



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

JAY CAMPBELL, on behalf of)
himself and other persons similarly situated,)
))
Plaintiff,)
))
v.)
))
THE CITY OF GARDENDALE, ALABAMA;)
JEFFERSON COUNTY, ALABAMA, and)
J.T. SMALLWOOD, in his official capacity)
as Tax Collector of Jefferson County, Alabama,)
))
Defendants.)

Case No. _____

CLASS ACTION COMPLAINT

For his Complaint against Defendants The City of Gardendale, Alabama (“Gardendale”) Jefferson County, Alabama (“the County”), and J.T. Smallwood, in his official capacity as Tax Collector of Jefferson County, Alabama, Plaintiff Jay Campbell (“Plaintiff”) states as follows:

INTRODUCTION

1. At all times, school-aged children residing in Gardendale have attended public schools operated by the Jefferson County Board of Education (“JeffCo BOE”). Gardendale residents have paid (and still pay) an 8.8-mill *ad valorem* tax (the “County School Tax”), imposed by the County under ALA. CONST. JEFF. CO. AMEND. 14 (“Local Amendment 14”) and set at a rate over 5 mills pursuant to ALA. CONST. ART. IX, SEC. 217(e). The proceeds of the County School Tax inure to the JeffCo BOE, solely for educational purposes.

2. JeffCo BOE serves Gardendale’s student population because Gardendale has not formed a legally recognized school district. In fact, Gardendale has for the past several years been in litigation with the JeffCo BOE in the United States District Court for the Northern District of Alabama (the “federal district court”), seeking to form a legally recognized school district - despite

the outstanding desegregation order enforced by the federal court since the 1960s. Gardendale lost that effort, resoundingly, by virtue of a February 14, 2018 decision of the United States Court of Appeals for the Eleventh Circuit (the “Eleventh Circuit”), which specifically instructed the federal district court to deny Gardendale’s effort to form a splinter autonomous school district. So Gardendale is now legally precluded from forming a school district and operating schools.

3. In spite of its lack of a legally recognized school district, Gardendale began imposing an additional 10-mill *ad valorem* municipal tax (the “Municipal Taxes”) in the 2014 tax year, purportedly pursuant to ALA. CONST. ART. IX, SECS. 216 and 216.04. The Municipal Taxes were, by their own terms, adopted and levied *solely* for public school purposes. Gardendale has been collecting the Municipal Taxes continuously since 2014. Thus, for tax years 2014 and following, Gardendale residents have paid *both* (a) an 8.8 mill tax under Local Amendment 14, *and* (b) a 10-mill public-education tax under Sections 216 and 216.04. Gardendale has publicly stated that it has been segregating the proceeds of the Municipal Taxes, in furtherance of its effort to form a legally recognized school district. The reality, however, is that Gardendale has been using funds collected from the Municipal Taxes for (1) paying school administrators to supervise a non-existent school system, and (2) funding lawyers to prosecute a catastrophically, and now finally, unsuccessful effort to form a splinter district.

4. The existing taxation scheme violates Alabama law on multiple alternative grounds, specifically the following:

a. ***The entire 10 mills of the Municipal Taxes are illegal.*** Gardendale purportedly authorized its 10 mill Municipal Taxes in two ways: five (5) mills were purportedly authorized under Section 216, and the second five (5) mills under Section 216.04. (The difference is that the

Section 216 levy was accomplished by the Gardendale City Council, whereas Section 216.04 required a referendum). Both are illegal.

1) Although Section 216 might confer authority on Gardendale to impose five (5) mills of tax for general purposes or an unstated purpose, the Gardendale City Council did *not* impose a general-purpose tax. Rather, it imposed a special tax earmarked specifically for public-school purposes – for the funding of a putative Gardendale school district. But the Eleventh Circuit’s holding renders that purpose *illegal* – the Eleventh Circuit’s judgment prohibits Gardendale from forming and operating a school district. Thus, the Section 216 levy and collection are illegal because the City Council’s Ordinance specifically provided that the purpose was for the funding of a Gardendale school district, which is an illegal purpose.

