

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

LENA SUTTON, on behalf of)
herself and those similarly situated)
as described below,)

Plaintiff,)

v.) **CIVIL ACTION NO.:** _____

STEVE MARSHALL in his official)
capacity as the Attorney General of)
the State of Alabama,)

Defendant.)

CLASS ACTION COMPLAINT

Plaintiff Lena Sutton states the following as to her Complaint against Steve Marshall, in his official capacity as the Attorney General of the State of Alabama¹:

I. PARTIES

1. Lena Sutton is over the age of nineteen (19), and is a resident of Autauga County, Alabama. At the time of the incident made the basis of this action, she was living in Cherokee County, Alabama.

2. Defendant Steve Marshall in his official capacity as the Attorney General of the State of Alabama is the chief law enforcement officer of the State of

¹ When “State of Alabama,” “the State,” “State” are used herein, Mr. Marshall, in his official capacity, is included in the reference.

Alabama, subject to suit for prospective injunctive relief under 42 U.S.C. §1983. Seminole Tribe of Fla. V. Fla., 517 U.S. 44, 73 (1995).

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this case under 28 U.S.C. § 1331, Federal Question jurisdiction, because the case is a civil rights lawsuit brought pursuant to 47 U.S.C. § 1983, for violation of the Due Process clause of the Fourteenth Amendment to the United States Constitution.

4. Part of the relief requested herein is an injunction enjoining unconstitutional state action. The law allows a § 1983 action to go forward against a state action to enjoin unconstitutional activity.

5. Actions brought under 42 U.S.C. § 1983 to enjoin state courts are not prohibited by the anti-injunction statute, 28 U.S.C. § 2283, because they are an “expressly authorized” exception to the ban on federal injunction of state court proceedings. Mitcham v. Foster, 497 U.S. 225 (1972).

III. BACKGROUND AND INTRODUCTION

A. Alabama's Civil Forfeiture Statute.

6. The Alabama Uniform Controlled Substance Act, Ala. Code 20-2-1 (1975), *et. seq.*, contains a section providing for the forfeiture, not only of controlled substances, but of , “all monies . . . intended to be furnished by any person in exchange for a controlled substance . . . [or] used or intended to be used to facilitate any violation of any law of this section concerning controlled substances . . .” Ala. § 20-2-93 (1975). (“The Civil Forfeiture Act”) In addition to the forfeiture of property or cash connected to a transaction involving controlled substances, the Civil Forfeiture Act provides for the forfeiture of vehicles or conveyances used or intended to be used to transport, or in any way facilitate, a transaction in violation of the Controlled Substances Act, Ala, Code § 20-2-93 (1975).

7. The Civil Forfeiture Act provides for the seizure of property used or intended to be used in the commission of violations of the Controlled Substances Act “upon process issued by any court having jurisdiction over the property.” Ala. Code § 20-2-93(b)(1975). The Act, however, provides that property may be seized without process if the seizure is incident to an arrest or a search under a search warrant or an inspection, . . . the property has been the subject of a prior judgment in favor of the state for a criminal injunction . . . [there is] probable cause to believe that the property is . . . dangerous, or probably cause to believe that the property was

used or is intended to be used in violation of the Alabama Controlled Substances Act. Ala. Code § 20-2-93(b).

8. The Civil Forfeiture Act states that seized property is not even subject to a replevin action, but “is deemed to be in the custody of the state, county, or municipal law enforcement agency subject only to orders and judgment of the court having jurisdiction over the forfeiture proceedings.” Ala. Code § 20-2-93(d). In other words, those who have had their property seized have no access to their property, or ability to replevin or re-acquire their property, other than to defend an action brought against them through the civil litigation process, which could take months while the defendants have been deprived of their property.

9. Not only is property seized without any process, but it, as is this case with the named plaintiff, the owner of the property was not the subject of the arrest. The statute puts the burden on the unafflicted person to prove he or she had no connection to the crime. The statute states, “An owners’ or bona fide lienholders’ in any type of property other than real property and fixtures shall be forfeited under this section until the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner’s or lienholder’s knowledge or consent and that the owner could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use.” Ala. Code. 20-2-93(h). In

short, there is a seizure, and in order for one not even charged with a crime to get his or her property back, the burden is placed on the property owner to prove he or she had no involvement.

