

IN THE CIRCUIT COURT OF HALE COUNTY, ALABAMA

**SOUTHERN CENTER FOR
HUMAN RIGHTS,**)
)

**ALABAMA APPLESEED
CENTER FOR LAW AND
JUSTICE,**)
)

Plaintiffs,)
)

v.)

CIVIL ACTION NO. _____

KENNETH ELLIS, in his)
official capacity as Sheriff of)
Hale County,)
)

JIMMY ABBETT, in his)
official capacity as Sheriff of)
Tallapoosa County,)
)

DAVID ABSTON, in his)
official capacity as Sheriff of)
Pickens County,)
)

HAL ALLRED, in his)
official capacity as Sheriff of)
Lamar County,)
)

LOYD ARRINGTON, in his)
official capacity as Sheriff of)
Blount County,)
)

RICHARD BATES, in his)
official capacity as Sheriff of)
Marengo County,)
)

JONATHAN BENISON, in his)
official capacity as Sheriff of)
Greene County,)

RANDY BROCK, in his)
official capacity as Sheriff of)
Conecuh County,)
)
ANDRÉ BRUNSON, in his)
official capacity as Sheriff of)
Macon County,)
)
DAVID COFIELD, in his)
official capacity as Sheriff of)
Randolph County,)
)
TODD ENTREKIN, in his)
official capacity as Sheriff of)
Etowah County,)
)
EARNEST EVANS, in his)
official capacity as Sheriff of)
Wilcox County,)
)
BILL FRANKLIN, in his)
official capacity as Sheriff of)
Elmore County,)
)
MATT GENTRY, in his)
official capacity as Sheriff of)
Cullman County,)
)
DENNIS GREEN, in his)
official capacity as Sheriff of)
Cleburne County,)
)
KENNY HARDEN, in his)
official capacity as Sheriff of)
Butler County,)
)
BRIAN HARRIS, in his)

official capacity as Sheriff of)
Sumter County,)
)
TONY HELMS, in his)
official capacity as Sheriff of)
Geneva County,)
)
RODNEY INGLE, in his)
official capacity as Sheriff of)
Fayette County,)
)
JAY JONES, in his)
official capacity as Sheriff of)
Lee County,)
)
RAY LATHAM, in his)
official capacity as Sheriff of)
Clay County,)
)
SID LOCKHART, in his)
official capacity as Sheriff of)
Chambers County,)
)
SCOTT LOLLEY, in his)
official capacity as Sheriff of)
Choctaw County,)
)
HUEY MACK, in his)
official capacity as Sheriff of)
Baldwin County,)
)
WILLIAM MADDOX, in his)
official capacity as Sheriff of)
Henry County,)
)
DENNIS MEEKS, in his)
official capacity as Sheriff of)
Covington County,)

)
GENE MITCHELL, in his)
official capacity as Sheriff of)
Lawrence County,)
)
TOMMY MOORE, in his)
official capacity as Sheriff of)
Winston County,)
)
RAY NORRIS, in his)
official capacity as Sheriff of)
Clarke County,)
)
SHANNON OLIVER, in his)
official capacity as Sheriff of)
Franklin County,)
)
WALLY OLSON, in his)
official capacity as Sheriff of)
Dale County,)
)
CHUCK PHILLIPS, in his)
official capacity as Sheriff of)
Jackson County,)
)
MICKEY POWELL, in his)
official capacity as Sheriff of)
Crenshaw County,)
)
BUCK RODGERS, in his)
official capacity as Sheriff of)
Bullock County,)
)
JOE SEDINGER, in his)
official capacity as Sheriff of)
Autauga County,)
)
JOHN SHEARON, in his)

official capacity as Sheriff of)
Chilton County,)
)
RICK SINGLETON, in his)
official capacity as Sheriff of)
Lauderdale County,)
)
GROVER SMITH, in his)
official capacity as Sheriff of)
Escambia County,)
)
RICHARD STRINGER, in his)
official capacity as Sheriff of)
Washington County,)
)
TERRY SURLES, in his)
official capacity as Sheriff of)
St. Clair County,)
)
DAVE SUTTON, in his)
official capacity as Sheriff of)
Coffee County,)
)
RUSSELL THOMAS, in his)
official capacity as Sheriff of)
Pike County,)
)
LEROY UPSHAW, in his)
official capacity as Sheriff of)
Barbour County,)
)
JODY WADE, in his)
official capacity as Sheriff of)
Bibb County,)
)
SCOTT WALLS, in his)
official capacity as Sheriff of)
Marshall County,)

