

3. Although African Americans constitute approximately 23% of Houston County's population, and 29% of Henry County's population, they are routinely intentionally excluded from or given only token representation in serious felony cases, principally capital cases, in Houston and Henry Counties.

4. Because of the actions of Valeska and the Assistant District Attorneys acting under his direction and supervision, the rights, privileges, and immunities of the Plaintiffs as secured by 42 U.S.C. § 1983, the Equal Protection Clause of the United States Constitution and Sections 1 and 22 of the State of Alabama Constitution, the federal Civil Rights Act of 1875, as well as the statutory and common law of the State of Alabama, have been intentionally violated for which Plaintiffs are entitled to relief.

5. Plaintiffs, as class representatives, seek declaratory relief and such further relief as may be necessary, pursuant to 28 U.S.C. §§ 2201 and 2202, and injunctive relief from these serious constitutional and statutory violations.

6. Plaintiffs, as class representatives, seek attorneys' fees pursuant to 42 U.S.C. § 1988 against Defendants.

JURISDICTION AND VENUE

7. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, the United States Constitution, 18 U.S.C. § 243, the Alabama Constitution, and the statutory and common law of the State of Alabama.

8. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 because this action is based on Defendants' intentional violations of the rights, privileges and immunities secured to Plaintiffs by 42 U.S.C. § 1983, the Equal Protection Clause

of the Fourteenth Amendment to the United States Constitution, and the federal Civil Rights Act of 1875.

9. This Court may assume supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 because the facts that give rise to the state claims derive from the same nucleus of operative facts as the federal claims.

10. Venue is appropriate under 28 U.S.C. § 1391(b)(2) because a substantial part of the events that give rise to Plaintiffs' claims occurred in this judicial district.

PLAINTIFFS

11. Plaintiff Dennis Hall is a 41-year-old African-American man who has lived in Henry County all his life and works as an automotive mechanic. In 1992, Mr. Hall was called for jury service in the case of *State v. Charles Randall Bush*. Mr. Hall was able, willing, and qualified to serve as a juror in that case. However, Defendants used a peremptory strike to prevent Mr. Hall from serving, along with 80% of the African-American prospective jurors. The Alabama Court of Criminal Appeals subsequently found that Mr. Hall had been illegally excluded from the *Bush* jury on the basis of race in violation of *Batson*. See *Bush v. State*, 615 So. 2d 137, 139-40 (Ala. Crim. App. 1993).

12. Mr. Hall has only been called for jury service once since his illegal removal in *Bush*. He has never served on a jury. He is able, willing, and qualified to serve on a jury when he is called in the future if Defendants cease their practice of illegally striking African Americans on the basis of race.

13. Plaintiff Mary Glanton is a 40-year-old African-American woman who has lived in Houston County her entire life. Ms. Glanton lives in Cottonwood, Alabama. In 1995, Ms. Glanton was called for jury service in the case of *State v. Willie C. McCray*. Ms. Glanton was

able, willing, and qualified to serve as a juror in that case. However, Defendants used a peremptory strike to prevent Ms. Glanton from serving, along with six other African-American prospective jurors. Defendants' stated reason for striking African Americans was to avoid an "all black jury." The Alabama Court of Criminal Appeals subsequently found that Defendants' exercise of peremptory strikes to exclude Ms. Glanton from the *McCray* jury was improperly motivated by race in violation of *Batson*. See *McCray v. State*, 738 So. 2d 911, 912-14 (Ala. Crim. App. 1998).

14. Ms. Glanton has been called for jury service on several occasions but has never served on a jury. Ms. Glanton is able, willing, and qualified to serve on a jury when she is called in the future if Defendants cease their practice of illegally striking African Americans on the basis of race.

