

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PERSONHOOD MISSISSIPPI, on its)
own behalf and on behalf of its members,)
and P. LESLIE RILEY, JR., sponsor of)
Initiative No. 26,)

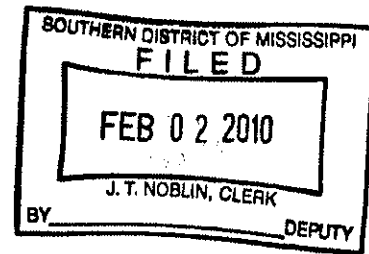
Plaintiffs,)

v.)

JIM HOOD, in his official capacity as)
Attorney General for the State of)
Mississippi; and,)
DELBERT HOSEMANN, in his official)
capacity as Secretary of State for the State)
of Mississippi,)

Defendants.)

Case No. 3:10 CV 71 DPJ-FKB



VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 that challenges the construction and interpretation by the State of Mississippi, by and through its duly elected officials, of certain deadlines in the Voter Initiative Act, Miss. Code Ann. §§ 23-17-1, et seq. ("the Act").

2. In particular, Defendants have construed and applied Miss. Code Ann. §§ 23-17-3, 23-17-21, and 23-17-13 (and related constitutional and statutory provisions), governing the deadlines for completing and filing voter initiatives proposing amendments to the

Mississippi Constitution, in a manner that shortens the time within which Plaintiffs can gather signatures and thus limits the number of voices expressing their message, shrinking the size of the audience they can reach, and making it less likely they will garner sufficient signatures to place their Initiative on the ballot, thereby infringing the First and Fourteenth Amendment rights of Plaintiffs and others not before the Court, as well as the rights set forth in Miss. Const. §273.

3. The unconstitutional construction and application by Defendants chills and deprives Plaintiffs and other similarly situated citizens of their right to free speech, free press, the free exercise of religion, and the right to petition the government for a redress of their grievances. Plaintiffs and others have suffered, are suffering, and will continue to suffer irreparable injury to their First Amendment rights absent declaratory and injunctive relief.

4. Plaintiffs seek a declaratory judgment that the challenged statutes, customs and/or constructions are unconstitutional, and preliminary and permanent injunctive relief.

JURISDICTION AND VENUE

5. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3),(4) which confer original jurisdiction on federal district courts in suits to redress the deprivation of rights, privileges and immunities as set forth in paragraphs 1 and 2 above. The Court may address the declaratory relief requested pursuant to 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in the Southern District of Mississippi, Jackson Division, pursuant to 28 U.S.C. §1391(b), because the claims arose in the district.

IDENTIFICATION OF PARTIES

7. Plaintiff Personhood Mississippi is a Mississippi political committee in good standing.

8. Plaintiff P. Leslie Riley, Jr., is a citizen of the United States and a resident of Pontotoc County, Mississippi.

9. Defendant Jim Hood is the Attorney General in and for the State of Mississippi. He is sued in his official capacity.

10. Defendant Delbert Hosemann is the Secretary of State for the State of Mississippi. He is sued in his official capacity.

ALLEGATIONS OF FACT

11. The Mississippi Constitution reserves to the people “the power to propose and enact constitutional amendments by initiative.” Miss. Const. §273(3).

12. According to the Constitution, the people may propose an initiative to amend the Constitution “by a petition *signed over a twelve-month period* by qualified electors equal in number to at least twelve percent (12%) of the votes for all candidates for Governor in the last gubernatorial election.”¹ *Id.* (emphasis added).

13. The Constitution further provides that the legislature “shall provide by law the manner in which initiative petitions shall be circulated, presented and certified.” Miss. Const. §273(12).

¹ The number of signatures Plaintiffs must obtain is approximately 89,285, according to the Secretary of State’s “Citizens’ Guide.”

14. While the legislature may regulate the *manner* of completing the petitions, it “*shall in no way restrict or impair* the provisions of this section or the powers herein reserved to the people.” Miss. Const. §273(13) (emphasis added).

15. Pursuant to its constitutional duty, the legislature enacted the Voter Initiative Act.

16. In or about November 2008, as allowed by the Act, Plaintiff Leslie Riley filed with the Secretary of State a proposed initiative to amend the Mississippi Constitution to define “person” to “include every human being from the moment of fertilization, cloning, or the functional equivalent thereof.”