)
KEVIN WILLIAMS, in his)
 official capacity as Sheriff of)
 Marion County,)
)
JOHN WILLIAMS, SR., in his)
 official capacity as Sheriff of)
 Lowndes County,)
)
FRANK WILLIAMSON, in his)
 official capacity as Sheriff of)
 Colbert County,)
)
TERRY WILSON, in his)
 official capacity as Sheriff of)
 Coosa County,)
)
 Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Alabama Public Records Law, Ala. Code § 36-12-40, to compel the production of certain public writings held by the 49 Defendants in their official capacities as the Sheriffs of various counties. The Defendant Sheriffs have violated the Alabama Public Records Law by failing to disclose records showing whether--and, if so, by how much--they have personally profited by taking money for feeding inmates in their jails.

2. Sheriffs in Alabama operate county jails and are responsible for feeding the inmates in their custody. The financial arrangements for purchasing food for jail inmates vary between counties.

3. Some Sheriffs in Alabama convert to their own personal use state, municipal, and/or federal funds appropriated or provided by contract or otherwise for the feeding of inmates. These Sheriffs purport to rely on Ala. Code § 36-22-17 (providing that, in certain instances, sheriffs “shall be entitled to keep and retain” the “allowances and amounts received for feeding prisoners”) to justify this practice.

4. Plaintiff Southern Center for Human Rights (SCHR) represents and frequently receives letters from people in jails in counties across Alabama. Many inmates report that the food they are provided is inadequate in quantity or nutritional value, spoiled, or contaminated, such as with insect or rodent droppings, or foreign objects.

5. Plaintiff Alabama Appleseed Center for Law and Justice advocates for data-driven criminal justice reforms. As part of this work, it investigates and engages in advocacy regarding issues affecting people incarcerated in jails in Alabama. In the course of this work, it relies heavily on information obtained pursuant to open records laws.

6. Out of a concern that the practice of some sheriffs of converting jail food funds to their own personal use creates a perverse incentive for them to spend as little as possible on the feeding of inmates, and out of a belief that this practice

constitutes misappropriation of taxpayer monies, SCHR wrote to the Defendant Sheriffs in July 2017, requesting records pursuant to the Alabama Public Records Law, Ala. Code § 36-12-40, showing the amounts of money they or their offices receive for feeding inmates, and the amounts of these funds, if any, which they or their predecessors have “ke[pt] and retain[ed]” for personal use in the past few years. None of the Defendant Sheriffs responded to this letter.

7. SCHR followed up with a second letter in September 2017 reiterating its request. Some of the Defendant Sheriffs did not respond to this letter. Some of the Defendant Sheriffs responded to this letter with identical letters suggesting that SCHR contact the Alabama Department of Finance regarding the amount of money provided to their counties for the feeding of inmates. These Sheriffs did not, however, produce the records within their custody or control showing the amounts they have received and the amounts, if any, they have converted to their own personal use.

8. SCHR sent the Defendant Sheriffs a third letter in November 2017, again reiterating its request. To the Sheriffs who had directed SCHR to contact the Alabama Department of Finance, SCHR explained why this did not constitute an adequate response to the request under the Alabama Public Records Law and the case law interpreting it. This third letter informed the Defendant Sheriffs that if

they did not produce any responsive records by December 1, 2017, SCHR would file suit to obtain them.

9. Alabama Appleaseed also seeks to obtain these records, which are highly pertinent to its ongoing work regarding jails across Alabama, by and through the requests made by SCHR. In addition, Alabama Appleaseed is committed to ensuring that public officials in Alabama comply with their statutory obligations of transparency so that the workings of government can be understood and assessed by advocates, policymakers, and the general public.

10. In furtherance of its efforts to obtain these records, Alabama Appleaseed sent letters to the Defendant Sheriffs in December 2017 jointly with SCHR. These letters reiterated the requests previously made by SCHR and requested additional records regarding the food obtained by the Defendant Sheriffs for feeding inmates in their jails.

11. Although some Sheriffs have complied with the Public Records Law and produced responsive financial records, the Defendant Sheriffs have, to date, failed to produce the requested public writings.

JURISDICTION AND VENUE

12. This is an action arising under the laws of the State of Alabama. *See* Ala. Code § 36-12-40.

13. This Court has jurisdiction pursuant to Ala. Code §§ 12-11-31(1) and 12-11-33(1).

14. Venue is proper in Hale County Circuit Court pursuant to Ala. Code § 6-3-2(b)(3), because Sheriff Ellis is a material defendant and resides there.