2) Section 216.04 allows municipalities to impose up to 12.5 additional mills of “special purpose” taxes, provided that they are approved in a referendum vote at which the specific purpose of the tax is stated. The second five (5) mills of the Municipal Tax was designated for the purpose of funding the Gardendale public schools. Again, the Eleventh Circuit’s holding renders that purpose *illegal* – the Eleventh Circuit’s judgment prohibits Gardendale from forming and operating a school district, and thus the proceeds of the Section 216.04 portion of the Municipal Taxes cannot lawfully be used for the purpose stated in the referendum. Section 216.04, by its own terms, requires that the proceeds may be used only for the purpose “for which the same shall be authorized at such election” – meaning that the purpose for the tax cannot now be altered.

b. ***8.8 mills of the Municipal Taxes or the County District Tax Is Illegal.*** Local Amendment 14 prohibits double taxation on its face - simultaneous imposition of the Municipal

Taxes (because they are special or additional public-school taxes) and the County School Tax are illegal. The dual-taxation regime began in 2014 and has continued since that time. The question is which of the taxing schemes is illegal.

1) ***Alternative 1: 8.8 mills of the Municipal Taxes are illegal.*** Local Amendment 14 generally “boxes out” or blocks the County’s authority to impose the County School Tax, where a municipality has imposed a school district tax. The present circumstances, however, are unusual: here, the County’s board, and not Gardendale, is providing public education to the municipality’s school-aged population – in fact, Gardendale is now legally prohibited from operating any schools by virtue of the Eleventh Circuit’s holding. Under the circumstances, Gardendale has no legal authority to impose 8.8 mills of the Municipal Taxes (if it has any authority at all), to the extent the Municipal Taxes interfere with the County’s ability to impose its County School Tax. Thus, 8.8 mills of the 10-mill Municipal Taxes are illegal, because that is the extent to which the Municipal Tax conflicts with and interferes with the County’s provision of educational services to the municipality’s residents, which are to be funded through the County School Tax.

2) ***Alternative 2: The County School Tax Is Illegal In Gardendale So Long As The Municipal Taxes Can Legally Be Collected.*** In the alternative, if the Municipal Taxes are lawful, Local Amendment 14 prohibits the imposition of the County School Tax up to the amount of any tax lawfully collected by a municipality for public school purposes – i.e., up to the amount of the Municipal Taxes. Thus, because the Municipal Taxes exceed the County School Tax, the entire 8.8-mill County School Tax has been illegal in Gardendale since the Municipal Taxes began – in tax years 2014 and following (again, assuming the Municipal Taxes are lawful).

5. Plaintiff, seeking to represent all taxpayers in Gardendale of *ad valorem* taxes in tax years 2014 and following, seeks the following relief: (a) a declaratory judgment that the Municipal Taxes, or alternatively the double-taxation scheme occasioned by imposition of both the Municipal Taxes and the County School Tax, are illegal under Alabama law; (b) an injunction preliminarily requiring that Gardendale pay into the Court all proceeds of the Municipal Taxes collected to date (the “Escrowed Funds”), or at least 8.8 mills of the same, pending the Court’s adjudication of this case; (c) an injunction prohibiting either the Municipal Taxes or the perpetuation of the dual-taxation scheme; (d) an Order directing payment of the Escrowed Funds (or at least 8.8 mills) to Plaintiff and the members of the putative class; and (e) for further relief.

PARTIES, JURISDICTION, AND VENUE

6. Plaintiff is a taxpayer, a resident, and a citizen of Gardendale and the County.

7. Gardendale is a municipality contained within Jefferson County, Alabama and organized and existing under Alabama law.

8. The County is a political subdivision of the State of Alabama.

9. Smallwood is the Tax Collector of the County, charged by law with the legal duty of collecting the subject taxes.

10. The Court has subject matter jurisdiction over the claims alleged in this lawsuit and the parties thereto.

11. Venue is proper in this court under *Ala. Code* § 6-3-11.

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action on behalf of himself and a class of persons defined as follows: All persons, firms, or entities who or which paid, or who or which will pay at any time

up through the date of final judgment in this lawsuit, the County School Tax and the Municipal Taxes on property situated in Gardendale for the tax years 2014 and following.

13. The exact number of the members the Class (the “Members”) is not known, but it is believed to be in the thousands of persons and entities. Therefore, the number of individual members of the Class is so extensive that individual joinder is impracticable.

14. There are common questions of law or fact shared by the Plaintiff’s claims and the claims of the members of the Class. In fact, each Member’s claim is identical to one another and to the Plaintiff’s claims: that either the Municipal Taxes or the County School Tax was illegal in tax years 2014 and following, and one or the other remains so today.

15. The claims of Plaintiff are typical of the claims of the Members. The dispositive issues with respect to Plaintiff’s claims are the same as the issues governing the claims of the Members, and Plaintiff is not subject to unique defenses.

16. Plaintiff and chosen Class Counsel will adequately and fairly protect the interests of the Members, and there is no conflict of interest among groups of Members, or between Plaintiff or Class Counsel and the Members.

