

STATE OF ALABAMA, On the relation
of, ED SHELDON AND DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, joining with the
State of Alabama for themselves,
and in the name of the State of
Alabama as Plaintiffs,

PLAINTIFFS

VS

MARVIN BERGLIN

DEFENDANT

IN THE
CIRCUIT COURT

OF

BALDWIN COUNTY

ALABAMA

AT LAW

CASE NO.

3241

This day came the State of Alabama on relation of ED SHELDON and DONALD DRYER, and filed herein its petition against MARVIN BERGLIN alleging that the said Marvin Berglin has intruded into or unlawfully exercises the powers and privileges of the office of Councilman, a member of the City Council of the City of Fairhope in Baldwin County, Alabama, when at said time of intruding into or unlawfully exercising said powers and privileges he was ineligible and disqualified to hold said office as a member of the City Council of the City of Fairhope in Baldwin County, Alabama on the grounds that he was illegally holding said office, or ineligible to exercise the powers and privileges thereof; said petition further prayed process may issue requiring and commanding the said Marvin Berglin to show by what authority he is holding said office and exercising the powers and privileges thereof; and upon consideration of said petition it is ordered by the Court that a copy of said petition be forthwith served upon the said Marvin Berglin, and that he, the said Marvin Berglin, be and is hereby commanded to appear before the Circuit Court of Baldwin County, Alabama at Bay Minette on the 22 day of May, 1957, and show by what authority he is intruding into said office or exercising the powers and privileges thereof.

Dated at Bay Minette this 10 day of May, 1957.

Hubert M. Hall
CIRCUIT JUDGE.

STATE OF ALABAMA, On the relation
of ED SHELDON and DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, individually and
joining with the State of Alabama
for themselves, and in the name
of the State of Alabama as plain-
tiffs,

Plaintiffs,

VS.

MARVIN BERGLIN,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3241

JUDGMENT SUSTAINING DEMURRER TO AMENDED
INFORMATION

This cause coming on again to be heard on this date is
submitted on the defendant's demurrer to the information as last
amended (the amended information filed July 18, 1957), upon consid-
eration of all of which it is, therefore, ORDERED, ADJUDGED AND
DECREED by the court as follows:

The defendant's said demurrer to the said information
shall be and it is hereby sustained. The plaintiffs are allowed
ten (10) days from this date in which to amend their pleadings, if
they shall elect so to do.

Done on this the 19th day of November, 1957.

Hubert M. Hall
Judge

STATE OF ALABAMA, On the relation
of ED SHELTON and DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, individually and
joining with the State of Alabama
for themselves, and in the name
of the State of Alabama as plain-
tiffs,

PLAINTIFFS,

VS

MARVIN REGALIN

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW

NO. 3211.

On the 7th day of August, 1957, came the defendant in the above styled
cause, and filed demurrers to counts one, two and three of plaintiffs
complaint, and the same having been heard and understood by the court, were
sustained by the court on the 19th day of November, 1957, and plaintiffs were
given until the 30th day of November, 1957 to amend said complaint, and
plaintiffs by their attorney declined to amend the same within said period
of time, and with leave of the court takes a non-suit, on account of the
adverse ruling by this court, and the same having been, considered, heard
and understood by the court, it is therefore Ordered, Adjudged and Decreed
by the court that a Non-suit be and the same is hereby entered in said cause,
and said cause is hereby dismissed by the court, and the cost of the same
is hereby taxed against plaintiffs in this cause, and Robert R. Mahrgang and
Mrs. Candace Mahrgang as sureties for plaintiffs in said cause, for which
let execution issue if the same be not paid and the Defendant may go hence
without delay in said cause.

Dated and entered this 6th day of December, 1957.

FILED

DEC 6 1957

ALICE L. DUCK, Clerk

Robert R. Mahrgang
Judge of Circuit Court of Baldwin
County, Alabama, 28th Judicial Circuit.

STATE OF ALABAMA, On the relation
of ED SHELDON and DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, individually and
joining with the State of Alabama
for themselves, and in the name
of the State of Alabama as plain-
tiffs,

PLAINTIFFS,

VS

MARVIN BERGLIN

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

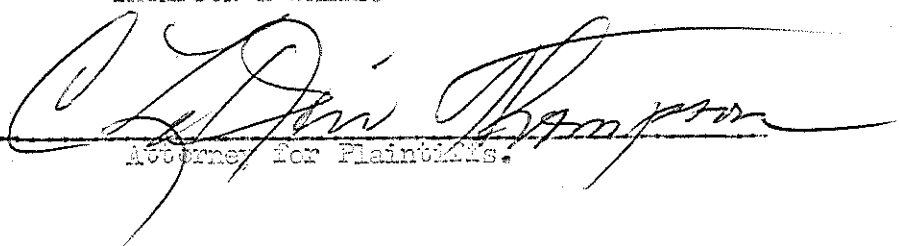
AT LAW.

NO. 3241.

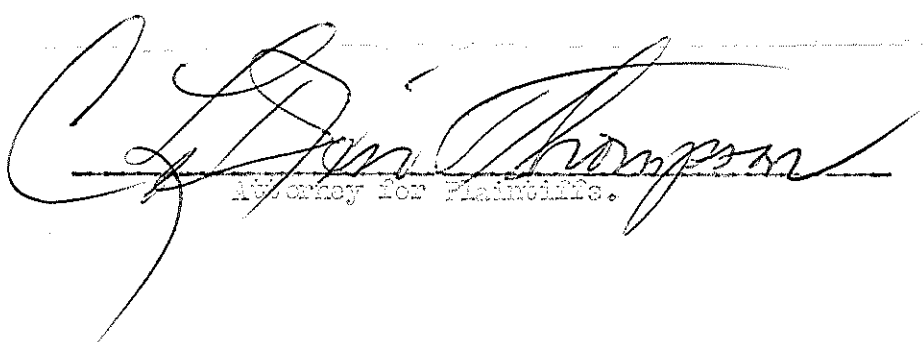
Come Ed Sheldon and Donald Dryer, Plaintiffs in the above styled cause
by their Attorney of Record and give notice of appeal to the Supreme Court
of Alabama from the decree of the Judge of the 28th Judicial Circuit, At
Law, in and for Baldwin County, Alabama, entered on the 19th day of November,
1957, sustaining the demurrers of the Defendant, Marvin Berglin, filed on
the 7th day of August, 1957, and sustained by a decree of the said Circuit
Court on the 19th day of November, 1957.