15. Joinder of the other named defendants is appropriate pursuant to Alabama Rule of Civil Procedure 20(a) because this complaint asserts against them a right to relief arising out of the same series of transactions or occurrences, and questions of law and fact common to all of them will arise in the action.

PARTIES

16. Plaintiff SCHR is a non-profit corporation organized under the laws of the State of Georgia. SCHR is a civil rights organization that has for decades engaged in litigation and other advocacy on behalf of people incarcerated in jails in Alabama.

17. Plaintiff Alabama Appleseed is a non-profit, non-partisan public organization founded in 1999 whose mission is to achieve justice and equity for all Alabamians. Alabama Appleseed is organized under the laws of the State of Alabama. Its Fair Schools, Safe Communities Campaign focuses on implementing data-driven policies that make Alabama's communities safer while reducing the government's reliance on incarceration, including at both the prison and jail levels.

18. Defendant Kenneth Ellis is the Sheriff of Hale County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Hale County. He resides in his official capacity in Hale County. The actions this lawsuit seeks to compel him to take will occur in Hale County.

19. Defendant Jimmy Abbett is the Sheriff of Tallapoosa County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Tallapoosa County.

20. Defendant David Abston is the Sheriff of Pickens County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Pickens County.

21. Defendant Hal Allred is the Sheriff of Lamar County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Lamar County.

22. Defendant Loyd Arrington is the Sheriff of Blount County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Blount County.

23. Defendant Richard Bates is the Sheriff of Marengo County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Marengo County.

24. Defendant Jonathan Benison is the Sheriff of Greene County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Greene County.

25. Defendant Randy Brock is the Sheriff of Conecuh County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Conecuh County.

26. Defendant André Brunson is the Sheriff of Macon County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Macon County.

27. Defendant David Cofield is the Sheriff of Randolph County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Randolph County.

28. Defendant Todd Entrekin is the Sheriff of Etowah County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Etowah County.

29. Defendant Earnest Evans is the Sheriff of Wilcox County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Wilcox County.

30. Defendant Bill Franklin is the Sheriff of Elmore County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Elmore County.

31. Defendant Matt Gentry is the Sheriff of Cullman County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Cullman County.

32. Defendant Dennis Green is the Sheriff of Cleburne County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Cleburne County.

33. Defendant Kenny Harden is the Sheriff of Butler County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Butler County.

34. Defendant Brian Harris is the Sheriff of Sumter County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Sumter County.

35. Defendant Tony Helms is the Sheriff of Geneva County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Geneva County.

36. Defendant Rodney Ingle is the Sheriff of Fayette County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Fayette County.

37. Defendant Jay Jones is the Sheriff of Lee County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Lee County.

38. Defendant Ray Latham is the Sheriff of Clay County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Clay County.

39. Defendant Sid Lockhart is the Sheriff of Chambers County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Chambers County.

40. Defendant Scott Lolley is the Sheriff of Choctaw County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Choctaw County.

41. Defendant Huey Mack is the Sheriff of Baldwin County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Baldwin County.

42. Defendant William Maddox is the Sheriff of Henry County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Henry County.

43. Defendant Dennis Meeks is the Sheriff of Covington County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Covington County.

44. Defendant Gene Mitchell is the Sheriff of Lawrence County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Lawrence County.

45. Defendant Tommy Moore is the Sheriff of Winston County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Winston County.

46. Defendant Ray Norris is the Sheriff of Clarke County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Clarke County.

47. Defendant Shannon Oliver is the Sheriff of Franklin County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Franklin County.

48. Defendant Wally Olson is the Sheriff of Dale County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Dale County.

49. Defendant Chuck Phillips is the Sheriff of Jackson County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Jackson County.

50. Defendant Mickey Powell is the Sheriff of Crenshaw County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Crenshaw County.

51. Defendant Buck Rodgers is the Sheriff of Bullock County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Bullock County.

52. Defendant Joe Sedinger is the Sheriff of Autauga County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Autauga County.

53. Defendant John Shearon is the Sheriff of Chilton County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Chilton County.

54. Defendant Rick Singleton is the Sheriff of Lauderdale County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Lauderdale County.

55. Defendant Grover Smith is the Sheriff of Escambia County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Escambia County.

56. Defendant Richard Stringer is the Sheriff of Washington County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Washington County.