10. While statistics of the actual amounts seized, statewide, are not readily available; in 2014, in fourteen counties according to the Southern Poverty Law Center, the courts awarded over \$2,100,000 in cash to various law enforcement agencies, along with 405 weapons and 119 vehicles, which were presumably sold, and the monies sent to the general fund of the jurisdictions of award.

11. In approximately 25% of the 2014 civil forfeiture cases studied by the Southern Poverty Law Center, criminal charges were not brought against the owner of the property.

12. The money collection in civil forfeiture actions in Alabama, per the statute, are awarded by order of the court, “and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which respective agency or department contributed to the police work resulting in the seizure.” Ala. Code § 20-2-93(e)(2).

13. The result of the forfeiture and the divvying up of the proceeds for civil forfeiture actions is that the law enforcement entities in charge of the forfeiture actions have a direct financial stake in the civil forfeiture action. The state district attorneys' offices often take a percentage of the money awarded in civil forfeiture actions they bring, and the study cited above reports that 42% of the proceeds from civil forfeitures went to police departments. This is "policing for profit," where police personnel are incentivized to seize property, knowing much of it will be forfeited on default, because it ends up in the department's coffers.

14. All of this is done with no process whatsoever upon seizure, and without any requirement that the owner of the property be convicted or even charged with a crime.

15. The State need not prove the owner used the property in the commission of a crime to seize property; or that the owner was convicted of a crime; or that the owner is even charged with a crime. The property is seized immediately, and subject to the grist of the civil forfeiture action mill.

16. A system has been created whereby the State of Alabama, and its local and municipal agents doing the policing, seizes property, and the only process undertaken is the institution of a civil forfeiture action against the property and its owners.

17. The only recourse one who's property has been seized is to defend that civil action. However, even if successful in defending that civil action, the following are true: (1) the Plaintiff Class members are deprived of their property during the pendency of the action; (2) in order to successfully defend the civil forfeiture action, the Plaintiff Class has to hire counsel and pay counsel to recover assets taken from them in the initial seizure; and (3) those assets are originally seized without any process.

18. The practices have been held to be subject to scrutiny under the 4th, 8th and 14th Amendments to the Constitution, and failing to meet basic standards of due process.

IV. FACTS OF THE CASE

19. In the spring of 2019, Plaintiff Lena Sutton was separated from her spouse and found herself having to find a new place to live.

21. Her funds were limited due to her domestic situation, and she ended up relying on a friend, Roger David Mize, for a place to stay, temporarily, until she could get herself back on her feet.

22. On or about February 20, 2018, Ms. Sutton told Mr. Mize that her car needed an oil change. Mr. Mize told Ms. Sutton that he could do it. Ms. Sutton agreed, and Mr. Mize took her car, a 2012 Chevrolet, to get the necessary supplies to perform the oil change.

23. Either on the way to or back from the auto parts store, Mr. Mize picked up Tracy Walker. Mr. Mize was pulled over by the Leesburg Police Department for speeding.

24. During the traffic stop, Mr. Mize and the vehicle were searched, and a trafficking sized amount of methamphetamine was discovered.

25. Mr. Mize and Ms. Walker were arrested and charged with trafficking in a controlled substance.

26. Ms. Sutton did not know that Mr. Mize had methamphetamine on his person while making the trip, and had no knowledge of any of his actions regarding methamphetamine.

27. Ms. Sutton has not been charged with any crime.

28. Ms. Sutton has not been charged with a crime, but her vehicle was seized on the day of Mr. Mize's arrest. She has not had her vehicle since February 20, 2019.

29. Not only has Ms. Sutton been deprived of her vehicle, but she has been given no opportunity to present any case that she did not know her vehicle was going to be used in connection with drug trafficking.