THOMPSON & WHITE.

BY:


Attorney for Plaintiffs.

I. C. LENOIR THOMPSON, Attorney At Law in the above styled cause hereby
acknowledge myself security for cost in the foregoing appeal.


Attorney for Plaintiffs.

FILED

DEC 11 1957

ALICE J. DUCK, Clerk

JULY 24, 1958

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1957-58

1 DIV. 766

THE STATE OF ALABAMA, ex rel.
ED SHELDON and DONALD DRYER, ETC.,

vs.

MARVIN BERGLIN,
BALDWIN CIRCUIT COURT, NO. 3241.

Come the parties by Attorneys, and appellee's motion to dismiss the appeal and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the Court,

IT IS CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the appellee's motion to dismiss the appeal be and is hereby granted, and that the appeal be and is hereby dismissed.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the appellants, Ed Sheldon and Donald Dryer, and C. LeNoir Thompson, surety on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court, for which costs let execution issue accordingly.

Clerk of the Supreme Court of Alabama

JUL 24 1958

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1958

1 DIV. 766

The State of Alabama,
ex rel. Ed. Sheldon and Donald Dryer, etc.,

VS.

Marvin Berglin,

Appeal from Baldwin Circuit Court.

SIMPSON, JUSTICE:

This is an appeal from a judgment of non-suit in a quo warranto proceeding wherein petitioners on relation of the State of Alabama sought to oust one Marvin Berglin from the office of councilman of the town of Fairhope. The quo warranto petition claimed certain irregularities in the election of Berglin by the town council in filling a vacancy caused by the resignation of Councilman Fleming.

2.

Appellee has filed in this Court a motion to dismiss the appeal, because the case is now moot on the ground that at the time of the rendition of judgment by the trial court appellee had been duly and legally elected to fill said vacancy. Exhibited with the motion is a properly certified copy of an ordinance of Fairhope which shows this to be a fact. Since appellee is, and was when the decree was rendered, duly and legally elected as a member of the town council, it could not be held that he is unlawfully intruding into, or illegally holding, said office. Hence there is no issue for this Court to resolve. The motion is well taken. - See Coleman v. Mange, 238 Ala. 141, 189 So. 749, and cases cited; also Abrams v. State, 17 Ala. App. 379, 84 So. 862, and cases cited.

Motion to dismiss appeal granted.

Livingston, C. J., Goodwyn and Coleman, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 766

THE STATE OF ALABAMA, ex rel.
Ed. Sheldon and Donald Dryer, etc.
vs.

MARVIN BERGLIN, Appellee,

From BALDWIN Circuit Court.

The State of Alabama,
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to TWO inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, this the 24th day of

JULY, 19 58
J. Render Thomas
Clerk of the Supreme Court of Alabama

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 6th
~~Monday~~ in December, 1957, in a cer-
tain cause in said Court wherein ~~State of Alabama on the relation of Ed Sheldon and Donald Dryer~~
Dryer Plaintiff, and Marvin Berglin
Defendant, a judgement was rendered against said
Ed Sheldon and Donald Dryer
to reverse which judgment, the said Ed Sheldon and Donald Dryer
applied for and obtained from this office an APPEAL, returnable to the next
Term of our Supreme Court of the State of Alabama, to be held at Montgomery,
on the _____ day of _____, 1957 next, and the necessary bond
having been given by the said ~~C. LeNoir Thompson~~
with C. LeNoir Thompson, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Marvin Berglin
or J. E. Blackburn
, attorney, to appear at the next Term of our
said Supreme Court, to defend against the said Appeal, if _____ think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 13th
day of December, A. D., 1957.

Attest:

Alice J. Duck, Clerk.

Div. No. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 3241

THE STATE OF ALABAMA

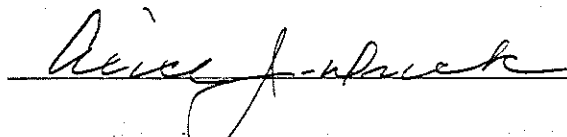
Baldwin County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein ~~State of Alabama, on the relations of~~ Ed Sheldon and Donald Dryer was plaintiff, and Marvin Berglin

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said ~~Ed Sheldon and Donald Dryer~~ did on the 11th day of December, 1957, pray for and obtain an appeal from the judgment of said Court to the ~~Supreme Court~~ of Alabama to reverse said judgment of said Court upon entering into bond with LeMoir Thompson as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of ~~Baldwin~~ Baldwin County is hereto affixed, this the 13th day of December, 1957


Clerk of the Circuit Court of
Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

STATE OF ALABAMA, On the relation
of ED SHELDON and DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, individually and
joining with the State of Alabama
for themselves, and in the name
of the State of Alabama as plain-
tiffs,

PLAINTIFFS,

VS

MARVIN BERGLIN

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW

NO. 3241.

Come the Plaintiffs in the above entitled cause and shows to the Court
that from the ruling or decision of the Court upon the pleadings in said
cause, viz: That on the 7th day of August, 1957, came the
Defendant in the above styled cause and filed demurrers to Counts One, Two
and Three of Plaintiffs' complaint, and the said demurrers having been heard
and considered by the Court, were sustained by the Court on the 19th day of
November, 1957, and Plaintiffs were given ten days to amend said complaint
and it being necessary because of said ruling sustaining demurrers to their
complaint Plaintiffs elect to take a non-suit.

Now therefore the Plaintiffs reserve an exception to the ruling of said
Court and takes a non-suit in said Court and prays an appeal to the Supreme
Court of Alabama to review said judgment upon record of said cause.

THOMPSON & WHITE

By: C. L. Davis Thompson
George E. Stone Jr.
Attorneys for Plaintiffs.