57. Defendant Terry Surles is the Sheriff of St. Clair County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to St. Clair County.

58. Defendant Dave Sutton is the Sheriff of Coffee County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Coffee County.

59. Defendant Russell Thomas is the Sheriff of Pike County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Pike County.

60. Defendant LeRoy Upshaw is the Sheriff of Barbour County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Barbour County.

61. Defendant Jody Wade is the Sheriff of Bibb County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Bibb County.

62. Defendant Scott Walls is the Sheriff of Marshall County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Marshall County.

63. Defendant Kevin Williams is the Sheriff of Marion County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Marion County.

64. Defendant John Williams, Sr. is the Sheriff of Lowndes County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Lowndes County.

65. Defendant Frank Williamson is the Sheriff of Colbert County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Colbert County.

66. Defendant Terry Wilson is the Sheriff of Coosa County, Alabama. In that capacity, he has possession of and control over the records that Plaintiffs seek pertaining to Coosa County.

STATEMENT OF FACTS

67. In letters dated July 17, 2017, and sent to each of the Defendant Sheriffs, SCHR requested, pursuant to the Alabama Public Records Law, Ala. Code § 36-12-40, “records reflecting the amounts, if any, of funds ‘received for feeding prisoners’ that you or your predecessors in office have ‘ke[pt] and retain[ed]’ since January 1, 2014, pursuant to Ala. Code § 36-22-17.” True copies of these July 17, 2017 letters to the Defendant Sheriffs are attached as Exhibit A (hereinafter, “First ORA Request”).

68. In its First ORA Request, SCHR requested a response from the Defendant Sheriffs within two weeks.

69. Sheriff Mack responded in writing on August 3, 2017, to indicate that it was his “understanding that you have also made this request of the 66 other sheriffs in the State of Alabama,” that he had “referred your letter to Mr. Bobby Timmons, Executive Director of the Alabama Sheriffs Association and its retained legal counsel,” and that “[t]his letter is under review prior to any response being given.” A true copy of this August 3, 2017 letter is attached as Exhibit B.

70. Sheriff Jay Jones called SCHR to state that he was in the process of compiling the requested records and would send them at a later date.

71. Otherwise, SCHR received no response from any of the Defendant Sheriffs to its First ORA Request.

72. Two months after sending its First ORA Request, SCHR reiterated its request in letters dated September 18, 2017, which were sent by certified mail to each of the Defendant Sheriffs. These letters clarified that SCHR was “specifically requesting financial records of all monies received by you or your office or jail for the feeding of people in your custody, from any source (state, county, municipal, and federal), and the amounts of any such funds that you or your predecessors have personally ‘ke[pt] and retain[ed]’ since January 1, 2014.” These letters also explained as follows:

The requested records are plainly public records. The Alabama Supreme Court has long held that the language of Alabama Code § 36-12-40, which requires disclosure of “any public writing,” shall be “liberally construed,” and that there is a “presumption in favor of public disclosure.” *Chambers v. Birmingham News Co.*, 552 So. 2d 854, 856 (Ala. 1989). This presumption is based in the intent of the Legislature and “the policy of this state . . . to advocate open government.” *Id.* at 857.

The Supreme Court has further held that “the party refusing disclosure shall have the burden of proving that the writings or records sought are within an exception and warrant nondisclosure of them.” *Id.* The Court has emphasized that placing the burden of justification on public officials who refuse to disclose records ensures that they are not

free to “pick and choose what they believe the public should be made aware of.” *Id.* Therefore, if you withhold these records, you must cite the specific exemption you believe justifies the refusal to release them.

The letters sent to Sheriffs Mack and Jay Jones were slightly modified, so as to reflect that their communications had been received. True copies of these September 18, 2017 letters are attached as Exhibit C (hereinafter, “Second ORA Request”).

73. In its Second ORA Request, SCHR requested a response from the Defendant Sheriffs by no later than September 29, 2017.

74. On various dates, SCHR received responses to its Second ORA Request from Donald R. Rhea, Esq., counsel to the Alabama Sheriffs Association, on behalf of Sheriffs Abbett, Abston, Allred, Arrington, Bates, Evans, Franklin, Greene, Harden, Helms, Lockhart, Lolley, Maddox, Moore, Olson, Phillips, Sedinger, Singleton, Stringer, Sutton, Thomas, Walls, and Kevin Williams. These letters were essentially identical. They quoted Ala. Code § 36-22-17, and then stated as follows:

Historically, this statute has been authoritatively interpreted as confirming that while the Sheriff is the official responsible for the feeding of prisoners, the Commissions of the respective Counties in the State of Alabama have supervisory authority for that task. See Opinion to the Honorable James E. Turnbach, Etowah County attorney, dated June 14, 1996, A.G. No. 96-00239.

