COMMUNITY BANCSHARES INC /DE/
Form S-8
May 25, 2005

As filed with the Securities and Exchange Commission on May 25, 2005.

File No. 333-______

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Community Bancshares, Inc.

(Exact Name of Issuer as Specified in its Charter)

Delaware	**63-0868361**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification Number)**

68149 Main Street

Blountsville, AL 35031

(205) 429-1000

(Address, including zip code, and telephone number of Principal Executive Offices)

STOCK OPTIONS AND SHARES OF STOCK

GRANTED TO CERTAIN EMPLOYEES AND DIRECTORS OUTSIDE OF A PLAN

WILLIAM H. CAUGHRAN

Community Bancshares, Inc.

68149 Main Street

Blountsville, AL 35031

(205) 429-1000

832-6170

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:

MICHAEL L. STEVENS

Alston & Bird LLP

One Atlantic Center

1201 West Peachtree Street, N.W.

Atlanta, Georgia 30309-3424

(404) 881-7970

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock $0.10 par value per share	635,000(1)	$ 6.89(2)	$ 4,375,150.00(2)	$ 514.96
Common Stock $0.10 par value per share	14,406(3)	$ 7.50(4)	$ 108,045.00(4)	$ 12.72
Total				$ 527.68

(1) Amount to be registered consists of 635,000 shares issuable upon the exercise of stock options granted by Community Bancshares, Inc. (the Company) to certain employees outside of any plan, including any additional shares that may become issuable in accordance with the adjustment and anti-dilution provisions such stock option agreements.

(2) Determined in accordance with Rule 457(h) under the Securities Act of 1933, as amended, the registration fee calculation is based on the weighted average exercise price of the following previously-granted stock option awards: (i) 550,000 at $6.81, (ii) 30,000 at $7.00, (iii) 5,000 at $7.05, and (iv) 50,000 at $7.68.

(3) Amount to be registered consists of 14,406 shares issuable to directors outside of any plan.

(4) Determined in accordance with Rule 457(h) under the Securities Act of 1933, as amended, the registration fee calculation is based on the average of the high and low prices of the Company s common stock as reported on the over-the-counter bulletin board on May 24, 2005.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 will be sent or given to the employees and directors receiving options or shares as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended. These documents and the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933, as amended.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which Community Bancshares, Inc. (the Company) previously filed with the Securities and Exchange Commission (the Commission) pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are hereby incorporated by reference into this Registration Statement:

(1) The Company s Annual Report on Form 10-K for the fiscal year ended December 31, 2004;

(2) All other reports filed by the Company pursuant to Section 13(a) or 15(d) of the Exchange Act since December 31, 2004; and

(3) The description of the Common Stock contained in the Company s Registration Statement filed under Section 12 of the Exchange Act, including all amendments or reports filed for the purpose of updating such description.

All documents subsequently filed with the Commission by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment that indicates that all securities offered herein have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be part of hereof from the respective dates of filing such documents. Any statement contained in a document incorporated or deemed incorporated herein by reference shall be deemed to be modified or superseded for the purpose of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is, or is deemed to be, incorporated herein by reference modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

The validity of the Common Stock issuable by the Company pursuant to the stock options and stock grants will be passed upon for the Company by William H. Caughran, the General Counsel of the Company.

Item 6. Indemnification of Directors and Officers.

The Company s Amended and Restated Certificate of Incorporation (the Certificate of Incorporation) eliminates personal liability of directors to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except for: (i) any breach of the duty of loyalty to the Company or its stockholders; (ii) acts or omissions not in good faith or which involve intentional misconduct or knowing violations of law; (iii) liability under Section 174 of the General Corporation Law of the State of Delaware (DGCL) relating to certain unlawful dividends and stock repurchases; or (iv) any transaction from which the director derived an improper personal benefit.

Section 145 of DGCL provides that under certain circumstances, a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of the Company or is or was serving at its request in such capacity in another corporation or business association, against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The Certificate of Incorporation of the Company provides for indemnification of directors and officers of the Company to the fullest extent authorized by Section 145 of DGCL against, and, upon request, advancement of, expenses (including attorneys fees), judgments, penalties, fines and other amounts paid in settlement incurred by them in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, in which any such person was or is a party or is threatened to be made a party. The Certificate of Incorporation prohibits the Company from indemnifying any director or officer who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to secure a judgment in its favor against such director or officer with respect to any claim, issue, matter as to which the director or officer has been adjudged liable to the Company, unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine that, despite the adjudication of liability but in view of all the circumstances of the case, such director or officer is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper. The indemnification provided for in the Certificate of Incorporation does not limit the Company s ability to indemnify other persons for any such expenses. The advancement of expenses, as well as indemnification, pursuant to the Certificate of Incorporation of the Company is not exclusive of any other rights which persons seeking indemnification or advancement of expenses from the Company may have.

The Certificate of Incorporation also permits the Company to maintain an insurance policy pursuant to which its directors and officers are insured against certain liabilities that might arise out of their relationship with the Company as directors and officers.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

See Exhibit Index, which is incorporated here by reference.

Item 9. Undertakings.

(a) The undersigned Company hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in this registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the Registration Statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities being offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Company hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company s annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan s annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Blountsville, State of Alabama, on the 26th day of April 2005.

COMMUNITY BANCSHARES, INC.

By: /s/ Patrick M. Frawley

Patrick M. Frawley
Chief Executive Officer, President and Chairman

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Kerri C. Kinney and William H. Caughran his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and to each Registration Statement amended hereby, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Patrick M. Frawley	Chief Executive Officer, President	April 26, 2005
Patrick M. Frawley	and Chairman	
	(Principal Executive Officer)	
/s/ Kerri C. Kinney	Chief Financial Officer	April 26, 2005
Kerri C. Kinney	(Principal Financial Officer)	

/s/ Kenneth K. Campbell Kenneth K. Campbell	Director	April 26, 2005
/s/ Glynn C. Debter Glynn C. Debter	Director	April 26, 2005
/s/ Roy B. Jackson Roy B. Jackson	Director	April 26, 2005
/s/ John J. Lewis, Jr. John J. Lewis, Jr.	Director	April 26, 2005
/s/ Stacey W. Mann Stacey W. Mann	Director	April 26, 2005
/s/ Terry Sanderson Terry Sanderson	Director	April 26, 2005
/s/ Michael A. Tarpley Michael A. Tarpley	Director	April 26, 2005
/s/ Jimmie A. Trotter Jimmie A. Trotter	Director	April 26, 2005

EXHIBIT INDEX

TO

REGISTRATION STATEMENT ON FORM S-8

Exhibit Number	Description
5.1	Opinion of William H. Caughran, General Counsel of the Company
23.1	Consent of Counsel (included in Exhibit 5.1)
23.2	Consent of Carr, Riggs & Ingram, LLC
24.1	Power of Attorney (included in signature pages to this Registration Statement)