

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS  
COUNTY, MISSISSIPPI

Mississippi Votes

PLAINTIFFS

v.

CAUSE NO. 2023-652

Zack Wallace, Circuit Clerk, Hinds  
County Election Commissioners

DEFENDANT(S)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW, Mississippi Votes by and through undersigned counsel, and files this their Complaint for Declaratory and Injunctive Relief against Defendant(s), Zack Wallace, Hinds Circuit Clerk, and the Hinds County Election Commissioners as follows:

PRELIMINARY STATEMENT

1. Plaintiffs have filed this action to respectfully move this Court for emergency injunctive relief to halt the ongoing, irreparable denial of Plaintiffs' right to vote under the laws and constitutions of the United States of America and Mississippi as a result of unreasonably long lines and wait times at polling sites in the following precincts 1) Old Byram (Byram City Hall), 2) Clinton 3 (Northside Baptist Church), 3) Raymond 1 (United Methodist Church), and 4) Clinton 2 (Wildwood Baptist Church) caused by Defendants' delay in having sufficient ballots for voters and Defendants' failure to correct the lack of ballots for over two hours in certain precincts. There is no adequate justification for such a severe burden on such a fundamental right.

2. As described below, upon information and belief, Defendants have engaged and continue to engage in an organized effort to deny Plaintiffs and similarly

situated voters the voting opportunities they need and to which they are entitled, for the purpose and with the effect of restricting their fundamental right to vote.

3. Without this Court's immediate intervention, Defendants will continue to inflict irreparable injury upon Plaintiffs and potentially hundreds of other lawfully registered voters.

#### PARTIES

4. Plaintiff Mississippi Votes is a nonpartisan, nonprofit organization led by young people that registers people to vote, organizes and encourages civic engagement, and educates communities on voting rights through grassroots organizing, programming, and outreach strategies that empower young people. Mississippi Votes, along with other nonpartisan organizations, is running an election protection line for today's election, and they are helping, along with other nonpartisan nonprofit organizations, to train and manage non-partisan poll monitors throughout the state of Mississippi. MS Votes has a number of member chapters throughout the state of Mississippi. The interests at stake in this action are germane to the purposes of Mississippi Votes.. Neither the claims asserted herein nor the relief requested requires the individual participation of any members in this action. The unlawful conduct at issue in this action has forced Mississippi Votes to divert resources in an effort to counteract these violations.

5. Defendant Kidada Brown is a Hinds County Election Commissioner in the Board of Supervisors, a political subdivision of the State of Mississippi.

6. Defendant RaToya Gilmer McGee is a Hinds County Election Commissioner in the Board of Supervisors, a political subdivision of the State of Mississippi.

7. Defendant Jermal Clark is a Hinds County Election Commissioner in the Board of Supervisors, a political subdivision of the State of Mississippi.
8. Defendant Yvonne R. Horton is a Hinds County Election Commissioner in the Board of Supervisors, a political subdivision of the State of Mississippi.
9. Defendant Sirley Varnadois a Hinds County Election Commissioner in the Board of Supervisors, a political subdivision of the State of Mississippi.
10. Defendant Zack Wallace is the Hinds County Circuit Clerk.

11. Defendants have acted at all relevant times under color of law and are sued in their official capacities for all purposes in this action.

#### JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of the Complaint pursuant to Sections 24 and 156 of the Mississippi Constitution.

13. As qualified electors and taxpayers in the state of Mississippi, Plaintiff(s) have standing to raise the claims alleged in their Complaint.

14. Venue is proper in Hinds County because substantial acts and omissions which gave rise to Plaintiffs' injury occurred in Hinds County and a Defendant resides or has its principal place of business in Hinds County. See Miss. Code Ann. § 11-11-3(2).

#### GENERAL ALLEGATIONS

15. Mississippi state law requires that every voter who is in line by 7:00 p.m. be given the opportunity to cast a regular, non-provisional ballot. Miss. Code. Ann. § 23-15-541. Mississippi state law also requires that the officer charged with printing and distributing the official ballot shall ascertain from the registrar, at least ten (10) days

before the day of election, the number of registered voters in each voting precinct; and he or she shall have printed and distributed a sufficient number of ballots for use in each precinct. Miss. Code Ann. § 23-15-353; Miss. Code. Ann. § 23-15-371 also provides that, in the event the polling location's official paper ballots are "lost or destroyed," those paper ballots must be replaced. Miss. Code. Ann. § 23-15-371.

16. However, on or about November 7, 2023, Plaintiffs became aware that, upon information and belief, Defendants ran out of ballots at several precincts, including at 1) Old Byram (Byram City Hall), 2) Clinton 3 (Northside Baptist Church) 3) Raymond 1 (United Methodist Church), and 4) Clinton 2 (Wildwood Baptist Church).