17. The elements of Rule 23(b)(1)(A) are satisfied in this case. The prosecution of separate actions by or against members of the Class would create a risk of inconsistent adjudications with respect to such persons which would establish incompatible standards of conduct for the party opposing the class. Indeed, equal protection and due process concerns require that the taxing authorities (Gardendale and the County) not be subjected to incompatible standards of conduct with respect to enforcement of taxing laws.

18. The elements of Rule 23(b)(2) are also satisfied. Both Gardendale and the County have acted, and intend to act, on grounds generally applicable to the Class as a whole, thereby

making appropriate final injunctive or declaratory relief with respect to the enforcement of the Municipal Taxes and/or the County School Tax as against the Members.

FACTUAL ALLEGATIONS

19. Gardendale began imposing the Municipal Taxes for the 2014 tax year. Plaintiff and the Members have been subjected to both the Municipal Taxes and the County School Tax since tax year 2014. Plaintiff and the Members continue to be subjected to both the Municipal Taxes and the County School Tax.

20. Both the enabling Ordinances passed by Gardendale, for both 5-mill Municipal Taxes, and the ballots used in the referendum on the portion of the 5-mill Municipal Tax authorized and required by Section 216.04, specified that all proceeds of the Municipal Taxes would be used for public school purposes. They have not been so used: Gardendale has not appropriated or used any of the money collected under the Municipal Tax since it began being collected, but rather is holding those monies. And now, they cannot be used for that purpose, because Gardendale is legally prohibited from operating public schools.

21. School-aged children attending public schools in Gardendale attend public schools operated by JeffCo BOE. Gardendale has not formed a school district, nor does it directly or indirectly operate a school system recognized by law for the education of residents.

COUNT ONE – AGAINST GARDENDALE FOR ILLEGALITY OF THE MUNICIPAL TAXES

22. Plaintiff realleges and adopts by reference all prior allegations of the Complaint, as if set forth fully herein.

23. Gardendale's imposition of both the Section 216 portion and the Section 216.04 portions of the Municipal Taxes are illegal. Both 5-mill taxes were levied and collected solely for the purposes of funding Gardendale's putative public schools. Gardendale is now legally

prohibited from forming a school district or operating any schools. Thus, Gardendale has no authority to impose the Municipal Taxes. Therefore, all 10 mills of the Municipal Taxes are illegal because they are being levied and collected (and have been so) for an illegal purpose.

24. Alternatively, Gardendale cannot lawfully use its taxing authority to displace the County's authority, under Local Amendment 14, to impose the County School Tax, when it is the JeffCo BOE, and not Gardendale, which has at all times been educating the school-aged students of Gardendale. Therefore, at least 8.8 mills of Gardendale's Municipal Taxes are illegal. At all times, it has been the JeffCo BOE – not Gardendale – which has been providing public education services to school-aged children in Gardendale. Under the circumstances, the proper construction of Local Amendment 14 would require Gardendale to refund 8.8 mills of the Municipal Taxes, and for Gardendale to be enjoined from further collection of 8.8 mills of its Municipal Taxes, given the legal prohibition on Gardendale from forming a school district or operating public schools.

25. As a result, Gardendale's imposition of the Municipal Taxes is without legal basis and is contrary to law.

WHEREFORE, Plaintiff requests that the Court issue the following relief against Gardendale for himself and the Members, after certification of a class including the Members:

(a) a declaratory judgment that the Municipal Taxes, or at least 8.8 mills of them, are illegal under Alabama law;

(b) an injunction preliminarily requiring that Gardendale pay into the Court all of the Escrowed Funds, pending the Court's adjudication of this case;

(c) an injunction prohibiting Gardendale from imposing the Municipal Taxes, or at least 8.8 mills of them;

(d) upon adjudication of this dispute, an Order directing payment of the Escrowed Funds to Plaintiff and the members of the putative class;

(e) an Order directing payment of attorneys' fees and reasonable expenses and costs to Plaintiff's counsel; and

(f) for such further relief as may be just and equitable or to which Plaintiff might otherwise be entitled.