Funds made available for the feeding of prisoners are issued by the State of Alabama through its Department of Finance. See Ala. Code § 14-6-42 (Code 1975) that provides as follows:

Food for prisoners in the county jail shall be paid by the State as follows: There shall be allowed such amount as is actually necessary for food for each prisoner daily, and said amount so allowed shall be \$1.75 per capita. In addition to the above amount, there is hereby conditionally appropriated from the General Fund an amount of \$1.25 per capita.

In order to ascertain and determine the funds provided to [each] County for the feeding of prisoners, I suggest you contact the Alabama Department of Finance in Montgomery, Alabama.

No records were provided in conjunction with these responses, nor did the letters deny that the requested records existed. True copies of these letters are attached as Exhibit D (hereinafter, "First Rhea Response").

75. On various dates, SCHR received responses to its Second ORA Request directly from Sheriffs Mack and Surles. The substance of these responses was essentially the same as that of the First Rhea Response. True copies of these letters are attached as Exhibit E.

76. In a letter dated October 16, 2017, Fletcher D. Green, Esq., the Chilton County Attorney, responded to SCHR's Second ORA Request on behalf of Sheriff Shearon. This letter stated that "should you wish to inspect the records in person, at the Sheriff's Office located in the Chilton County Courthouse in

Clanton, AL, you may do so,” provided contact information for Ms. Becky Gatlin, Financial Clerk for the Chilton County Sheriff’s Office, and suggested contacting her to arrange a time to review the records. A true copy of this October 16, 2017 letter is attached as Exhibit F. Aaron Littman, a staff attorney at SCHR, contacted Ms. Gatlin and arranged for one of SCHR’s paralegals to come to the Chilton County Sheriff’s Office on November 14, 2017.

77. As of November 3, 2017, SCHR had received no response to its Second ORA Request from Sheriffs Benison, Brock, Brunson, Cofield, Ellis, Entrekin, Gentry, Brian Harris, Ingle, Jay Jones, Latham, Meeks, Mitchell, Norris, Oliver, Powell, Rodgers, Smith, Upshaw, Wade, John Williams, Sr., Williamson, or Wilson.

78. Over three months after sending its First ORA Request, and over a month after sending its Second ORA Request, SCHR again reiterated its request in letters dated November 3, 2017, which were sent by certified mail to each of the Defendant Sheriffs from whom SCHR had not yet received a response to its Second ORA Request. These letters explained that if the recipients failed to respond by December 1, 2017, a lawsuit was forthcoming. True copies of these November 3, 2017 letters are attached as Exhibit G (hereinafter, “Third ORA Request”).

79. Also on November 3, 2017, SCHR sent a reply to Mr. Rhea by certified mail regarding the letters he sent on behalf of Sheriffs Abbett, Abston, Allred, Arrington, Bates, Evans, Franklin, Greed, Harden, Helms, Lockhart, Lolley, Maddox, Moor, Olson, Phillips, Sedinger, Stringer, Sutton, Thomas, Walls, and Kevin Williams, with copies to those Defendant Sheriffs. This letter explained as follows:

In [your] letters, you stated that “[i]n order to ascertain and determine the funds provided to [each county] for the feeding of prisoners, I suggest you contact the Alabama Department of Finance in Montgomery, Alabama.” You did not, however, produce any records regarding either (1) the monies received by them or their offices or jails for the feeding of people in their custody, from any source (state, county, municipal, and federal), or (2) the amounts of any such funds that they or their predecessors have personally “ke[pt] and retain[ed]” since January 1, 2014. You also did not deny that any such records exist.