17. Long lines and wait times lines can prevent voters who intended to vote from successfully casting a ballot. One study estimates that 730,000 eligible voters did not vote in the 2012 election because of long lines and unreasonable wait times at their polling sites.<sup>1</sup> Long lines and unreasonable wait times also have long-term impacts on voter participation. Another study estimates that nearly 200,000 American voters likely did not vote in November 2014 because of the wait times they experienced in 2012.<sup>2</sup>

18. An extension of polling site hours can ameliorate the effect of long lines by providing voters turned away by long lines the opportunity to return during extended hours to cast their ballots.

19. Defendants' failure to provide voters with ballots violated Plaintiffs' fundamental right to vote and other crucial rights guaranteed by federal and state law.

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<sup>1</sup> Charles Stewart III, *Managing Polling Place Resources*, Caltech/MIT Voting Technology Project (Nov. 2015), available at [https://elections.delaware.gov/pdfs/manage\\_pp.pdf](https://elections.delaware.gov/pdfs/manage_pp.pdf).

<sup>2</sup> Stephen Pettigrew, *The Downstream Consequences of Long Waits: How Lines at the Precinct Depress Future Turnout*, Univ. of Pa. Working Paper, <https://www.dropbox.com/s/7eis5yychwqstw/pettigrew%20-%20lines%20and%20turnout.pdf?dl=0>.

20. The harm to Plaintiffs in being prevented or deterred from voting in the November 7, 2020 state election is irreparable, imminent, unequal, and substantial.

21. The hardships incurred by Plaintiffs in being prevented or deterred from voting in the November 7, 2023 statewide election far outweigh any modest burden on Defendants in complying with federal and state law.

22. The actions of Defendants are contrary to the public interest and unsupported by any legitimate interest.

COUNT 1 (Miss. Code. Ann. § 23-15-353)

23. Plaintiffs re-allege each allegation contained in each of the Paragraphs above, as if fully set forth herein.

24. Miss. Code. Ann. § 23-15-353 provides that, “The officer charged with printing and distributing the official ballot shall ascertain from the registrar, at least ten (10) days before the day of election, the number of registered voters in each voting precinct; and he or she shall have printed and distributed a sufficient number of ballots for use in each precinct.”

25. Miss. Code. Ann. § 23-15-353 therefore requires election officials to take the adequate actions to ensure that there are a sufficient number of ballots for each precinct in advance of election day.

26. On or about November 7, 2023, upon information and belief, Plaintiff(s) became aware that Defendants prohibited such voters from casting such a ballot.

27. The Defendants’ actions violate Miss. Code. Ann. § 23-15-353.

28. Unless and until enjoined by this Court, Defendants will unlawfully continue to deprive Plaintiff(s) and those similarly situated of their right to vote in the

November 7, 2023 statewide election, in violation of Miss. Code. Ann. § 23-15-353.

COUNT 2 (Miss. Code. Ann. § 23-15-371)

29. Plaintiffs re-allege each allegation contained in each of the Paragraphs above, as if fully set forth herein.

30. Miss. Code. Ann. § 23-15-371 provides that, in the event the polling location's official paper ballots are "lost or destroyed," those paper ballots must be replaced. Miss. Code. Ann. § 23-15-371. In the event the ballots cannot be printed or otherwise replaced in time, the voter may write out a ballot, "marked by the voter as provided for printed ballots." Id.

31. Miss. Code. Ann. § 23-15-371 therefore requires election officials to take the adequate actions to ensure all paper ballots must be readily available for voters and take the proper steps to ensure their replacement.

32. On or about November 7, 2023, upon information and belief, Plaintiff(s) became aware that Defendants prohibited such voters from casting such a ballot.

33. The Defendants' actions violate Miss. Code. Ann. § 23-15-353.

34. Unless and until enjoined by this Court, Defendants will unlawfully continue to deprive Plaintiff(s) and those similarly situated of their right to vote in the November 7, 2023 statewide election, in violation of Miss. Code. Ann. § 23-15-353.

COUNT 3 (Mississippi Constitution § 241)

35. The Mississippi Constitution provides that eligible voters have a right to vote.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) respectfully pray that this Court enter an order:

I. Requiring that 1) Old Byram (Byram City Hall), 2) Clinton 3 (Northside Baptist Church) 3) Raymond 1 (United Methodist Church), and 4) Clinton 2 (Wildwood Baptist Church) remain open until 9 p.m., such that any voter in line by 9:00 p.m. shall be permitted to cast a ballot;

II. Directing Defendants to provide immediate notice of this injunction to election officials at relevant polling sites, to provide a written copy of this injunction to election officials at every relevant polling site at the earliest opportunity, and to provide notice of this injunction to the public through such other means as the Court finds necessary and appropriate to promptly correct the violations of law herein;

III. Any other relief deemed appropriate by the Court.

Date: November 7, 2023

Respectfully submitted,

/s/ Paloma Wu  
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