15. Plaintiff Samuel Jackson is a 70-year-old African-American man who has lived in Henry County all of his life. Mr. Jackson works as a roofing contractor and runs his own business. In 1987, Mr. Jackson was called for jury service in the case of *State v. Don Grimes*. Mr. Jackson was able, willing, and qualified to serve as a juror in that case. However, Defendants used a peremptory strike to exclude Mr. Jackson from the jury. The United States District Court for the Middle District of Alabama subsequently found that Mr. Jackson had been illegally excluded from the *Grimes* jury on the basis of race in violation of *Batson*. See *Grimes v. Jones*, No. 93-T-215-S, slip op. 10-13 (M.D. Ala. May 23, 1996) (recommendation of magistrate judge, adopted by district court June 12, 1996).

16. Mr. Jackson is able, willing, and qualified to serve on a jury when he is called in the future if Defendants cease their intentional practice of illegally striking African Americans on the basis of race.

17. Plaintiff Vicky Allen Brown is a 35-year-old African-American woman who has lived in Houston County all her life. Ms. Brown has a degree in accounting and works at McLane. In 1995, Ms. Brown was called for jury service in the case of *State v. Willie C. McCray*. Ms. Brown was able, willing, and qualified to serve as a juror in that case. However, Defendants used a peremptory strike to prevent Ms. Brown from serving, along with six other African-American prospective jurors. Defendants' stated reason for striking African Americans was to avoid an "all black jury." The Alabama Court of Criminal Appeals subsequently found that Defendants' exercise of peremptory strikes to exclude Ms. Brown from the *McCray* jury was improperly motivated by race in violation of *Batson*. See *McCray v. State*, 738 So. 2d 911, 912-14 (Ala. Crim. App. 1998).

18. Ms. Brown is able, willing, and qualified to serve on a jury when she is called in the future if Defendants cease their practice of illegally striking African Americans on the basis of race.

19. Plaintiff Freddie B. Russaw is a 57-year-old African-American man, who is now retired after serving twenty-two years in the United States military. Mr. Russaw was born and raised in Houston County in the 1950s and 1960s, at a time when public places were still racially segregated. He has been living in Houston County continuously since 1996, after being stationed in various locations around the world during his military service.

20. In 2004, Mr. Russaw was called for jury service in the case of *State v. Jerry Jerome Smith*. Mr. Russaw was able, willing, and qualified to serve as a juror in that case. However, during *voir dire*, Defendants engaged in disparate questioning, singling out African-American jurors, including Mr. Russaw, for individual questioning about the burden of proof. Of the ten *venire* members targeted, eight were African-American, one was Asian-American, and

only one was White. Although Mr. Russaw responded that he would not require more than proof beyond a reasonable doubt, Defendants later claimed that he had said he would require 100% proof. Defendants then used peremptory strikes to prevent Mr. Russaw and every other African-American *venire* member from serving on the jury. The jury ultimately selected in the *Smith* case was all white. Mr. Russaw immediately felt something was wrong when he saw that all of the African Americans had been excluded from the jury.

21. Mr. Russaw is able, willing, and qualified to serve on a jury when he is called in the future if Defendants cease their practice of illegally striking African Americans on the basis of race.

DEFENDANTS

22. Defendant Valeska is the District Attorney of Houston County and Henry County, Alabama. He has held that office since 1987. His mailing address is: P.O. Box 1632, Dothan, Alabama 36302-1632. He is sued in his official capacity.

23. John Does 1-10 are Assistant District Attorneys who work under the direction and supervision of Valeska (Valeska and John Does 1-10 are referred to collectively herein as "Defendants") in Houston County and Henry County, and who participated with him in the selection of juries in serious felony cases. Their mailing address is: P.O. Box 1632, Dothan, Alabama 36302-1632. They are also sued in their official capacity.

24. At all times and during all incidents relevant to this Complaint, Defendants Valeska and John Does 1-10 are and were acting under the color of state law.

25. At all times and during all incidents relevant to this Complaint, Defendants Valeska and John Does 1-10 are and were acting within their official capacities on behalf of the State of Alabama.

CLASS ACTION ALLEGATIONS

A. The requirements of Fed. R. Civ. P. 23(a) are met.

26. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2). Plaintiffs have suffered injury in-fact including discrimination and unequal treatment on account of their race so as to exclude them from jury service in serious felony cases, principally involving capital offenses, in Houston and Henry Counties contrary to law and in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

27. Plaintiffs thus bring this action on behalf of themselves and the following Class of Persons: All qualified African-American persons who have been or will be called to jury service on serious felony cases, principally involving capital offenses, in Houston County and Henry County, Alabama.