I am requesting any pertinent records *within these Sheriffs’ custody or control*. These are records they are required by Alabama law to make and to keep. *See Stone v. Consol. Pub. Co.*, 404 So. 2d 678, 680-81 (Ala. 1981) (“Code 1975, § 36-12-2, provides in part: ‘All public officers . . . shall correctly make and accurately keep . . . all such books or sets of books, documents, files, papers, letters and copies of letters as at all times shall afford full and detailed information in reference to the activities or business required to be done or carried on by such officer . . . and from which the actual status and condition of such activities and business can be ascertained without extraneous information.’”); *see also id.* at 681 (holding that a public official must disclose, pursuant to Ala. Code § 36-12-40, any “record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens”). Whether

another state agency may possess some records pertinent to these topics is irrelevant to the Sheriffs' obligation to maintain such records and to produce any pertinent records they do maintain in response to my request. Moreover, and incidentally, there is no reason to believe that the Alabama Department of Finance possesses any records showing any monies received by these Sheriffs or their offices or jails for the feeding of people in their custody from any source other than the State, or the amounts of any food funds that they or their predecessors have personally "ke[pt] and retain[ed]" since January 1, 2014.

The requested documents concern the receipt and disbursement of public funds and are plainly public records. The Alabama Supreme Court has long held that the language of Alabama Code § 36-12-40, which requires disclosure of "any public writing," shall be "liberally construed," and that there is a "presumption in favor of public disclosure." *Chambers v. Birmingham News Co.*, 552 So. 2d 854, 856 (Ala. 1989). This presumption is based in the intent of the Legislature and "the policy of this state . . . to advocate open government." *Id.* at 857.

Your letter, which directs me to contact another state agency which you apparently do not represent but fails to either produce the requested records or state that no responsive records exist within your clients' custody or control, constitutes a refusal to disclose without any proffer of justification. The Alabama Supreme Court has held that a "party refusing disclosure shall have the burden of proving that the writings or records sought are within an exception and warrant nondisclosure of them." *Id.* The Court has emphasized that placing the burden of justification on public officials who refuse to disclose records ensures that they are not free to "pick and choose what they believe the public should be made aware of." *Id.*

This letter also explained that if the Defendant Sheriffs represented by Mr. Rhea failed to produce the requested records by December 1, 2017, a lawsuit was forthcoming. A true copy of this November 3, 2017 letter to Mr. Rhea is attached

as Exhibit H (hereinafter, "First Reply to Rhea"). On November 10, 2017, SCHR also acknowledged receipt of a response from Mr. Rhea on behalf of Sheriff Singleton, in a letter a true copy of which is attached as Exhibit I.

80. Also on November 3, 2017, SCHR sent replies by certified mail to the two Defendant Sheriffs--Sheriffs Mack and Surlles--who had themselves sent responses essentially identical to those from Mr. Rhea. The substance of SCHR's replies to these Defendant Sheriffs was essentially the same as that of the First Reply to Rhea; these letters likewise explained that if the recipients failed to produce the requested records by December 1, 2017, a lawsuit was forthcoming. True copies of these November 3, 2017 letters are attached as Exhibit J.

81. On November 7, 2017, after sending Sheriff Ellis its Third ORA Request, SCHR received a response to its Second ORA Request from Christmas Y. Green-Williams, Esq., on behalf of Sheriff Ellis, which was essentially identical to the First Rhea Response. A true copy of this November 7, 2017 letter is attached as Exhibit K. On November 10, 2017, SCHR sent a reply--the substance of which was essentially the same as that of the First Reply to Rhea--to Ms. Green-Williams by certified mail, with a copy to Sheriff Ellis. A true copy of this November 10, 2017 letter is attached as Exhibit L.

82. On November 15, 2017, after sending Sheriff Rodgers its Third ORA Request, SCHR received a response to its Second ORA Request from Sheriff Rodgers. This letter, dated September 28, 2017, was essentially identical to the First Rhea Response; the names of the County and the Sheriff to which it pertained were handwritten into blanks in the form letter. It was written on the letterhead of Mr. Rhea's law firm, but mailed in an envelope listing the Sheriff's Office as the return address. A true copy of this September 28, 2017 letter is attached as Exhibit M. On November 17, 2017, SCHR sent a reply--the substance of which was essentially the same as that of the First Reply to Rhea--to Sheriff Rodgers by certified mail, with a copy to Mr. Rhea. A true copy of this November 17, 2017 letter is attached as Exhibit N.

83. On November 18, 2017, after sending Sheriff Williamson its Third ORA Request, SCHR received a response to this request from Sheriff Williamson. This letter, dated November 9, 2017, was essentially identical to the First Rhea Response. A true copy of this September 28, 2017 letter is attached as Exhibit O. On December 1, 2017, SCHR sent a reply--the substance of which was essentially the same as that of the First Reply to Rhea--to Sheriff Williamson by certified mail. A true copy of this November 17, 2017 letter is attached as Exhibit P.