I hereby certify that I have this day the 29th day of November, 1957,
sent by United States mail postage prepaid a copy of the foregoing pleading
to Honorable J. B. Blackburn as Leading Council for the Defendant herein
named.

Filed
11-29-57

C. L. Davis Thompson

AMENDED

STATE OF ALABAMA, On the relation
of ED SHELTON and DONALD DRYER,
resident Citizens of Fairhope,
Baldwin County, Alabama, joining with
the State of Alabama for them-
selves, and in the name of the State
of Alabama as plaintiffs,

PLAINTIFFS

VS

MARVIN BERGLIN

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

CASE NO. _____

Come the Petitioners in the above styled cause and amends the petition
heretofore filed in said cause to read as follows:

STATE OF ALABAMA, on the relation
of ED SHELTON and DONALD DRYER,
resident Citizens of Fairhope,
Baldwin County, Alabama, individually
and joining with the State of
Alabama for themselves, and in the
name of the State of Alabama as
Plaintiffs,

PLAINTIFFS

VS

MARVIN BERGLIN

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

CASE NO. _____

Comes the State of Alabama on the relation of ED SHELTON and DONALD
DRYER, Citizens of Fairhope, Baldwin County, Alabama and residing within the
corporate limits of said municipality, individually and as Plaintiffs for
themselves and join in the name of the State of Alabama with the State of
Alabama as Plaintiffs in said cause, who having given security for costs of
this action approved by the Clerk of this Honorable Court and respectfully
shows as follows:

COUNT ONE.

That they as relators in said cause joining with the State of Alabama,
and are residing within the corporate limits of the municipality of the City
of Fairhope, and are duly qualified electors of said municipality and of Baldwin
County, Alabama and over the age of 21 years.

That Marvin Berglin has usurped, intruded into and unlawfully holds
without warrant or authority of law the office of councilman for the City of
Fairhope in Baldwin County, Alabama, and the said Marvin Berglin claims to
be clothed with powers and privileges of said office and is now exercising
the powers and functions of the same and enjoying the emoluments of said

office, and that said office of councilman of the City of Fairhope is a public office of a municipal corporation of the State of Alabama duly created by law. That the said Marvin Berglin is usurping and intruding into and unlawfully holds and is exercising the powers and functions of said office in that he claims to hold said office by virtue of an election alleged to have been held on Monday April 15, 1957 to fill a vacancy on the City Council of Fairhope created by a resignation of Mr. John Fleming a former member of the said City Council of the City of Fairhope whose resignation was received and accepted by the remaining members of the said City Council of the City of Fairhope at the same meeting to-wit: April 15, 1957. Said alleged election being in violation of Title 37 Section 427 of the Code of Alabama of 1940.

Your relators did further show that the said alleged election by members of the City Council of the City of Fairhope in Baldwin County, Alabama was not held in accordance with the requirements as laid down by the legislature of Alabama in the provisions of Section 427, Title 37 of the Code of Alabama of 1940. Said alleged election being held at a meeting other than a regular meeting as recorded in the purported minutes of the meeting of Monday April 15th as set out in the attached minutes which are marked exhibit "A" for the plaintiffs and made a part of count one hereof.

COUNT TWO.

That they as relators in said cause joining with the State of Alabama, and are residing within the corporate limits of the municipality of the City of Fairhope, and are duly qualified electors of said municipality and of Baldwin County, Alabama and over the age of 21 years.

That Marvin Berglin has usurped, intruded into and unlawfully holds without warrant or authority of law the office of councilman for the City of Fairhope in Baldwin County, Alabama, and the said Marvin Berglin claims to be clothed with powers and privileges of said office and is now exercising the powers and functions of the same and enjoying the emoluments of said office, and that said office of councilman of the City of Fairhope is a public office of a municipal corporation of the State of Alabama duly created by law. That the said Marvin Berglin is usurping and intruding into and unlawfully holds and is exercising the powers and functions of said office in that he claims to hold said office by virtue of an election alleged to have been held on Monday April 15, 1957 to fill a vacancy on the City Council of Fairhope created by a resignation of Mr. John Fleming a former member of the said City Council of the City of Fairhope whose resignation was received and accepted by the remaining members of the said City Council of the City of Fairhope at

the same meeting to-wit: April 15, 1957. Said election has not been properly authenticated in that the Mayor of the City of Fairhope to-wit: one E. B. Overton, in such capacity, has not signed the minutes of the said meeting.

COUNT THREE.

That they as relators in said cause joining with the State of Alabama, and are residing within the corporate limits of the municipality of the City of Fairhope, and are duly qualified electors of said municipality and of Baldwin County, Alabama and over the age of 21 years.

That Marvin Berglin has usurped, intruded into and unlawfully holds without warrant or authority of law the office of councilman for the City of Fairhope in Baldwin County, Alabama, and the said Marvin Berglin claims to be clothed with powers and privileges of said office and is now exercising the powers and functions of the same and enjoying the emoluments of said office, and that said office of councilman of the City of Fairhope is a public office of a municipal corporation of the State of Alabama duly created by law. That the said Marvin Berglin is usurping and intruding into and unlawfully holds and is exercising the powers and functions of said office in that he claims to hold said office by virtue of an election alleged to have been held on Monday April 15, 1957 to fill a vacancy on the City Council of Fairhope created by a resignation of Mr. John Fleming a former member of the said City Council of the City of Fairhope whose resignation was received and accepted by the remaining members of the said City Council of the City of Fairhope at the same meeting to-wit: April 15, 1957, that the said Marvin Berglin was not elected a member of the Council in that he did not receive a majority vote of the whole number of members of the regularly elected Council.

THE PREMISES CONSIDERED, the relators pray the Court for the issuance of a writ of quo warranto or other appropriate writ in the nature thereof, requiring the said Marvin Berglin to show by what warrant, right or authority he claims to hold said office as a member of the City Council of the City of Fairhope in Baldwin County, Alabama and by what warrant, right and authority he does exercise the powers and privileges of said office, and that upon a final hearing thereof the said Marvin Berglin be adjudged guilty of usurping or intruding into or unlawfully holding or exercising the powers of said office and that judgment be rendered excluding him from said office, and from holding the same or exercising the powers and privileges of said office thereof or

enjoying the emoluments therefrom, and that relators may recover their reasonable costs against said Marvin Berglin and that they may have all other relief to which they may appear entitled.