30. Under Alabama's Civil forfeiture statute, Ms. Sutton's only chance to redeem her vehicle is to contest the forfeiture action and to retain her property, she has to prove, under Ala. Code § 20-2-93, that she had no knowledge of the crime, and could not have prevented the crime. However, she is not versed in the law, and even if she were to prevail, she would pay legal fees to get back a car taken from her without any proof of her knowledge of its use in a crime.

V. CLASS ALLEGATIONS

31. Class Definition: Pursuant to Fed.R.Civ.P. 23(a), (b)(1), and (b)(2), Plaintiff brings this action on behalf of herself and all others similarly situated, as members of the proposed Plaintiff Class.

32. Numerosity: The members of each class and subclass are so numerous that their individual joinder would be impracticable in that: (a) the Class includes at least hundreds of individual members; (b) the precise number of Class members and their identities are unknown to Plaintiffs, but are available through public records, and can easily be determined through discovery; (c) it would be impractical and a

waste of judicial resources for each of the at least hundreds of individual class members to be individually represented in separate actions; and (d) it is not economically feasible for those class members to file individual actions.

33. Commonality/Predominance: Common questions of law and fact predominate over any questions affecting only individual class members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether ex parte seizures of property, without a prompt hearing, are violations of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
- b. Whether it is a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution for the State and its local law enforcement agents to prosecute civil forfeiture actions when they have a direct stake in the outcome of those cases.
- c. Whether it is a violation of the 4th and 8th Amendments, and Due Process Clause of the Fourteenth Amendment of the United States Constitution for property to be seized without providing a prompt hearing at which time the State and its local law enforcement agents must show some exigency for the seizure of property.
- d. Whether it is a violation of the 4th, 8th, and 14th Amendments to seize the property of one who has not been charged with a crime, and force them, under Ala. Code. § 20-2-93(h) to prove they did not have knowledge of the crime, and could not have prevented the crime.

- e. Whether Ala. Code § 20-2-93(1975), is unconstitutional because it does not provide for a meaningful, prompt hearing after property has been seized, and only calls for the litigation of a civil forfeiture under the ordinary Rules of Civil Procedure.
- f. Whether it is a violation of the 8th Amendment's prohibition against excessive fines for the state to seize the property of someone not even charged with a crime.

34. Typicality: Plaintiff is typical of the claims of the class members. Plaintiff and all class members have been injured by the same wrongful practices. Plaintiff's claim arises out of the same practices and course of conduct that give rise to the claims of the class, and are based on the same legal theories for the class.

35. Adequacy: Plaintiff will fully and adequately assert and protect the interests of the class. Plaintiff has counsel experienced in class actions and complex mass tort litigation. Neither Plaintiff nor counsel have interests contrary to or conflicting with the interests of the class or subclasses.

36. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is large, the individual damage suffered by each, in many cases is too small to warrant the expense of individual lawsuits. The court system would be unreasonably burdened by the number of cases that would be filed if as a class action if not certified.

37. Plaintiff does not anticipate any difficulties in the management of this litigation management of this litigation.

38. The State and its local law enforcement agents have acted on grounds generally noticeable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole proper.

COUNT I

(Failing to Provide Notice and a Meaningful Hearing at a Meaningful Time Violates Fourth Amendment and the Due Process Claims of the Fourteenth Amendment)

39. Plaintiff incorporates by reference, as if set forth fully herein paragraphs 1-38 above.

40. This claim is brought pursuant to 42 U.S.C. § 1983, which gives persons deprived of Constitutional rights by one acting under color of state law the right to bring a civil action to vindicate those rights.

41. Under the practices of the State of Alabama as executed by Attorney General Marshall, Ms. Sutton and the Class Members first learn that their property is threatened when their property is seized during an arrest.

42. The State and its agent local and municipal law enforcement agents thereby have seized the property of Ms. Sutton and the Class members with no meaningful opportunity to be heard.

43. It is the policy and practice of local and state law enforcement to seize property without providing any evidence that the property must be preserved for civil forfeiture, or that providing notice will jeopardize the ability of law enforcement to effectuate civil forfeiture.

44. It is the policy and practice of the State and its local and municipal law enforcement agents to seize personal and real property without proffering any particular evidence of exigent circumstances as required by U.S. v. James Daniel Good Real Property, 510 U.S. 43 (1993).