17. The Secretary of State dutifully submitted a copy to the Attorney General’s office, which reviewed it and issued a Certificate of Review, as required by law. The proposed initiative was then returned to Plaintiff Riley.

18. Plaintiff Riley timely re-submitted the proposed initiative and the Certificate of Review to the Secretary of State, in accordance with the Act.

19. The Secretary of State then assigned the petition Initiative No. 26, and forwarded a copy to the Attorney General.

20. As required by the Act, the Attorney General’s office drafted a ballot title and summary, which were duly filed with the Secretary of State.

21. The Secretary of State notified Plaintiff Riley of the language of the ballot title and summary, and published them in the newspaper, in order to allow any person dissatisfied with the language to file an appeal, as required under the Act. No one filed an appeal.

22. Thereafter, in February, 2009, the Secretary of State sent it back to Plaintiff Riley and informed him that the petition would be valid for a period of twelve months, ending February 13, 2010.

23. Plaintiffs then began collecting signatures on their petition. Periodically, they submitted petitions to the circuit clerks of the various counties in which the signatures were gathered.

24. Some clerks' offices were quick to complete the certification process, and others were not as quick. Some returned the petitions to Plaintiffs within a matter of days, some took a few weeks, and some took a month or more.

25. Plaintiffs have encountered varying degrees of accuracy in reviewing the signatures that were certified and those that were rejected, frequently finding signatures that were rejected erroneously.

26. As the deadline grows nearer, Plaintiffs have submitted greater numbers of petitions to some clerks, especially those in larger counties.

27. The clerks' offices are often understaffed and overworked, lacking sufficient resources to quickly process the stacks of petitions and carefully review the signatures.

28. In at least one instance, Plaintiffs have not received the petitions back from the clerk's office for over two months.

29. Without timely information concerning the number of certified signatures in each of the five congressional districts among which an equal number of signatures are required, Plaintiffs are unable to allocate their limited resources in a manner calculated to insure success in obtaining the minimum number of certified signatures sufficient to enable them to place the initiative on the ballot.

30. As of the date of the filing of this lawsuit, Plaintiffs have thousands of petitions in clerks' offices around the state, with no way of obtaining an accurate count of the total number of certified signatures collected or the number still needed.

31. Under Defendants' construction of the Act, it would be impossible for a qualified elector who signs the petition on the last day of its validity, February 13, 2010, to have her signature counted, because (a) February 13 is a Saturday, and both the clerks' offices and the Secretary of State's offices are closed, and (b) according to Defendants, the petition must be *filed* with the Secretary of State's office *before* February 13, which in this case means it must be filed no later than the close of business Friday, February 12.

32. Furthermore, given the delay between the date signatures are submitted to the clerks' offices and the date when they are returned to Plaintiffs, even if a signatory on the last day or even the last week or two of the petition's validity were to submit that signature to the clerk's office, it will be almost impossible for the clerk to review and certify it, return the certified petition to Plaintiffs, and then rush the new totals back in time for Plaintiffs to meet the deadline for submission to the Secretary of State's office as construed and applied by Defendants.

Legal Provisions

33. Section 23-17-3 of the Act provides: "The petition for a proposed initiative measure must be filed with the Secretary of State *not less than ninety (90) days before the first day of the regular session of the Legislature at which it is to be submitted*. A petition is valid for a period of twelve (12) months." *Id.* (emphasis added).

34. Section 23-17-21 requires that “the petition must be certified by the circuit clerk of each county in which the petition was circulated,” meaning that the clerks must “verify the name of each qualified elector signing on each petition.” *Id.*

35. That same section further states in part:

When the person proposing any initiative measure has secured upon the petition a number of signatures of qualified electors equal to or exceeding the minimum number required by Section 273(3) of the Mississippi Constitution of 1890 for the proposed measure, and such signatures have been certified by the circuit clerks of the various counties, he may submit the petition to the Secretary of State for filing.

Id. (emphasis added).

36. Under the statutes, then, Plaintiffs may not submit the petition to the Secretary of State for filing until they have secured sufficient signatures of qualified electors, *and those signatures have been certified* by the circuit clerks.