84. On November 21, 2017, after sending Sheriff Gentry its Third ORA Request, SCHR received a response to this request from Heath E. Meherg, Esq., on behalf of Sheriff Gentry, which was essentially identical to the First Rhea Response. A true copy of this November 21, 2017 letter is attached as Exhibit Q. On December 1, 2017, SCHR sent a reply--the substance of which was essentially the same as that of the First Reply to Rhea--to Mr. Meherg by certified mail, with a copy to Sheriff Gentry. A true copy of this December 1, 2017 letter is attached as Exhibit R.

85. On November 28, 2017, after sending Sheriff Jay Jones its Third ORA Request, SCHR received a response to this request from Sheriff Jones, which stated that “[t]he public records kept and maintained by our office are available and we will provide same for inspection here at our office located at the Sheriff W.S. Jones Center,” and “request[ed] that you contact my Executive Assistant, Mrs. Iris Bridges . . . in order to set a date and time that will be convenient for all to meet.” A true copy of this November 28, 2017 letter is attached as Exhibit S. Mr. Littman called Mrs. Bridges, but was informed by her that records showing how funds received for feeding inmates are disbursed would not be disclosed.

86. On November 14, 2017, a paralegal employed by SCHR, Mr. Jeremy Isard, went to Sheriff Shearon’s office to obtain the requested records. However,

as detailed in a letter sent on November 17, 2017 to Mr. Green by certified mail, with a copy to Sheriff Shearon, “Mr. Isard was provided only with records showing amounts received by the Sheriff and his office for feeding prisoners; he was denied access to records showing how these funds are disbursed, and, specifically, the amounts of these funds that the Sheriff has personally kept and retained. Mr. Isard was informed that such records are indeed maintained, but that the Sheriff does not believe that they are public writings subject to disclosure under state law.”

SCHR’s letter proceeded to state why this withholding was unjustified. A true copy of this November 17, 2017 letter is attached as Exhibit T. On November 30, 2017, another attorney, Mr. Fred Clements, Esq., contacted SCHR, and stated that he represented Sheriff Shearon for purposes of potential litigation. He requested two weeks to consider the matter and consult with his client. Mr. Clements subsequently informed SCHR that he had learned that Sheriff Ellis had filed a declaratory judgment action related to the same issue, and had therefore “advised Sheriff Shearon against either disclosing the requested records or issuing a response denying your request.” A true copy of the electronic correspondence with Mr. Clements is attaches as Exhibit U.

87. SCHR and Alabama Appleseed have requested from the Alabama Department of Finance records showing the amounts of funds that the Sheriffs of

the various Counties have “received for feeding prisoners” from any source since January 1, 2014, as well as the amounts of such funds that the Sheriffs have personally “ke[pt] and retain[ed]” since that time. Two requests were submitted for these records, the most recent sent on January 3, 2018. Upon information and belief, the Alabama Department of Finance’s records will show at most the Defendant Sheriffs’ receipt of funds, and not whether they have personally “ke[pt] and retain[ed]” these funds.

88. On December 20, 2017, SCHR and Alabama Appleseed sent a joint letter to each of the Defendant Sheriffs by certified mail, with copies to Mr. Rhea. This letter rearticulated the requests previously made by SCHR on behalf of both organizations, and also requested additional records pertaining to any free or nearly expired food obtained for feeding of jail inmates. True copies of these December 20, 2017 letters are attached as Exhibit V.

89. On January 4, 2018, SCHR and Alabama Appleseed received identical replies to their December 20, 2017 letters from Mr. Rhea on behalf of Sheriffs Entrekin, Oliver, Phillips, and Singleton. In these replies, Mr. Rhea did not produce or agree to produce any responsive records regarding food obtained for free or within a week of its expiration date, but instead reiterated the position that “the financial venture [of feeding prisoners] is personal to the individual

occupying the office of Sheriff,” and suggested that whether these records are subject to disclosure under the Alabama Public Records Law should be adjudicated along with the other issues raised in this litigation.

90. Since July 2017, certain Alabama Sheriffs--including those who have converted jail food funds to personal use and those who have not--have complied with the above requests and produced responsive records, including ledger sheets, checks, and other financial documents.

91. The Defendant Sheriffs, however, have failed to produce the requested public writings, despite repeated requests over the course of more than five months.

92. The Defendants Sheriffs’ refusal to comply with the Alabama Public Records Law has been coordinated amongst themselves under the auspices of the Alabama Sheriffs Association and its counsel.