28. The named Plaintiffs have standing to seek such relief because of the adverse effect and impact that such discrimination has had on them individually and on African Americans who reside in Houston and Henry Counties, generally. In order to obtain relief for themselves and the Class Members, the named Plaintiffs will first establish the existence of systemic racial discrimination and unequal treatment under the law as the premise for the relief they seek. Without Class Certification, the same evidence and issues would be subject to litigation in a multitude of individual lawsuits with the attendant risk of inconsistent adjudications and conflicting obligations.

29. At the time of their exclusion, Plaintiffs were qualified, able and ready to serve as jurors.

30. The Plaintiffs are qualified, able, willing and expect to be called for jury service in the future.

31. There is a real and immediate threat of future injury to Plaintiffs and the Class Members because of the Defendants' systemic pattern and/or practice of intentional racial discrimination against African-American citizens who live in Houston County and Henry County, Alabama.

32. By excluding Plaintiffs from jury service, Defendants have intentionally erected a barrier which prevents Plaintiffs and the Class Members from receiving equal treatment under the law.

33. The number of Class Members is so numerous that joinder is impractical. The class consists of thousands of individuals. The burden and expense of individual litigation would make it impossible for most Class Members to obtain redress for the wrongs done by Defendants.

34. There are numerous questions of law and fact that are common to the Class. Common questions of law include, *inter alia*: (a) the proper standards for proving a pattern and/or practice of discrimination by Defendants against qualified African Americans who have been or will be called to jury service in serious felony cases, principally involving capital offenses, in Houston and Henry Counties; (b) whether Defendants have engaged in unlawful, systemic racial discrimination in utilizing their peremptory strikes against African-American jurors in serious felony cases, principally involving capital offenses; and (c) whether Defendants are liable for a continuing, systemic violation of state and federal law including the Alabama and United States Constitutions.

35. Common questions of fact include, *inter alia*: (a) whether Defendants have utilized their peremptory strikes in serious felony cases, principally involving capital offenses, in Houston and Henry Counties in a discriminatory way; (b) whether Defendants' use of their

peremptory strikes to exclude African Americans acts as a barrier to the participation of African Americans on juries in serious felony cases, principally involving capital offenses, in Houston and Henry Counties; and (c) whether Defendants' racially discriminatory peremptory challenges have unfairly disenfranchised qualified African Americans from the opportunity to serve on juries in serious felony cases, principally involving capital offenses.

36. The individual claims of the named Plaintiffs require resolution of the common question of whether Defendants have engaged in a systemic pattern and/or practice of racial discrimination against African-American citizens who live in Houston County and Henry County, Alabama. The named Plaintiffs seek remedies to eliminate the adverse effects and impact of such discrimination in their own lives, and in the lives of the Class Members, and to prevent continued racial discrimination in the future.

37. The claims of the named Plaintiffs are typical of the claims of the Class. The named Plaintiffs assert claims in each of the categories of claims they assert on behalf of the Class Members. The relief they seek for themselves is also typical of the relief sought on behalf of the Class Members.

38. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel known for their experience and skill in class actions and civil rights litigation.

39. Plaintiffs have no interests adverse to those of other Class Members.

40. Plaintiffs do not expect difficulty in managing this lawsuit as a class action, ascertaining a class, or identifying individual Class Members.

B. The requirements of Fed. R. Civ. P. 23(b)(2) are met

41. Certification under Fed. R. Civ. P. 23(b)(2) is warranted because Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

42. Defendants have acted on grounds generally applicable to the named Plaintiffs and the Class Members by adopting and following systemic policies, practices and/or procedures that are discriminatory on the basis of race and act as a barrier to prevent Plaintiffs, and the Class Members, from receiving equal treatment under the law.

43. Defendants' systemic discrimination and refusal to act on nondiscriminatory grounds justify the requested injunctive and declaratory relief with respect to the Class as a whole.

