continuation by Respondents of their state court proceeding to assess attorney’s fees against her and the Jefferson County Election Commission (“JCEC”) is an affront to the integrity of this court.

I. Jefferson County is Liable For Payment of Election Costs

The law of Alabama squarely places on the shoulders of a county the obligation of paying the costs of an election:

The compensation of officers and other expenses of all primary elections, general or special, held under the provisions of this chapter, shall be paid in the same manner and to the same extent as is or may be provided by law for the payment of the expenses and officers of general election held under the general election laws of Alabama and **shall be paid out of the county treasury** in the same manner.

Ala. Code § 17-13-4. (emphasis added.)



To be sure, if the election covers federal and state offices along with county offices, then the State of Alabama is obligated to reimburse the county one-half of the costs of the election. Ala. Code § 17-16-3. And if the election is scheduled only for federal or state officers, or, as here, a presidential preference primary, then the State of Alabama is obligated to fully reimburse the county for the costs of the election. Alabama Code §§ 17-13-4, 100.

But it cannot plausibly be denied that the County has the unflagging obligation to pay the election costs, whether or not it is entitled to subsequent reimbursement from the State of Alabama.

In point of fact, the Respondents stipulated that

“46. Jefferson County’s General Fund is used to pay persons to administer elections at the direction of the Jefferson County Commission, including the February 8, 2008, presidential preference primary election. As a result of the Election Commission’s resolving to conduct an election, monies appropriated from Jefferson County’s General Fund pay for the printing of ballots used during the February 5, 2008, presidential preference primary.

Working et al. v. Jefferson County Election Commission, et al., 2 So.3d 827, 836 (Ala.2008) (“*Working I*”).

II. In Scheduling and Supervising the Challenged Election, the JCEC and Circuit Clerk Anne-Marie Adams Acted Solely in their Ministerial Capacities

The JCEC acts only when authorized by statute and in the manner authorized by statute. As Circuit Judge Vowell found in the underlying case: “ [t]he duties performed by canvassing boards like the JCEC are statutorily mandated and

ministerial in nature, i.e., the legislature has not made provisions for canvassing boards to exercise any judgment or discretion in the performance of their duties.” *Working et al. v. Jefferson County Election Commission*, 2013 WL 6360938, *4, 5 (Ala.) (“*Working III*”).)

Thus, Petitioner’s conduct as a member of the JCEC is purely ministerial in nature. She as Circuit Clerk, Probate Judge Alan Kin, and Sheriff Mike were made parties to the case “solely for the purpose of securing any needed relief in the nature of a writ of mandamus.” *Working III*, at *3. They were not sued in their individual capacities.

III. Respondents Are Barred From Seeking Recovery Against the State of Alabama

On December 6, 2013, the Alabama Supreme Court dismissed the Respondents’ state law claim against the State of Alabama. *Working III*, at *6. It is now clear that the Respondents may not seek any recovery from the State.

This Court’s Order partially relieved Respondents from the automatic stay and permitted them to continue the state court litigation only to the extent that they could collect from the State of Alabama any judgment entered in the case.

For more than a year, Respondent’s inability to collect any judgment against the State has been transparent.

The condition of this Court’s partial relief from the stay having evaporated, the state court case should have come to an end in December 2013.

IV. Respondents' federal claim is barred by Eleventh Amendment Immunity

The Respondents' federal claim against the JCEC and its members is barred by the Eleventh Amendment to the United States Constitution. *Manders v. Lee*, 338 F.3d 1304 (11th Cir.2003), *en banc*.

In *Working III*, the Alabama Supreme Court affirmed Judge Vowell's conclusion that "...the JCEA's powers, its functions, and its relationship to the State identify the JCEC as an 'immediate and strictly governmental agency' of the State for purposes of § 14 [the sovereign immunity article of the Alabama Constitution]. See *Ex parte Greater Mobile-Washington County Mental Health-Mental Retardation Bd.*, 940 So.2d [990] at 997 [Ala.2006]. *Working III*, at *5.

It is well-settled that Eleventh Amendment immunity precludes federal claims against the State itself and when an "arm of the state" is sued. In such cases, four factors are relied on to make the determination of

whether an entity is an "arm of the state" in carrying out a particular function: (1) how the state law defines the entity, (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity. [Citing cases.]

Manders v. Lee, 338 F.3d 1304, 1309 (11th Cir.2003) (*en banc*). In *Manders*, the Eleventh Circuit held that under Georgia law, a sheriff is and arm of the State and therefore entitled to Eleventh Amendment immunity from claims brought under 42 U.S.C. § 1983 ("Section 1983").

More recently, in *Ross v. Jefferson County Department of Health*, 701 F.3d 655 (11th Cir.2012), the Eleventh Circuit held that the Jefferson County Department of Health is entitled to Eleventh Amendment immunity on various claims, including a Section 1983 claim. In analyzing the three factors, the Court was significantly impressed by the state law definition of the Health Department as an “arm of the state.” *Id.*, at 600. On the second factor, the State exercised significant control of the personnel decisions of the Health Department. Despite county funding of all of the operations of the Health Department, court found that this factor did not “tip the balance” there was no evidence that the county exercises control over the department, “and the county funds the Health Department only because state law requires it to do so.” see *Manders*, 338 F.3d at 1324.” *Id.*

In light of *Manders* and *Ross*, the Respondents’ federal law claim for attorney fees has no basis in law.

For all of these reasons, the Court should issue an order requiring the Respondents to show cause why they should not be sanctioned for violation of the automatic stay as embodied in the Confirmation Order, as well as the Discharge Injunction itself.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 6th day of January, 2015, I have electronically served a copy of this brief on counsel for the opposing parties by utilizing the Clerk of Court's CM-ECF filing system, which will send electronic notification to all interested parties.

/s/U.W. Clemon
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