93. On November 29, 2017, Mr. Rhea filed a complaint in the Circuit Court of Hale County, seeking declaratory relief on behalf of Sheriff Ellis against SCHR. This complaint was served on SCHR by certified mail on December 7, 2017. Essentially, it seeks a determination that the requested records are “personal” and therefore need not be disclosed pursuant to the Alabama Public Records Law. A true copy of this complaint is attached as Exhibit W.

CLAIM FOR RELIEF

Count One: Violation of the Alabama Public Records Law

94. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

95. The Alabama Public Records Law, Ala. Code § 36-12-40, provides the public with “a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.”

96. The records described in the requests attached as exhibits are public writings within the meaning of Ala. Code § 36-12-40, and are not subject to any exemption from disclosure.

97. The Defendant Sheriffs have refused to give Plaintiffs access to or copies of the documents described in repeated record requests.

98. Plaintiffs have a statutory right to the public writings they seek, and there is no legal basis for the Defendant Sheriffs’ failure to disclose them.

99. It is in the interest of the people of Alabama that these records be made available to the public.

100. By failing to give Plaintiffs access to and copies of the requested public writings within a reasonable time, the Defendant Sheriffs have violated and are continuing to violate Ala. Code § 36-12-40 and Plaintiffs’ rights thereunder.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

- (A) Assume jurisdiction over this action;
- (B) Consolidate this case with the related matter currently pending before the Court which is docketed at 36-CV-900083.00;
- (C) Declare that the requested records are public writings under Alabama's Public Records Law;
- (D) Declare that the requested records are "reasonably necessary to record the business and activities required to be done or carried on by [Defendants] so that the status and condition of such business and activities can be known," and that they are therefore records Defendants are required to "correctly make and accurately keep" and produce for public inspection, pursuant to *Stone v. Consol. Pub. Co.*, 404 So. 2d 678, 680-81 (Ala. 1981) (citing Ala. Code § 36-12-2);
- (E) Declare that Defendants' withholding of the requested public writings is unlawful;
- (F) Declare that Alabama citizens will benefit from the disclosure of the requested public writings;
- (G) Order Defendants to make the requested records available to Plaintiffs without further delay;

(H) Direct that Defendants must waive all fees associated with Plaintiffs' requests and produce the records by mail or email;

(I) Award Plaintiffs their costs and reasonable attorney's fees; and

(J) Grant Plaintiffs such other relief as the Court deems just and proper.

Respectfully submitted this 5th day of January, 2018.

/s/ Sarah Geraghty
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*Applications for *pro hac vice*
admission forthcoming

IN THE CIRCUIT COURT OF HALE COUNTY, ALABAMA

**SOUTHERN CENTER FOR
HUMAN RIGHTS, et al.,**)

Plaintiffs,)

v.)

**KENNETH ELLIS, in his
official capacity as Sheriff of
Hale County, et al.,**)

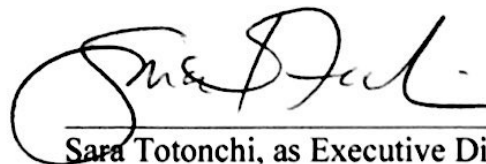
Defendants.)

CIVIL ACTION NO. _____

VERIFICATION OF SARA TONCHI

I verify under penalty of perjury that the organization of which I am the executive director, the Southern Center for Human Rights, is a Plaintiff in the within and foregoing civil action, and that the facts contained in the complaint are true and correct to the best of my knowledge, information, and belief.

SO VERIFIED this 5th day of January, 2018.



Sara Totonchi, as Executive Director
of the SOUTHERN CENTER FOR
HUMAN RIGHTS

IN THE CIRCUIT COURT OF HALE COUNTY, ALABAMA

SOUTHERN CENTER FOR)
HUMAN RIGHTS, et al.,)
)
Plaintiffs,)
)
v.)
)
KENNETH ELLIS, in his)
official capacity as Sheriff of)
Hale County, et al.,)
)
Defendants.)

CIVIL ACTION NO. _____

VERIFICATION OF FRANK KNAACK

I verify under penalty of perjury that the organization of which I am the executive director, the Alabama Appleseed Center for Law and Justice, is a Plaintiff in the within and foregoing civil action, and that the facts contained in the complaint are true and correct to the best of my knowledge, information, and belief.

SO VERIFIED this 4 day of January, 2018.



Frank Knaack, as Executive Director
of the ALABAMA APPLESEED
CENTER FOR LAW AND JUSTICE