44. Injunctive and declaratory relief are the predominant relief sought in this case. Entitlement to declaratory and injunctive relief flows directly and automatically from proof of systemic racial discrimination by Defendants.

45. Plaintiffs reserve the right to amend or modify the class description with greater specificity or to seek certification of subclasses.

SUBSTANTIVE ALLEGATIONS

46. For decades, Defendants Valeska and John Does 1-10 have engaged in a pervasive and continuing practice of utilizing peremptory challenges to exclude African Americans from jury service altogether or, at a minimum, to greatly reduce and minimize their representation on juries in serious felony cases, principally involving capital offenses, in Houston and Henry Counties.

47. Defendants' racially discriminatory use of peremptory challenges is in direct violation of the United States Supreme Court's decision in *Batson v. Kentucky*, 476 U.S. 79 (1986) as well as *Batson's* progeny.

48. Defendants' racially discriminatory use of peremptory challenges is also in direct violation of the Civil Rights Act of 1875, as codified in 18 U.S.C. § 243, which prohibits officers or other persons charged with any duty in the selection or summoning of jurors from excluding or failing to summon any qualified citizen to jury service on account of race, color, or previous condition of servitude, and provides criminal penalties for violations of Act.

49. The Alabama Court of Criminal Appeals, in a case styled *Roger v. State*, 593 So.2d 141 (Ala. Crim. App. 1991), reversed the felony conviction of Amp Roger, due to reversible error that occurred when the Defendants struck all three African Americans from the jury pool in violation of *Batson*.

50. The Alabama Court of Criminal Appeals, in a case styled *Williams v. State*, 620 So.2d 82 (Ala. Crim. App. 1992), reversed the capital murder conviction of Willie Williams, Jr., due to reversible error that occurred when the Defendants failed to engage in meaningful *voir dire* prior to striking an African American from the jury pool in violation of *Batson*.

51. The Alabama Court of Criminal Appeals, in a case styled *Bush v. State*, 615 So.2d 137 (Ala. Crim. App. 1992), reversed the felony conviction of Charles Randall Bush, due to reversible error that occurred when the Defendants failed to engage in meaningful *voir dire* prior to using peremptory strikes to remove potential African-American jurors from the jury pool, and thus committed a *Batson* violation.

52. The Alabama Court of Criminal Appeals, in a case styled *Andrews v. State*, 624 So.2d 1095 (Ala. Crim. App. 1993), reversed the felony conviction of Joseph Andrews, Jr., due

to reversible error that occurred when the Defendants failed to engage in meaningful *voir dire* prior to using a peremptory strike to remove an African-American juror from the jury pool, and thus committed a *Batson* violation.

53. The Alabama Court of Criminal Appeals, in a case styled *Ashley v. State*, 651 So.2d 1096 (Ala. Crim. App. 1994), reversed the capital murder conviction of Mike Shannon Ashley, due to reversible error that occurred when the Defendants failed to provide any reason for using a peremptory strike to remove an African-American alternate juror, and thus, committed a *Batson* violation.

54. The United States District Court, Middle District of Alabama, in a case styled *Grimes v. State*, 93-cv-215 (M.D. Ala. June 12, 1996), reversed the conviction of Don Grimes, due to reversible error that occurred when the Defendants committed a *Batson* violation.

55. The Alabama Court of Criminal Appeals, in a case styled *McCray v. State*, 738 So.2d 911 (Ala. Crim. App. 1998), reversed the capital murder conviction of Willie C. McCray, due to reversible error that occurred when the Defendants provided race-based reasons for striking African Americans from the jury pool in order to prevent an all African-American jury, and thus, committed a *Batson* violation.

56. Notwithstanding these seven adverse decisions, Defendants, with an intent to discriminate, continue to exclude African Americans from juries in violation of federal and state law.

57. Rather than amending and remedying this unconstitutional practice, Valeska and the attorneys from his Office continue to fabricate race-neutral explanations for their discriminatory challenges.