C. L. Davis Thompson

Geo. E. Stone Jr.
Attorneys for Petitioners.

Filed
8-9-57

EXHIBIT "A"

STATE OF ALABAMA

County of Baldwin

The City Council met on Monday, April 15, 1957, with the following members present: Mayor E. B. Overton, City Manager C. B. Niemeyer, Councilmen: Belew, McDaniels, Ruffles and Shull. Councilman Fleming being absent.

The Park and Recreation Board met with the Council. Mayor Overton outlined the procedure for the Board as suggested by Mr. Van Fleet of the National Recreation Association.

The request of the Methodist Church to erect fire escapes was held over with the request that it be approved by the State Fire Marshal before being presented to the City Council for approval.

A letter of resignation from Mr. John Fleming was read to the Council. Motion by Councilman McDaniels seconded by Councilman Belew that the City accept with regret Mr. Fleming's resignation and that he be given a vote of thanks for the outstanding work he has performed while on the City Council. Motion carried.

Councilman Ruffles nominated Marvin Berglin to be elected to the Council to fill the unexpired term of Mr. Fleming.

Motion by Councilman Belew seconded by Councilman Shull that the nomination be carried over to the next regular meeting. Voting Yes: Councilmen Belew and Shull. Voting No: Mayor Overton, Councilmen McDaniels and Ruffles. Motion defeated.

Councilman Belew nominated E. P. Wakefield to be elected to the Council. Two nominations having been made the following vote was recorded: Voting for Mr. Berglin, Mayor Overton, Councilmen: McDaniels and Ruffles. Voting for Mr. Wakefield, Councilmen: Belew and Shull. Mr. Berglin having received the majority of votes was elected to the City Council to fill the unexpired term of Mr. Fleming.

It was duly moved and seconded that the meeting adjourn. Motion carried.

Approved _____

Mayor

Attest: _____

City Clerk

I, Marie Moore, Clerk of the City of Fairhope, Alabama hereby certify that the above minutes are a true copy of the minutes of the City Council meeting of April 15, 1957 as they appear in Minute Book #3 of the City of Fairhope, Alabama.

(CITY OF FAIRHOPE)
(CORPORATE SEAL)
(ALABAMA)

/s/ Marie Moore
City Clerk, City of Fairhope, Alabama.

STATE OF ALABAMA, On the relation
of ED SHELDON and DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, joining with the
State of Alabama for themselves,
and in the name of the State of
Alabama as plaintiffs,

Plaintiffs,

vs.

MARVIN BERGLIN,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW. NO. 3241.

DEMURRER TO AMENDED INFORMATION

Now comes the Defendant, by his attorneys, and demurs to
the information as last amended (the amended information filed on
July 18, 1957), and to each and every count thereof, separately
and severally, and as grounds of such demurrer assigns, separately
and severally, the following:

1. It does not state a cause of action.
2. No facts are alleged on which the relief sought can
be granted.
3. The allegations of the amended information are vague,
indefinite and uncertain.
4. The allegations of the amended information are con-
clusions of the pleader.
- ✓ 5. It affirmatively appears that this suit has not been
brought in the way and manner provided by Title 7, Section 1142
of the 1940 Code of Alabama.
6. There is a non-joinder of parties plaintiff.
- ✓ 7. There is a misjoinder of parties plaintiff.
8. No facts are alleged to show how and in what way Title
37, Section 427 of the 1940 Code of Alabama, was not complied with.
9. No facts are alleged to show that the Defendant was
not elected in accordance with the terms and provisions of Title
37, Section 427 of the 1940 Code of Alabama.
10. It affirmatively appears that the Defendant was elect-
ed by a majority vote of the City Council of the City of Fairhope,
Alabama, at a meeting at which all persons entitled to vote were
present and voted.

11. No facts are alleged to show that the said Ed Sheldon and Donald Dryer have any right to prosecute this suit.

12. It affirmatively appears that the Defendant, Marvin Berglin, was duly elected as a member of the City Council of the City of Fairhope, Alabama, a municipal corporation, at a meeting at which the mayor and all of the members of the City Council were present, and that a majority of those entitled to vote voted for the election of the said Marvin Berglin as said officer.

13. No facts are alleged to show how or in what manner the Defendant, Marvin Berglin, is unlawfully holding or exercising the office of City Councilman of the City of Fairhope, Alabama, a municipal corporation.

14. No facts are alleged to show that the election of the incumbent, Marvin Berglin, was induced by any corrupt, fraudulent or indirect motive.

15. No facts are alleged to show that the election of the said incumbent, Marvin Berglin, was unfairly conducted.

16. No facts are alleged to show that any person entitled to vote for or against the said Marvin Berglin was prevented from voting because of the time of the holding of the said election.

17. It affirmatively appears that the incumbent, Marvin Berglin, was elected by a majority of the vote of the City Council of the City of Fairhope, Alabama.

18. It affirmatively appears that the incumbent, Marvin Berglin, was elected by a majority vote of the City Council of the City of Fairhope, Alabama, at a meeting of the City Council thereof at which meeting all who were entitled to vote were present and voting.

19. The said information attempts to allege or show that the incumbent, Marvin Berglin was not legally elected but the facts alleged do not show that the incumbent was not legally elected.

20. It affirmatively appears that the incumbent, Marvin Berglin was legally elected to the office which he now holds.

21. No facts are alleged to show that the election of a councilman must be authenticated by the mayor.

22. The allegations of the information are incomplete in that Exhibit "A" which is referred to in the information is not attached to or made a part thereof.

23. The allegations of the information are conclusions of the pleader.

24. The allegations of the information are conclusions of the pleader and no facts are alleged to show how the election of the incumbent, Marvin Berglin, was in violation of Title 37, Section 427 of the 1940 Code of Alabama.

25. No facts are alleged to show that the mayor of the City of Fairhope, Alabama, is required to authenticate the election of the incumbent, Marvin Berglin.