37. Similarly, the Secretary of State “shall refuse to file” a petition that either lacks a sufficient number of certified signatures of qualified electors, or that is filed out of time. Miss. Code Ann. §23-17-23.

38. Although the Act purports to set forth explicit time limits on how long a petition is valid and when it is to be filed, it contains no time limit on how long the circuit clerks have to certify signatures.

39. Despite the unambiguous language in Miss. Const. §273(3) to the effect that the petition may be *signed* over a twelve month period, Defendant Hood’s office has rendered a formal opinion concluding that the petition must be *filed* by the end of the twelve month period. *See* Opin. Atty. Gen. No. 96-0433 (“Failure to file the petition with the Secretary of State within twelve months of the date that the notice was received by

the proposer of the measure according to the return receipt would prohibit the Secretary of State from accepting the petition for filing.”).

40. Under these circumstances, by Defendants’ construction and application of the Act Plaintiffs are being and will be denied the opportunity to disseminate their message and obtain signatures supporting the initiative during the full twelve month period the Mississippi Constitution guarantees that the petition will be valid.

41. Moreover, as construed and applied by Defendants, the Act vests unbridled discretion in the circuit clerks to deny Plaintiffs’ First Amendment rights by simply not timely reviewing and certifying the signatures submitted to them as required by the Act.²

42. Such a result would not only deny to Plaintiffs their First Amendment rights, but would also deny to the voters whose signatures were not counted their First Amendment rights to express themselves and be heard on this important issue of public concern.

ALLEGATIONS OF LAW

43. All of the acts of Defendants, their officers, agents, servants, and employees, as alleged herein, were conducted under color and pretense of the statutes customs, practices, and usages of the State of Mississippi, unless otherwise specified.

44. “The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change.” *Meyer v. Grant*, 486 U.S. 414, 421 (1988).

² Indeed, given the lack of any explicit deadline for the circuit clerks to act, even if Plaintiffs are correct that they have until 90 days before the start of the next regular legislative session to file their petition with the Secretary of State, an unscrupulous clerk could still refuse to certify signatures left with her in a timely fashion, and so defeat the entire initiative.

45. Plaintiffs seek by petition to achieve political change in Mississippi, and their right to engage in discussion concerning what constitutes a person is protected by the First Amendment.

46. Plaintiffs' activities constitute core political speech protected by the First and Fourteenth Amendments to the U.S. Constitution.

47. "[T]he speech at issue is 'at the core of our electoral process and of the First Amendment freedoms.'" *Meyer*, 486 U.S. at 424 (quoting *Buckley v. Valeo*, 424 U.S. 1, 39 (1976)).

48. "The securing of sufficient signatures to place an initiative measure on the ballot is no small undertaking." *Meyer*, 486 U.S. at 423 (internal quotation marks and citation omitted).

49. "[L]egislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment." *Buckley*, 424 U.S. at 50. That principle "applies equally to the discussion of political policy generally or advocacy of the passage or defeat of legislation." *Meyer*, 486 U.S. at 428 (quoting *Buckley*, 424 U.S. at 48).

50. Defendants, by their construction of the law and application thereof, limit the ability of Plaintiffs to garner a sufficient number of signatures, thus limiting their ability to make the matter of personhood the focus of statewide discussion.

51. Defendants' construction of the Act limits Plaintiffs' speech by restricting the number of voices who will convey their message, the days they can do so and, therefore, the size of the audience they can reach.

52. “[S]tatutes that limit the power of the people to initiate legislation are to be closely scrutinized and narrowly construed.” *Meyer*, 486 U.S. at 423.

53. As construed and applied by Defendants, the Voter Initiative Act vests unbridled discretion in the circuit clerks to deny Plaintiffs’ First Amendment rights.

54. The law “will not presume that the public official responsible for administering a legislative policy will act in good faith and respect a speaker’s First Amendment rights.” *City of Lakewood v. Plain Dealer Pub.*, 486 U.S. 750, 770 (1988).

55. Plaintiffs have no adequate remedy at law to correct the infringement of their First Amendment rights.

56. Plaintiffs have suffered, are suffering, and will continue to suffer, irreparable injury to their First and Fourteenth Amendment rights by the construction and application of the challenged laws absent declaratory and injunctive relief.