45. Indeed, in order for a seizure to pass due process muster, there must be an “extraordinary situation [] where some valid governmental interest is at stake that justifies postponing the hearing until after the event.” James Daniel Good Real Property, 510 U.S. at 53.

46. In the case of Ms. Sutton, there is no governmental interest in her automobile that would outweigh her own interest in having her car.

47. It is the policy of the State of Alabama and its agents to seize vehicles, cash, real property, and any other property, ex parte without proffering any evidence, without any notice of hearing, and without any evidence that a temporary restraining order restricting transfer of the property or other less restrictive means would be insufficient to protect the State’s interest during the pendency of a civil forfeiture proceeding.

48. The policy of seizing property first without providing a meaningful opportunity to be heard violates the Furth Amendment, as an illegal search, and Due Process Clause of the Fourteenth Amendment.

49. As a direct and proximate result the actions of the State, pursuant to the Alabama Civil Forfeiture Act, Plaintiff Sutton and the members of the plaintiff class have suffered irreparable injury to their constitutional rights, including the harshness of being deprived of the sole means of transportation.

50. Declaratory and injunctive relief, as outlined below, is necessary to remedy the seizure of Plaintiffs', and Plaintiff Class's, property without notice or a hearing. Without appropriate declaratory and injunctive relief, the State is unconstitutional policies and practice will continue.

COUNT II
**(Failing to Provide an Adequate, Prompt, Post-Deprivation
Hearing Violates the Fourth Amendment and
the Due Process Clause of the Fourteenth Amendment)**

51. Plaintiff incorporates by reference, as if fully set forth herein, paragraphs 1-50 above.

52. This claim is brought pursuant to 42 U.S.C. § 1983, which gives persons deprived of Constitutional rights by one acting under color of state law the right to bring a civil action to vindicate those rights.

53. After seizing or restraining property, the State and its agents have failed to provide Plaintiffs and the Class with a prompt hearing at which they would be able to challenge, before a neutral arbiter, the basis for the seizure, and/or indefinite retention of their property, particularly without ever being charged with a crime, pending alternate determination on the merits of whether the property should be forfeited.

54. For all practical purposes, the State effects a temporary restraining order as to the property without meeting the elements required for a temporary restraining order: i.e., a clear pleading showing that irreparable harm will result to the State if the ex parte seizure is not effectuated; a likelihood of success on the merits; and the posting of security.

55. This action continues, and will continue, unless this Court grants the relief requested.

56. The State has a policy and practice of seizing property indefinitely for civil forfeiture when it knows, or should know, that there is no meaningful opportunity to contest the seizure at a meaningful time before an ultimate hearing on the merits of the forfeiture, which usually takes months.

57. The State knows, or should know, that the costs associated with defending a civil forfeiture action, which could take months, often outweighs the

value of the property seized, and yet does nothing to provide a meaningful hearing at a meaningful time after seizure.

58. The State's policy of initiating civil forfeiture proceedings against seized or restrained property where it knows or should reasonably know that there is no meaningful opportunity to contest the seizure or restraint at a meaningful time before the ultimate hearing on the merits of the forfeiture is violation of the Fourth Amendment as an illegal seizure, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

59. The process afforded defendants in civil forfeiture proceedings does not provide a meaningful means to contest the deprivation of property at a meaningful time. Even if a civil forfeiture action is filed within weeks of the ex parte deprivation of property, civil forfeiture litigation then takes months to conclude, all the while depriving defendants, many of whom are not ever charged with a crime, not to mention convicted, of their property, and making it unsalable in the meantime.

60. As a direct and proximate result of the actions of the State, through Attorney General Marshall and its local and municipal law enforcement agents, Plaintiff and the plaintive Class have suffered irreparable harm to their constitutional rights, including being deprived of their property without notice or an opportunity to be heard.

61. Declaratory and injunctive relief is necessary. Without appropriate declaratory and injunctive relief, the State's unconstitutional policies and practices will continue.