58. Among the practices Defendants employ to discriminate against African Americans are the following: (a) intentionally targeting African-American jurors for individual questioning designed to bait them into giving answers that Valeska can use to support a supposedly race-neutral reason for the challenge; (b) intentionally failing to follow up such answers with meaningful questions to determine whether a juror's response would legitimately impair their ability to be impartial in a given case; (c) intentionally engaging in disparate treatment and questioning of African-American and White jurors; (d) challenging African-American jurors with an intent to discriminate on the basis of race while simultaneously allowing similarly situated White jurors to serve; (e) intentionally providing false reasons for peremptory challenges that are later contradicted by the record or by further factual investigation.

59. As a result of Defendants' racially discriminatory preemptory challenges, qualified African Americans in Houston County and Henry County remain disproportionately excluded from and underrepresented in felony juries, principally involving capital cases.

60. African Americans are unfairly disenfranchised from the opportunity to serve on juries in felony cases principally involving capital offenses.

61. Defendants' practices unfairly stigmatize the challenged jurors by striking them for reasons which often unfairly disparage and degrade these jurors.

62. According to 2009 United States Census information, there were a total of 72,944 persons age eighteen and older residing in Houston County in 2008, and 12,720 persons age eighteen and older residing in Henry County in 2008.

63. According to 2009 United States Census information, there were 16,996 African Americans age eighteen and older residing in Houston County in 2008. African Americans

constituted 23.3% of the total population of age eighteen and older Houston County residents in 2008.

64. According to 2009 United States Census information, there were 3,727 African Americans residing in Henry County in 2008. African Americans constituted 29.3% of the total population of age eighteen and older Henry County residents in 2008.

65. African Americans represented 24.191% (20,723/85,664) of the total population of Houston and Henry Counties combined.

66. The intentional exclusion of many qualified African-American residents of Houston County and Henry County from jury service has persisted for many years.

67. From 2006 to 2010, the most recent five year period for which data is available, in cases in which the death penalty was imposed that were prosecuted by Defendants, Defendants intentionally used peremptory strikes to remove 82% of the eligible African Americans qualified for jury service. As a result, in every one of these cases, the jury ultimately selected was either all white or had only a single African-American juror. Thus, only 5% of the jurors who served in these cases were African American, even though African Americans make up 24.191% of the population.

68. By excluding qualified African-American residents of Houston County and Henry County from jury service in serious felony cases, principally cases involving capital offenses, Defendants have intentionally erected a barrier which prevents Plaintiffs, and the Class Members, from receiving equal treatment under the law.

69. African Americans are a cognizable group entitled to constitutional protection from racial discrimination in jury selection and service in Houston County and Henry County.

70. Defendants' practice of excluding qualified African Americans from jury service in serious felony cases, especially capital cases, in Houston and Henry Counties causes harm to Plaintiffs and other excluded African-American jurors as well as the entire Houston and Henry County community, especially the African-American community. As the Supreme Court has recognized, "[a] venireperson excluded from jury service because of race suffers a profound personal humiliation heightened by its public character." *Powers v. Ohio*, 499 U.S. 400, 413-14 (1991). Moreover, "[t]he harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice." *Batson v. Kentucky*, 476 U.S. 79, 87 (1986).

71. Plaintiffs and similarly situated African Americans in Houston and Henry Counties who have been or will be excluded from jury service by Defendants' use of peremptory strikes on the basis of race have suffered and continue to suffer these harms because of Defendants continued use of peremptory strikes to exclude African Americans from jury service in serious felony cases, especially capital cases.

COUNT ONE

72. The actions of Defendants Valeska and John Does 1-10, through their pervasive and continuing practice of utilizing peremptory challenges in a discriminatory way to intentionally exclude African Americans from jury service, acting under color of state law, have caused and will continue to cause the selection and creation of juries which under-represent African Americans in Houston and Henry Counties resulting in the exclusion of Plaintiffs and the Class Members from jury service on account of their race thereby depriving them of the

rights, privileges and immunities secured to them by 42 U.S.C. § 1983, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

COUNT TWO

73. The actions of Defendants Valeska and John Does 1-10, through their pervasive and continuing intentional practice of utilizing peremptory challenges in a discriminatory way to exclude African Americans from jury service, have caused and will continue to cause the selection and creation of juries which under-represent African Americans in Houston and Henry Counties resulting in the exclusion of Plaintiffs and the Class Members from jury service on account of their race, thereby violating 18 U.S.C. § 243, the provision of the Civil Rights Act of 1875 that prohibits disqualification of otherwise qualified individuals for service as grand or petit jurors on account of race, color, or previous condition of servitude, and provides criminal penalties for violations of the Act.