**FIRST CAUSE OF ACTION - 42 U.S.C. § 1983
(First Amendment)**

57. Paragraphs 1 through 56 above are incorporated herein by reference as though pleaded in full.

58. Defendants’ construction and application of the Voter Initiative Act hinders and deprives Plaintiffs of their ability to effectively communicate their pro-life message.

59. The actions of Defendants in hindering and depriving Plaintiffs of their ability to effectively communicate their message are unconstitutional abridgements of Plaintiffs’ affirmative rights to freedom of speech, free press, and the free exercise of religion, secured by the First and Fourteenth Amendments to the United States Constitution.

60. Defendants have no compelling interest sufficient to justify their infringement on Plaintiffs' constitutional rights.

61. As a direct and proximate result of Defendants' actions, Plaintiffs are chilled and deprived of their constitutional rights. Plaintiffs have suffered, are suffering, and will continue to suffer, irreparable harm.

WHEREFORE, Plaintiffs pray for relief against Defendants as hereinafter set forth in the prayer for relief.

**SECOND CAUSE OF ACTION - 42 U.S.C. § 1983
(Due Process)**

62. Paragraphs 1 through 56 above are incorporated herein by reference as though pleaded in full.

63. As construed and applied by Defendants, the Voter Initiative Act fails to cabin the discretion of government officials in a manner protecting First Amendment rights.

64. Defendants have no compelling interest sufficient to justify their infringement on Plaintiffs' constitutional rights.

65. As a direct and proximate result of Defendants' actions, Plaintiffs are chilled and deprived of their constitutional rights. Plaintiffs have suffered, are suffering, and will continue to suffer, irreparable harm.

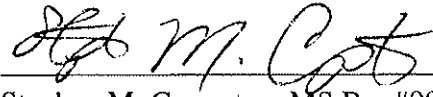
WHEREFORE, Plaintiffs pray for relief against Defendants as hereinafter set forth in the prayer for relief.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court:

- a. Assume jurisdiction over this action;
- b. Declare that Defendants' construction and application of the Voter Initiative Act as alleged herein is unconstitutional;
- c. Enter preliminary and permanent injunctions enjoining Defendants from requiring Plaintiffs to file their petition on the day it ceases to be valid;
- d. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988; and
- e. Grant such other and further relief as this Court deems necessary and proper.

Respectfully submitted,



Stephen M. Crampton, MS Bar #9952

LIBERTY COUNSEL

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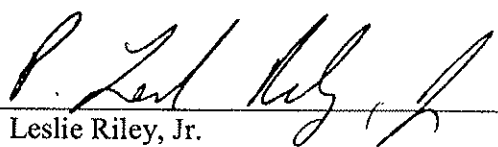
(434) 592-7000 Telephone

(434) 592-7700 Facsimile

Attorneys for Plaintiffs

VERIFICATION

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the factual allegations set forth in the foregoing Complaint are true and correct.



P. Leslie Riley, Jr.

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
PERSONHOOD MISSISSIPPI, on its own behalf and on behalf of its members, and P. LESLIE RILEY, JR., sponsor of Initiative No. 26

DEFENDANTS
JIM HOOD, in his official capacity as Attorney General for the State of Mississippi; and DELBERT HOSEMANN, in his official capacity as Secretary of State for the State of Mississippi

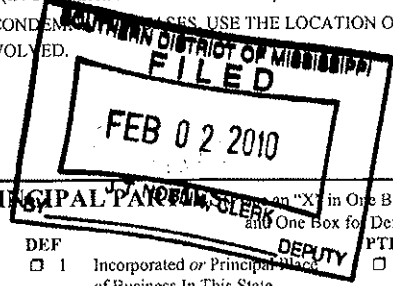
(b) County of Residence of First Listed Plaintiff LEE
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant HINDS
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Stephen M. Crampton, Liberty Counsel
100 Mountain View Road, Suite 2775 Lynchburg, VA 24502
(434) 592-7000

Attorneys (If Known)



II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTY (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, FOREIGN/RENTAL, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Sub-Section 1983
Brief description of cause:
Challenging the construction and interpretation of deadlines in the Voter Initiative Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

02/02/2010

Signature of Stephen M. Crampton

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

3464300674