26. The allegations of the information are vague, indefinite and uncertain in that it is not alleged which minutes of which meeting of the City Council of the City of Fairhope, Alabama, have not been signed by the mayor of the said City.

27. The allegations of the information are vague, indefinite and uncertain in that Exhibit "A" which is referred to in the said information is not attached to nor does it form a part thereof.

28. For aught that appears from the information the provisions of Title 37, Section 427 of the 1940 Code of Alabama are directly and not mandatory.

29. No facts are alleged to show that the election of the incumbent, Marvin Berglin, is governed entirely by Title 37, Section 427 of the 1940 Code of Alabama.

Filed
8-7-57

J. B. Blackburn
James M. Bailey
W. E. Baker
Attorneys for Defendant.

STATE OF ALABAMA, On the relation
of ED SHELDON and DONALD DRYER,
resident Citizens of Fairhope,
Baldwin County, Alabama, joining
with the State of Alabama for
themselves, and in the name of the
State of Alabama as plaintiffs,

PLAINTIFFS

VS

MARVIN BERGLIN

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

CASE NO. _____

Come the Plaintiffs in the above styled cause and move to strike the
jury demand filed by the Respondents and as grounds for said motion show
unto this Honorable Court as follows:

1.

That said demand was not made within thirty days after perfection of
service as provided in Title 7 Section 260.

Filed
7-18-27

C. L. ...
Attorney for Plaintiffs.

STATE OF ALABAMA, On the relation
of ED SHELDON and DONALD DRYER,
resident Citizens of Fairhope,
Baldwin County, Alabama, joining with
the State of Alabama for them-
selves, and in the name of the State
of Alabama as plaintiffs,

PLAINTIFFS

VS

MARVIN BERGLIN

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

CASE NO. _____

Come the Petitioners in the above styled cause and amends the petition
hereto ^{for} filed in said cause to read as follows:

STATE OF ALABAMA, on the relation
of ED SHELDON and DONALD DRYER,
resident Citizens of Fairhope,
Baldwin County, Alabama, joining with
the State of Alabama for them-
selves, and in the name of the State
of Alabama as plaintiffs,

PLAINTIFFS

VS

MARVIN BERGLIN

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

CASE NO. _____

Comes the State of Alabama on the relation of ED SHELDON and DONALD
DRYER, Citizens of Baldwin County, Alabama as Plaintiffs for themselves and
join in the name of the State of Alabama with the State of Alabama as
Plaintiffs in said cause, who having given security for costs of this action
approved by the Clerk of this Honorable Court and respectfully shows as
follows:

COUNT ONE.

That they as relators in said cause joining with the State of Alabama, and
are residing within the corporate limits of the municipality of the City of
Fairhope, and are duly qualified electors of said municipality and of Baldwin
County, Alabama and over the age of 21 years.

That Marvin Berglin has usurped, intruded into and unlawfully holds
without warrant or authority of law the office of councilman for the City of
Fairhope in Baldwin County, Alabama, and the said Marvin Berglin claims to
be clothed with powers and privileges of said office and is now exercising
the powers and functions of the same and enjoying the emoluments of said
office, and that said office of councilman of the City of Fairhope is a public
office of a municipal corporation of the State of Alabama duly created by
law. That the said Marvin Berglin is usurping and intruding into and unlawfully

holds and is exercising the powers and functions of said office in that he claims to hold said office by virtue of an election alleged to have been held on Monday April 15, 1957 to fill a vacancy on the City Council of Fairhope created by a resignation of Mr. John Fleming a former member of the said City Council of the City of Fairhope whose resignation was received and accepted by the remaining members of the said City Council of the City of Fairhope at the same meeting to-wit: April 15, 1957. Said alleged election being in violation of Title 37 Section 427 of the Code of Alabama of 1940.

Your relators did further show that the said alleged election by members of the City Council of the City of Fairhope in Baldwin County, Alabama was not held in accordance with the requirements as laid down by the Legislature of Alabama in the provisions of Section 427, Title 37 of the Code of Alabama of 1940. Said alleged election being held at a meeting other than a regular meeting as recorded in the purported minutes of the meeting of Monday April 15th as set out in the attached minutes which are marked exhibit "A" for the plaintiffs and made a part of count one hereof.

COUNT TWO.

That they as relators in said cause joining with the State of Alabama, and are residing within the corporate limits of the municipality of the City of Fairhope, and are duly qualified electors of said municipality and of Baldwin County, Alabama and over the age of 21 years.

That Marvin Berglin has usurped, intruded into and unlawfully holds without warrant or authority of law the office of councilman for the City of Fairhope in Baldwin County, Alabama, and the said Marvin Berglin claims to be clothed with powers and privileges of said office and is now exercising the powers and functions of the same and enjoying the emoluments of said office, and that said office of councilman of the City of Fairhope is a public office of a municipal corporation of the State of Alabama duly created by law. That the said Marvin Berglin is usurping and intruding into and unlawfully holds and is exercising the powers and functions of said office in that he claims to hold said office by virtue of an election alleged to have been held on Monday April 15, 1957 to fill a vacancy on the City Council of Fairhope created by a resignation of Mr. John Fleming a former member of the said City Council of the City of Fairhope whose resignation was received and accepted by the remaining members of the said City Council of the City of Fairhope at the same meeting to-wit: April 15, 1957. Said election has not been properly authenticated in that the Mayor of the City of Fairhope to-wit: one E. B. Overton, in such capacity, has not signed the minutes of the meeting.

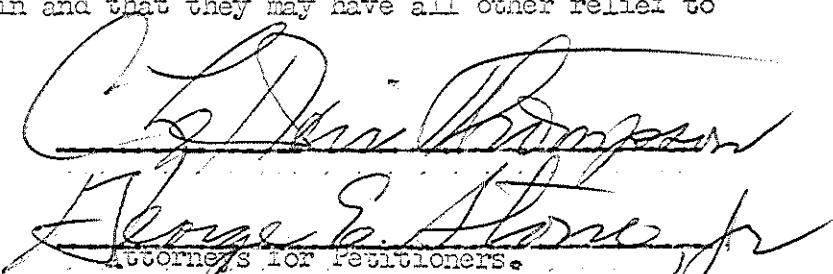
COUNT THREE.