COUNT THREE

74. The actions of Defendants Valeska and John Does 1-10, through their pervasive and continuing practice of utilizing peremptory challenges in a discriminatory way to intentionally exclude African Americans from jury service, have caused and will continue to cause the selection and creation of juries which under-represent African Americans in Houston and Henry Counties resulting in the exclusion of Plaintiffs, and the Class Members, from jury service on account of their race thereby violating Plaintiffs' rights under Article I, §§ 1 and 22 of the Alabama Constitution.

COUNT FOUR

75. The actions of Defendants Valeska and John Does 1-10, through their pervasive and continuing practice of intentionally utilizing peremptory challenges in a discriminatory way

to exclude African Americans from jury service, have caused and will continue to cause the selection and creation of juries which under-represent African Americans in Houston and Henry Counties resulting in the exclusion of Plaintiffs, and the Class Members, from jury service on account of their race thereby violating Plaintiffs' rights under §§ 12-16-55 and 12-16-56 of the Code of Alabama and the common law of Alabama.

COUNT FIVE

76. Defendants Valeska and John Does 1-10 are fiscally responsible to Plaintiffs and the Class Members for costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

On the basis of the foregoing, Plaintiffs and the class they represent respectfully request this Court to do the following:

(A) Declare that the policies, practices, acts and omissions of the Defendants described in this Complaint are in violation of the Plaintiffs' rights to the equal protection of the laws and otherwise in violation of the Fourteenth Amendment to the United States Constitution;

(B) Declare that the policies, practices, acts and omissions of the Defendants described in this Complaint are in violation of the Plaintiffs' rights under 18 U.S.C. § 243;

(C) Declare that the policies, practices, acts and omissions of the Defendants described in this Complaint are in violation of Alabama state law and constitutional requirements;

(D) Permanently enjoin Defendants, their officers, agents, employees, and successors in office, as well as those acting in concert and participating with them from subjecting the Plaintiffs and the class they represent to the illegal and unconstitutional practices described in this Complaint;

(E) Require Defendants for four years to collect and maintain data and records regarding:

- (1) the racial makeup of the jury pool in each serious felony case in Houston and Henry Counties, showing such data by case;
- (2) the race of individual jurors stricken both for cause and through use of peremptory challenges in each serious felony case in Houston and Henry Counties, showing such data by case;
- (3) the names of all cases in which *Batson* violations are alleged; and
- (4) the identity of the attorneys involved in each case in which a *Batson* violation is alleged in Houston and Henry Counties by case.

(F) Appoint a monitor for four years to ensure that Defendants remain in compliance with the record collection requirements set forth in Paragraph (E) above;

(G) Require Defendants to file a written report every six months with the monitor who has been appointed with respect to Paragraph (F) above setting forth the data described in Paragraph (E) above;

(H) Provide Plaintiffs' attorneys for four years access to the record collection requirements set forth in Paragraph (E) above;

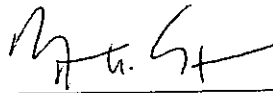
(I) Order that Plaintiffs shall have meaningful access to and monitoring of jury selection in serious felony cases with notice of the empanelling of juries in such cases and an opportunity for oversight and intervention if Defendants' discrimination continues;

(J) Retain jurisdiction of this matter until this Court's Order has been fully implemented;

(K) Award Plaintiffs their reasonable costs and attorneys' fees; and

(L) Grant such other relief as may be just and reasonable.

Respectfully Submitted,



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**Motions for admission pro hac vice forthcoming*

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