COUNT III
**(Having Local Law Enforcement Agencies Prosecuting
Civil Forfeiture Proceedings Violates the Due Process
Clause of the Fourteenth Amendment)**

62. Plaintiff incorporates by reference, as if set forth fully herein, paragraphs 1-61 above.

63. This claim is brought pursuant to 42 U.S.C. § 1983, which gives persons deprived of Constitutional rights by one acting under color of state law the right to bring a civil action to vindicate those rights.

64. The State, through Attorney General Marshall, and its local law enforcement agents, directly prosecutes civil forfeiture actions, including making determinations whether to seize property and file the action at all, and making default determinations.

65. The State and its local agents have a direct financial interest in the proceedings because the bounty of civil forfeiture actions fund law enforcement at the State and local level. This is a violation of substantive Due Process under the Fourteenth Amendment to the United States Constitution.

66. Declaratory and injunctive relief is necessary to correct the State and its local agents' unconstitutional conduct of having those with a direct financial

interest in the outcome of the proceedings prosecute those proceedings. Without appropriate declaratory and injunctive relief, the state's unconstitutional policies and practices will continue.

COUNT IV
**(Violation of the 8th Amendment's Prohibition
Against Excessive Fines)**

67. This claim is brought pursuant to 42 U.S.C. § 1983, which gives persons deprived of constitutional rights by one acting under color of state law the right to bring a civil action to undercut those rights.

68. Ms. Sutton and the Class members who were not charged with a crime have had their property seized and retained without due process.

69. They have been fined by the State in two ways: (1) their property has been seized, so even if they are able to get this property back through the civil forfeiture action, they have been deprived of their property in the meantime; and (2) they have to hire legal counsel and pay to prove they had no connection to the crime.

70. Since Ms. Sutton and the Plaintiff Class have not ever been charged with a crime, this forfeiture, even if brief, is by definition excessive under the 8th Amendment to the Constitution of the United States.

71. Declaratory and injunctive relief, as outlined below, is necessary to remedy the seizure and Plaintiff and Plaintiff Class's property without being charged

with a crime. Without appropriate declaratory and injunctive relief, the Stat's unconstitutional practices will continue.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests, on behalf of herself and all others similarly situated, the following relief:

1. An order certifying this action as a class action under Fed.R.Civ.P. 23(b)(2);
2. Entry of judgment declaring the following unconstitutional under the Due Process clause of the Fourteenth Amendment.
 - a. The practice of the State and its local law enforcement agents seizing real and personal property, and cash, without any evidence of exigent circumstances or necessity;
 - b. The State and its local law enforcement agents' practice of targeting the presence of drugs alone as an exigent circumstance;
 - c. The State and its local law enforcement agents' policy and practice of failing to provide adequate and prompt post-deprivation hearings to individuals whose property has been seized and retained;
 - d. The State and its local law enforcement agents' practice of retaining all seized property and its proceeds;
 - e. The States and its' local law enforcement agents' policy and practice of having those with a direct financial interest in the outcome of civil forfeiture proceedings control these proceedings.

3. For entry of judgment declaring the State liable for the above-described unconstitutional practices and policies.
4. For entry of preliminary and permanent injunctions prohibiting the State from engaging in the above-described policies and practices.
5. For entry of judgment declaring Ala. Code § 20-2-93(b) and (c) (1975) unconstitutional, to the extent they foreclose a meaningful hearing at a meaningful time relative to the seizure of property.
6. For entry of judgment declaring Ala. Code § 20-2-83(h) unconstitutional to the extent they require owners of seized property to prove they had no connection to the crime in order to have their property returned to them.
7. For entry of judgment requiring the State and its local law enforcement agents to:
 - a. dismiss the civil forfeiture action against named Plaintiff Lena Sutton;
 - b: restitution in the form of the return of all property seized from the named Plaintiff and all Class Members
 - c. dismiss all civil forfeiture actions brought against all Class Members.
8. An award of attorneys' fees, costs, and expenses of this action pursuant to 42 U.S.C. §1988(b).

JURY DEMAND

Plaintiff demands a trial by struck jury on all issues so triable.

/s/ Brian M. Clark _____
Brian M. Clark
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