That they as relators in said cause joining with the State of Alabama, and are residing within the corporate limits of the municipality of the City of Fairhope, and are duly qualified electors of said municipality and of Baldwin County, Alabama and over the age of 21 years.

That Marvin Berglin has usurped, intruded into and unlawfully holds without warrant or authority of law the office of councilman for the City of Fairhope in Baldwin County, Alabama, and the said Marvin Berglin claims to be clothed with powers and privileges of said office and is now exercising the powers and functions of the same and enjoying the emoluments of said office, and that said office of councilman of the City of Fairhope is a public office of a municipal corporation of the State of Alabama duly created by law. That the said Marvin Berglin is usurping and intruding into and unlawfully holds and is exercising the powers and functions of said office in that he claims to hold said office by virtue of an election alleged to have been held on Monday April 15, 1957 to fill a vacancy on the City Council of Fairhope created by a resignation of Mr. John Fleming a former member of the said City Council of the City of Fairhope whose resignation was received and accepted by the remaining members of the said City Council of the City of Fairhope at the same meeting to-wit: April 15, 1957, that the said Marvin Berglin was not elected a member of the Council in that he did not receive a majority vote of the whole number of members of the regularly elected Council.

THE PREMISES CONSIDERED, the relators pray the Court for the issuance of a writ of quo warranto or other appropriate writ in the nature thereof, requiring the said Marvin Berglin to show by what warrant, right or authority he claims to hold said office as a member of the City Council of the City of Fairhope in Baldwin County, Alabama and by what warrant, right and authority he does exercise the powers and privileges of said office, and that upon a final hearing thereof the said Marvin Berglin be adjudged guilty of usurping or intruding into or unlawfully holding or exercising the powers of said office and that judgment be rendered excluding him from said office, and from holding the same or exercising the powers and privileges of said office thereof or enjoying the emoluments therefrom, and that relators may recover their reasonable costs against said Marvin Berglin and that they may have all other relief to which they may appear entitled.

Filed
7-18-57


George E. Stone, Jr.
Attorneys for Petitioners.

STATE OF ALABAMA, On the relation
of ED SHELDON and DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, joining with the
State of Alabama for themselves,
and in the name of the State of
Alabama as plaintiffs,

PLAINTIFFS

VS

MARVIN BERGLIN

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW.

CASE NO. _____

Come the Petitioners in the above styled cause and amends the petition
hereto filed in said cause to read as follows:

STATE OF ALABAMA, On the relation
of ED SHELDON and DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, joining with the
State of Alabama for themselves,
and in the name of the State of
Alabama as plaintiffs

PLAINTIFFS

VS

MARVIN BERGLIN

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW.

CASE NO. _____

Comes the State of Alabama on the relation of ED SHELDON and DONALD
DRYER, Citizens of Baldwin County, Alabama as Plaintiffs for themselves and
join in the name of the State of Alabama with the State of Alabama as
Plaintiffs in said cause, who having given security for costs of this action
approved by the Clerk of this Honorable Court and respectfully shows as
follows:

COUNT ONE.

That they as relators in said cause joining with the State of Alabama,
are resident citizens and duly qualified electors of Baldwin County, Alabama
and over the age of 21 years.

That Marvin Berglin has usurped, intruded into and unlawfully holds
without warrant or authority of law the office of councilman for the City of
Fairhope in Baldwin County, Alabama, and the said Marvin Berglin claims to
be clothed with powers and privileges of said office and is now exercising
the powers and functions of the same and enjoying the emoluments of said
office, and that said office of councilman of the City of Fairhope is a public
office of a municipal corporation of the State of Alabama duly created by
law. That the said Marvin Berglin is usurping and intruding into and unlawfully

holds and is exercising the powers and functions of said office in that he claims to hold said office by virtue of an election alleged to have been held on Monday April 15, 1957 to fill a vacancy on the City Council of Fairhope created by a resignation of Mr. John Fleming a former member of the said City Council of the City of Fairhope whose resignation was received and accepted by the remaining members of the said City Council of the City of Fairhope at the same meeting to-wit: April 15, 1957. Said alleged election being in violation of Title 37 Section 427 of the Code of Alabama of 1940.

Your relators did further show that the said alleged election by members of the City Council of the City of Fairhope in Baldwin County, Alabama was not held in accordance with the requirements as laid down by the Legislature of Alabama in the provisions of Section 427, Title 37 of the Code of Alabama of 1940. Said alleged election being held at a meeting other than a regular meeting as recorded in the minutes of the meeting of Monday April 15th as set out in the attached minutes which are marked exhibit "A" for the plaintiffs and made a part of count one hereof.

COUNT TWO.

That they as relators in said cause joining with the State of Alabama, are resident citizens and duly qualified electors of Baldwin County, Alabama and over the age of 21 years.

That Marvin Berglin has usurped, intruded into and unlawfully holds without warrant or authority of law the office of councilman for the City of Fairhope in Baldwin County, Alabama, and the said Marvin Berglin claims to be clothed with powers and privileges of said office and is now exercising the powers and functions of the same and enjoying the emoluments of said office, and that said office of councilman of the City of Fairhope is a public office of a municipal corporation of the State of Alabama duly created by law. That the said Marvin Berglin is usurping and intruding into and unlawfully holds and is exercising the powers and functions of said office in that he claims to hold said office by virtue of an election alleged to have been held on Monday April 15, 1957 to fill a vacancy on the City Council of Fairhope created by a resignation of Mr. John Fleming a former member of the said City Council of the City of Fairhope whose resignation was received and accepted by the remaining members of the said City Council of the City of Fairhope at the same meeting to-wit: April 15, 1957. Said election has not been properly authenticated in that the Mayor of the City of Fairhope to-wit: one E. B. Overton, in such capacity, has not signed the minutes of the meeting.

COUNT THREE.

That they as relators in said cause joining with the State of Alabama, are resident citizens and duly qualified electors of Baldwin County, Alabama and over the age of 21 years.

