IN THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA

IN RE:

City of Fairhope Special Initiative Election Matter Case No.:_____

EMERGENCY PETITION

Comes Now the City of Fairhope by and through counsel of record and respectfully requests this Honorable Court set the City's Special Initiative Election on the date set forth in Alabama Code 11-43a-3.

1. The Fairhope Special Initiative Election is required by law to be set on November 6, 2018 which is the next general election and not sooner.

2. On July 12, 2018, the Judge of Probate hand delivered notice of certification of a petition by registered voters in the City of Fairhope. See attached letter from Tim Russell.

3. Two petitions were originally transmitted to the Court.

4. One petition, called for a change in Fairhope's municipal government to a city-manager form of government with certain council members elected via single member districts.

5. A second petition called for a change in Fairhope's municipal government to a city-manager form of government and was proposed by a group that generally supported at large election of new council members.

6. The petition that supported single member districts failed to gain enough support for an initiative vote.

7. The second petition was certified by the Judge of Probate and the certificate was transmitted to the Mayor, City Clerk and Council President Jack Burrell via letter dated July 12, 2018.

8. Pursuant to Alabama Code 11-43A-3, the Mayor of the City of Fairhope or other Chief Executive Officer of the city was required within ten days of receipt of the July 12 certification to submit, by proclamation, the question of the adoption of the council-manager form of government and set the date of the initiative election.

9. There was no proclamation, notice or other document issued by the executive branch within the mandatory ten-day time frame. See affidavit of Lisa Hanks, City Clerk

10. Pursuant to Alabama Code 11-43A-3, if there is no proclamation issued by the Mayor or Chief Executive Officer, the Judge of Probate is required to Order the election set at a time specified by statute after the expiration of the ten-day proclamation window.

11. Once the ten day window expires, the statute shifts jurisdiction strictly to the Probate Court to set the election and mandates certain specific election dates.

12. The Code section reads in part: . . . Should the election not be called by proclamation within 10 days after receipt of the certificate, the Judge of Probate shall call such election by Order at a time specified therein but not less than 40 days and not more than 90 days after the receipt by said mayor, or other executive officer of the said certificate of the judge of probate, unless a general election is to be held within 120 days after receipt of such certificate, in which event the special election herein provided for shall be held at the same time as such general election. See Ala Code § 11-43A-3, emphasis added.

13. Currently, the election is slated for an October 2, 2018 initiative vote without any executive proclamation or Order of the Judge of Probate. It is not properly set on the mandatory general election date as required by statute.

14. Alabama Law mandates that if a general election is within 120 days of the delivery of the certification to the Mayor or Chief Executive Officer and there is no proclamation

otherwise, the Judge of Probate shall set the initiative vote on the date of the next general election.

15. The certification of the petition was delivered to the Mayor and Council President on July 12, 2018, 117 days before the next general election currently set for November 6, 2018.

Wherefore, premises considered, the City of Fairhope respectfully requests this Court issue an Order setting the Special Initiative vote on November 6, 2018, the same date as the General Election pursuant to Alabama Code § 11-43A-3.

Respectfully submitted,

MARCUS E. MCDOWELL
Attorney, City of Fairhope
P O Box 1367
Fairhope, Alabama 36533
251-928-1915
251-928-1967

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Emergency Petition via email and U.S. Mail, address and postage affixed thereon to J. David Whetstone, 17090 Lagoon Winds Drive, Gulf Shores, Alabama 36542; davidwhetstone1@yahoo.com on this 27th day of September, 2018.

MARCUS E. MCDOWELL

STATE OF ALABAMA
2018 SEP 27 P 3:21
BALDWIN COUNTY

IN THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA

IN RE:

City of Fairhope Special Initiative Election Matter Case No.: _____

AFFIDAVIT OF LISA A. HANKS, MMC

State of Alabama

County of Baldwin

BEFORE ME, the undersigned authority in and for said State and County personally appeared **Lisa A. Hanks, MMC**, who is known to me and who after being by me first duly sworn deposes and says on oath as follows:

1. My name is Lisa A. Hanks, MMC. I am the City Clerk for the City of Fairhope. I am a resident of Baldwin County, over the age of 19 and competent to testify about the facts contained herein.

2. On or about July 13, 2018, I receive a hand delivered letter dated July 12, 2018 from Judge Tim Russell, Judge of Probate for Baldwin County.

3. The letter from Judge Russell was an acknowledgment and certification of a special initiative petition.

4. The City nor any branch of government issued a proclamation regarding setting the special initiative vote.

5. The first notice regarding the special initiative was dated August 10, 2018.

Further the affiant sayeth not:

Lisa A. Hanks
LISA A. HANKS, MMC

Sworn to and subscribed before me this 21 day of September, 2018.

JENNIFER OLMSTEAD NOTARY PUBLIC ALABAMA-STATE AT LARGE

Jennifer Olmstead
Notary Public
My Commission Expires: JENNIFER OLMSTEAD
Notary Public, Alabama State At Large
My Commission Expires
November 21, 2020

TIM RUSSELL

JUDGE OF PROBATE
BALDWIN COUNTY

220 Courthouse Square
P. O. Box 459
Bay Minette, AL 36507
(251) 580-2596

July 12, 2018

VIA HAND DELIVERY

City of Fairhope
384 Fairhope Avenue
Fairhope, Alabama 36532

Dear Mayor Karin Wilson and Council President Jack Burrell:

Our office of Probate has received two petitions from registered voters of the City of Fairhope. The signatures of both petitions have been verified by election officials of our office.

The first petition received June 30, 2018, had 188 verified signatures. This petition did not receive enough registered signatures required under the Alabama Code to call for a special election.

The second petition was received on July 5, 2018, and had 803 verified signatures. This number qualifies to call for a special election in the City. Attached is a copy of the language used in the petition.

By the powers granted to me as Judge of Probate of Baldwin County, I call for your City to set an election date no earlier than 40 days nor no later than 90 days from July 5, 2018.

We strongly encourage you to coordinate with our office in selecting a date for the election which works well for your citizens and the election officials of the city and our office. Alabama statutes require the cost of the election to be paid by the city. Our estimated costs of the election are $15,000. All county and Probate costs will be itemized and available for audit by members of your staff.

Yours in Public Service,

Judge Tim Russell

TR/jms

Enclosure

cc.

The Honorable John Merrill
Alabama Secretary of State
P.O. Box 5616
Montgomery, Alabama 36103-5616

The Honorable Frank Burt
Baldwin County Commission Chair
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

PETITION

The below listed registered voters residing in the City of Fairhope, Alabama hereby petition the Baldwin County (AL) Probate Judge to set an election in accordance with the Council-Manager Act of 1982 as amended to change the current Fairhope Mayor-Council form of government to the Council-Manager form of government, with a City Council composed of five members including a Mayor and four other Council Members.