**COUNT TWO – AGAINST THE COUNTY FOR
ILLEGALITY OF THE COUNTY SCHOOL TAX**

26. Plaintiff realleges and adopts by reference all prior allegations of the Complaint, as if set forth fully herein.

27. This Count Two is pleaded in the alternative to Count One.

28. Local Amendment 14 on its face requires that the County offset its County School Tax by the amount of any Municipal Tax lawfully collected. Specifically, sentence two of Local Amendment 14 states that the County's power to tax is circumscribed as follows:

provided that in any incorporated municipality where special or additional taxes are being levied and collected for public school purposes, including the servicing of debts incurred for public schools, the additional tax herein provided for shall be reduced by the amount of such special or additional municipal public school taxes in the corporate limits where such special or additional municipal public school taxes are being levied and collected and during the time such taxes are levied and collected

29. If Gardendale has the legal authority to impose Section 216 or section 216.04 taxes for public school purposes, then the County, since tax year 2014 and continuing to the present, has lacked any legal authority to impose its 8.8 mill *ad valorem* tax, the County Schools Tax, under Local Amendment 14. This is so because the County would have lacked any authority to impose the County School Tax up to the 10-mill Municipal Taxes imposed under Section 216, because both the Section 216 and Section 216.04 Municipal Taxes were specifically designated for

Gardendale's public school purposes - which would thus require a complete offsetting of the 8.8-mill County School Tax.

30. If the Court determines that Gardendale should not be enjoined from levying and collecting the Municipal Taxes, then the County must be required (a) to refund all 8.8 mills of the County School Tax during the tax years 2014 and following, and (b) to be enjoined from further collection of the County School Tax.

WHEREFORE, in the event the Court rules against Plaintiff and the Members as to Count One, Plaintiff requests that the Court enter an Order providing the following relief to Plaintiff and the Members, after certification of a class including the Members:

(a) a declaratory judgment that the dual imposition of the County School Tax and the Municipal Taxes has been and continues to be illegal under Alabama law;

(b) an injunction preliminarily requiring that the County pay into the Court all of the Escrowed Funds, or, in the alternative, at least such amount representing 8.8 mills of tax collections, pending the Court's adjudication of this case;

(c) an injunction prohibiting the County from imposing the County School Tax;

(d) upon adjudication of this dispute, an Order directing payment of the Escrowed Funds, or at least such amount representing 8.8 mills of tax collections, to Plaintiff and the members of the putative class;

(e) an Order directing payment of attorneys' fees and reasonable expenses and costs to Plaintiff's counsel; and

(f) for such further relief as may be just and equitable or to which Plaintiff might otherwise be entitled.

/s/ Wilson F. Green
Attorney for Plaintiff

OF COUNSEL:

James E. Fleenor, Jr.

Wilson F. Green

Fleenor & Green LLP

1657 McFarland Blvd. N., Ste. G2A

Tuscaloosa, Alabama 35406

(205) 722-1018

wgreen@fleenorgreen.com

SERVE DEFENDANTS BY CERTIFIED MAIL AS FOLLOWS:

City of Gardendale, Alabama
c/o Melissa Honeycutt, City Clerk
925 Main Street
Gardendale, AL 35071

Jefferson County, Alabama
c/o Tony Petelos, County Manager
Room 251, Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. N.
Birmingham, AL 35203

-and-

Jefferson County, Alabama
c/o Theo Lawson, County Attorney
Room 280, Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. North
Birmingham, AL 35203

J.T. Smallwood, Tax Collector
c/o Theo Lawson, County Attorney
Room 280, Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. North
Birmingham, AL 35203

Pursuant to *Ala. Code* § 6-6-227, service is being effected upon the Attorney General by certified mail as follows:

Steve Marshall
Attorney General, State of Alabama
Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36130-0152

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 THE CITY OF GARDENDALE, ALABAMA;)
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**FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION
TO DEFENDANT CITY OF GARDENDALE**

Pursuant to *Ala. R. Civ. P.* 33 and 34, Plaintiff requests that Defendant City of Gardendale, Alabama respond to the following:

1. Produce all documents relating in any way to the City of Gardendale’s collection of the Municipal Taxes, as defined in the Complaint. This request includes, without limitation, all documents relating to the amount of collections received in each year from the inception of the Municipal Taxes to the present; the account(s) into which such collections were or have been deposited (including ledgers); and the current account(s) in which those deposits are held (including ledgers).
2. Produce all documents relating in any way to the City of Gardendale’s expenditures of the Municipal Taxes, as defined in the Complaint. This request

includes, but is not limited to, all payees, amounts and dates of payments, the purpose(s) for such payments.

3. Provide an accounting of all monies collected in Municipal Taxes and expenditures of Municipal Taxes from January 1, 2014 to the present.

/s/ Wilson F. Green
Attorney for Plaintiff

OF COUNSEL:

James E. Fleenor, Jr.

Wilson F. Green

Fleenor & Green LLP

1657 McFarland Blvd. N., Ste. G2A

Tuscaloosa, Alabama 35406

(205) 722-1018

wgreen@fleenorgreen.com

SERVE WITH SUMMONS AND COMPLAINT