That Marvin Berglin has usurped, intruded into and unlawfully holds without warrant or authority of law the office of councilman for the City of Fairhope in Baldwin County, Alabama, and the said Marvin Berglin claims to be clothed with powers and privileges of said office and is now exercising the powers and functions of the same and enjoying the emoluments of said office, and that said office of councilman of the City of Fairhope is a public office of a municipal corporation of the State of Alabama duly created by law. That the said Marvin Berglin is usurping and intruding into and unlawfully holds and is exercising the powers and functions of said office in that he claims to hold said office by virtue of an election alleged to have been held on Monday April 15, 1957 to fill a vacancy on the City Council of Fairhope created by a resignation of Mr. John Fleming a former member of the said City Council of the City of Fairhope whose resignation was received and accepted by the remaining members of the said City Council of the City of Fairhope at the same meeting to-wit: April 15, 1957, that the said Marvin Berglin was not duly elected a member of the Council in that he did not receive a majority vote of the whole number of members of the regularly elected Council.

THE PREMISES CONSIDERED, the relators pray the Court for the issuance of a writ of quo warranto or other appropriate writ in the nature thereof, requiring the said Marvin Berglin to show by what warrant, right or authority he claims to hold said office as a member of the City Council of the City of Fairhope in Baldwin County, Alabama and by what warrant, right and authority he does exercise the powers and privileges of said office, and that upon a final hearing thereof the said Marvin Berglin be adjudged guilty of usurping or intruding into or unlawfully holding or exercising the powers of said office and that judgment be rendered excluding him from said office, and from holding the same or exercising the powers and privileges of said office thereof or enjoying the emoluments therefrom, and that relators may recover their reasonable costs against said Marvin Berglin and that they may have all other relief to which they may appear entitled.

EXHIBIT "A"

STATE OF ALABAMA

County of Baldwin

The City Council met on Monday, April 15, 1957 with the following members present: Mayor E. B. Overton, City Manager C. B. Niemeyer, Councilmen: Belew, McDaniel, Ruffles and Shull. Councilman Fleming being absent.

The Park and Recreation Board met with the Council. Mayor Overton outlined the procedure for the Board as suggested by Mr. Van Fleet of the National Recreation Association.

The request of the Methodist Church to erect fire escapes was held over with the request that it be approved by the State Fire Marshal before being presented to the City Council for approval.

A letter of resignation from Mr. John Fleming was read to the Council. Motion by Councilman McDaniel seconded by Councilman Belew that the City accept with regret Mr. Fleming's resignation and that he be given a vote of thanks for the outstanding work he has performed while on the City Council. Motion carried.

Councilman Ruffles nominated Marvin Berglin to be elected to the Council to fill the unexpired term of Mr. Fleming.

Motion by Councilman Belew seconded by Councilman Shull that the nomination be carried over to the next regular meeting. Voting Yes: Councilmen Belew and Shull. Voting No: Mayor Overton, Councilmen McDaniel and Ruffles. Motion defeated.

Councilman Belew nominated E. P. Wakefield to be elected to the Council. Two nominations having been made the following vote was recorded: Voting for Mr. Berglin, Mayor Overton, Councilmen: McDaniel and Ruffles. Voting for Mr. Wakefield, Councilmen: Belew and Shull. Mr. Berglin having received the majority of votes was elected to the City Council to fill the unexpired term of Mr. Fleming.

It was duly moved and seconded that the meeting adjourn. Motion carried.

Approved _____

Mayor

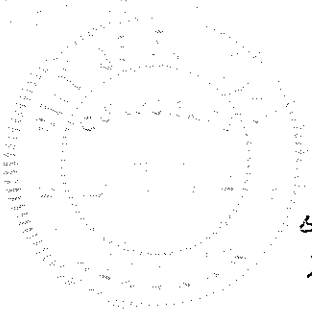
Attest: _____

City Clerk

I, Marie Moore, Clerk of the City of Fairhope, Alabama hereby certify that the above minutes are a true copy of the minutes of the City Council meeting of April 15, 1957 as they appear in Minute Book #5 of the City of Fairhope, Alabama.

Marie Moore

City Clerk, City of Fairhope, Alabama



Filed
7-10-57

STATE OF ALABAMA, On the relation
of ED SHELDON and DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, joining with the
State of Alabama for themselves,
and in the name of the State of
Alabama as plaintiffs,

PLAINTIFFS

VS

MARVIN BERGLIN

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

CASE NO. _____

Comes the State of Alabama on the relation of ED SHELDON and DONALD DRYER, Citizens of Baldwin County, Alabama as Plaintiffs for themselves and join in the name of the State of Alabama with the State of Alabama as Plaintiffs in said cause, who having given security for costs of this action approved by the Clerk of this Honorable Court and respectfully shows as follows:

COUNT ONE.

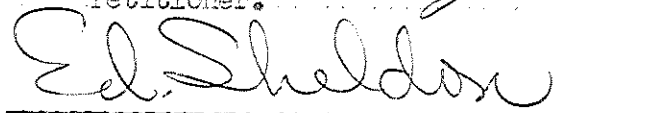
That they as relators in said cause joining with the State of Alabama, are resident citizens and duly qualified electors of Baldwin County, Alabama and over the age of 21 years.

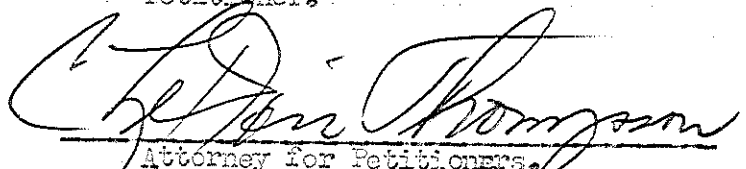
That Marvin Berglin has usurped, intruded into and unlawfully holds without warrant or authority of law the office of councilman for the City of Fairhope in Baldwin County, Alabama, and the said Marvin Berglin claims to be clothed with powers and privileges of said office and is now exercising the powers and functions of the same and enjoying the emoluments of said office, and that said office of councilman of the City of Fairhope is a public office of a municipal corporation of the State of Alabama duly created by law. That the said Marvin Berglin is usurping and intruding into and unlawfully holds and is exercising the powers and functions of said office in that he claims to hold said office by virtue of an election alleged to have been held on Monday April 15, 1957 to fill a vacancy on the City Council of Fairhope created by a resignation of Mr. John Fleming a former member of the said City Council of the City of Fairhope whose resignation was received and accepted by the remaining members of the said City Council of the City of Fairhope at the same meeting to-wit: April 15, 1957. Said election being in violation of Title 37 Section 427 of the Code of Alabama of 1940 as amended.

Your relators did further show that the said alleged election by members of the City Council of the City of Fairhope in Baldwin County, Alabama was not held in accordance with the requirements as laid down by the Legislature of Alabama in the provisions of Section 427, Title 37 of the Code of Alabama of 1940, as amended.

THE PREMISES CONSIDERED, the relators pray the Court for the issuance of a writ of quo warranto or other appropriate writ in the nature thereof, requiring the said Marvin Berglin to show by what warrant, right or authority he claims to hold said office as a member of the City Council of the City of Fairhope in Baldwin County, Alabama and by what warrant, right and authority he does exercise the powers and privileges of said office, and that upon a final hearing thereof the said Marvin Berglin be adjudged guilty of usurping or intruding into or unlawfully holding or exercising the powers of said office and that judgment be rendered excluding him from said office, and from holding the same or exercising the powers and privileges of said office thereof or enjoying the emoluments therefrom, and that relators may recover their reasonable costs against said Marvin Berglin and that they may have all other relief to which they may appear entitled.


Petitioner.


Petitioner.


Attorney for Petitioners.

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

CIRCUIT COURT, BALDWIN COUNTY

BALDWIN COUNTY

No.

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Marvin Berglin

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against _____

Marvin Berglin

_____, Defendant

by _____ State of Alabama on the Relations of Ed Sheldon, Donald Dryer et al

_____, Plaintiff.....

Witness my hand this 10th day of May 1957.....

Archie J. Roberts, Clerk

BOND FOR COSTS

STATE OF ALABAMA, On the relation
of, ED SHELDON AND DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, joining with the
State of Alabama for themselves,
and in the name of the State of
Alabama as plaintiffs,

PLAINTIFFS,

VS

MARVIN BERGLIN

DEFENDANT

IN THE
CIRCUIT COURT
OF
BALDWIN COUNTY
ALABAMA
AT LAW

KNOW ALL MEN BY THESE PRESENTS, That we ED SHELDON, DONALD DRYER and

Robert R. Nahrgang and Candace Nahrgang

do hereby acknowledge ourselves as security for all costs in a quo warranto
proceeding against MARVIN BERGLIN now being filed in the Circuit Court of
Baldwin County, Alabama, and by joining in this instrument we waive all
constitutional exemptions as to personal property.

Given under our hands and seals this the 10th day of May, 1957.

Donald D. Dryer
Ed. Sheldon
Robert R. Nahrgang
Candace Nahrgang

Taken and approved this the 10 day of May, 1957.

Acie L. Duck
Clerk of Circuit Court of Baldwin County,
Alabama.

STATE OF ALABAMA, On the relation)
of ED SHELTON and DONALD DRYER,)
Citizens of Fairhope, Baldwin)
County, Alabama, joining with the)
State of Alabama for themselves,)
and in the name of the State of)
Alabama as plaintiffs,)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3241

Plaintiffs,)

VS.)

MARVIN BERGLIN,)

Defendant.)

DEMURRER TO AMENDED PETITION

Now comes the defendant, by his attorneys, and demurs to the petition as last amended (the amended petition filed on July 10, 1957) and to each and every count thereof, separately and severally, and as grounds of such demurrer assigns, separately and severally, the following:

1. It does not state a cause of action.
2. No facts are alleged on which the relief sought can be granted.
3. The allegations of the complaint are vague, indefinite and uncertain.
4. The allegations of the petition are conclusions of the pleader.
5. It affirmatively appears that this suit has not been brought in the way and manner provided by Title 7, Section 1142 of the 1940 Code of Alabama.
6. There is a non-joinder of parties plaintiff.
7. There is a misjoinder of parties plaintiff.
8. No facts are alleged to show how and in what way Title 37, Section 427 of the 1940 Code of Alabama, was not complied with.
9. No facts are alleged to show that the defendant was not elected in accordance with the terms and provisions of Title 37, Section 427 of the 1940 Code of Alabama.
10. It affirmatively appears that the defendant was elected by a majority vote of the City Council of the City of Fairhope, Alabama, at a meeting at which all persons entitled to vote were present and voted.

11. No facts are alleged to show that the said Ed Sheldon and Donald Dryer are residents and qualified electors residing within the corporate limits of the City of Fairhope, Alabama.

12. No facts are alleged to show that the said Ed Sheldon and Donald Dryer have any right to prosecute this suit.

13. It affirmatively appears that the defendant, Marvin Berglin, was duly elected as a member of the City Council of the City of Fairhope, Alabama, a municipal corporation, at a meeting at which the mayor and all of the members of the City Council were present, and that a majority of those entitled to vote voted for the election of the said Marvin Berglin as said officer.

14. No facts are alleged to show how or in what manner the defendant is unlawfully holding or exercising the office of City Councilman of the City of Fairhope, Alabama, a municipal corporation.

15. No facts are alleged to show that the minutes, which are made a part of the said petition, are the true and correct minutes of the meeting of the City Council of the City of Fairhope, Alabama, a municipal corporation, which was held on April 15, 1957.

16. It affirmatively appears that the minutes, which are made a part of the said petition, are incomplete.

J. B. Blackburn
Ernest M. Bailey
E. G. Rickard
Attorneys for defendant

Defendant demands a trial of this cause by jury.

J. B. Blackburn
Of counsel for defendant

Filed
7-13-57

STATE OF ALABAMA, On the relation
of ED SHELDON and DONALD DRYER,
Citizens of Fairhope, Baldwin
County, Alabama, joining with the
State of Alabama for themselves,
and in the name of the State of
Alabama as plaintiffs,

Plaintiffs,

VS.

MARVIN BERGLIN,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3241

FILED

JUL 15 1957

ALICE A. DUCK, Clerk

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA