

IN THE SUPREME COURT OF MISSISSIPPI
Cause No.: 2024-EC-00406- SCT

TATE REEVES, IN HIS OFFICIAL CAPACITY
AS GOVERNOR OF THE STATE OF MISSISSIPPI **APPELLANT**

v.

JOHNNY GARY **APPELLEE**
AND
ERIC MITCHELL **INTERVENOR**

RESPONSE IN OPPOSITION TO
MOTION TO STAY OR VACATE

COME NOW, Johnny Gary, original Plaintiff, and Eric Mitchell, Intervenor, (hereinafter Appellees), by and through counsel, and file this their response in opposition to the motion to stay or vacate and in support hereof would show the following:

I. Introduction

Contrary to the arguments advanced by the Appellant, Governor Tate Reeves, the trial judge in this cause correctly ruled that while the Governor had the authority to set an election the election must comply with other applicable Mississippi laws. *Moore v. Parker* 962 So.2d 558, 568 (¶35) (Miss. 2007)

More specifically, the Court correctly ruled that the Governor must set the election at a time to ensure that local election commissioners receive notice of the writ and provide at least ninety (90) days notice to the public as required by Miss.

Code Ann. §23-15-835 and allow time for voters to cast absentee ballots as authorized by Miss. Code Ann. §23-15-715.

Hence, this Court should find that the circuit court did not abuse its discretion and reject the appeal filed by Governor Reeves.

II. Statement of the Facts and Analysis of the Law

On February 15, 2024 and February 22, 2024, a special circuit court judge issued rulings and ordered special elections in two actions pending in the Circuit Court of Leflore County, *Debra Hibbler v. Johnny Gary*, Cause No.: 2023-0071-CICI; and *Wayne Self v. Eric Mitchell*, Cause No.: 2023-0072-CICI.¹ Said orders requested that the Governor set special elections. On March 6, 2024, the Governor issued writs of election.

III. The Writ of Election Set special elections within Forty-One (41) Days in Contravention of Miss. Code Ann. §23-15-835

The writs of election issued by the Governor on March 6, 2024, each set the election on April 16, 2024 and provide in pertinent part that:

The special election shall be held and notice shall be given in a manner consistent with Miss. Code Ann. §23-15-835 and the laws of the State of Mississippi governing special elections. All relevant laws not in conflict with the terms of this Writ of Election

¹ The *Self v. Mitchell* case is on appeal in this court. See, *Eric Mitchell v. Wayne Self*, Case No. 2024-EC-00368-SCT

shall apply to this special election.

The statute referenced in the writs of election issued by Governor Reeves, Miss. Code Ann. §23-15-835, provides that:

The **election** commissioners of the several counties to whom the writ of **election** may be directed shall, immediately upon receipt of the writ, give notice of the special **election** to fill a vacancy in such county or county district office by posting notices at the courthouse and in each supervisor's district in the county for ninety (90) days before the **election** shall be prepared for and held as in case of a general **election**.

The Governor appears to acknowledge in the writs of election that §23-15-835 was applicable when he issued the writs of election on April 16, 2024. Yet, he now contends that §23-15-835 is inapplicable to him and it was apparently mentioned by mistake. Governor Reeves offered no other notice guidance to the commissioners. This alone should void the writs.

The writs of election issued by the Governor order and direct the Leflore County Election Commission to violate §23-15-835 by scheduling and conducting elections in forty-one (41) days in contravention of §23-15-833. Today, the Governor contends that §23-15-835 is not applicable to him. This is the very statute the Governor wrote on March 6, 2024, that "the special election shall be held and the notice shall be given consistent with..." The Governor makes this assertion that §23-15-835 is not applicable to him solely because for the Leflore County Election Commission to conduct an election consistent with §23-15-835, it

would be required to post notice at least ninety (90) days prior to the election. The writ would make compliance with §23-15-835 and therefore, is null and void.

The decision of the Circuit Court is consistent with rulings from this Court. This Court has recognized that the Governor has authority to set a special election under §23-15-937 as long as the writ complies with other applicable laws. *Moore v. Parker*, 962 So.2d at 568 (¶35). The Legislature intended for §23-15-833 to be mandatory and applicable to all elections. Hence, the writs of election issued herein do not and cannot comply with §23-15-835. Further, the Governor has not cited any other authority or identified any other statutory notice provision he is required to comply with for notice purposes. For instant, unless this Court holds that §23-15-835 is applicable to special elections set by the Governor, the Governor would have the absolute authority to set special elections within one week from the date of the writ so long as the election is set on a Tuesday. How preposterous does that sound?

**IV. The Claim by Governor that
Gary was Granted the Full
Relief Sought in his
Complaint is Without Merit**

Governor Reeves alleges in section of the motion entitled “Factual Background” that the ...judgment grants Gary the full relief sought in his complaint by declaring the writ of election void and enjoining the election

commissioners from conducting the April 16 special election.” Motion, P.3 of 6. Nothing can be further from the truth.

In the complaint for declaratory relief Gary requested as relief that the Court declare that all special elections for county offices and county district offices be held on the first Tuesday after the first Monday in November as required by Miss. Code Ann. §23-15-833. Complaint, ¶18, P.5 and ¶A, P.7; Motion for Declaratory Relief, etc. ¶8, P.2 and ¶9, P.3. The Circuit Court denied Gary’s request ruling that the Governor has authority to set the election up to and including the first Tuesday after the first Monday in November 2024. See, Order and Opinion, PP. 3 and 4 of 6.

More specifically, Gary contended that the writ of election issued by Governor Reeves contravenes §23-15-833. The Circuit Court disagreed. It denied Gary the relief sought under §23-15-833 ruling that it was bound by this Court’s pronouncement in *Parks v. Horton*, 299 So.3d 777, 778 (2020) that because no vacancy exists “... the Governor could have, but was not legally required to set the election day in November 2024 as described in §23-15-833.” Order and Opinion, P. 4 of 6. Hence, there is no doubt but that the Circuit Court followed all of this Court’s precedents in these cases. Further, this Court has held that the Governor must comply with other applicable election laws. See, *Moore v. Parker*, 962 So.2d 558, 568 (Miss. 2007) (The Governor may call a special election in conformity

with other applicable election laws). The circuit court carefully followed that *Parks v. Horton*. The applicable election laws certainly must include the public notice requirement (§23-15-835) and the absentee voting requirement (§23-15-715) among others.

**V. Whether the Circuit Court erred,
as a Matter of Law, When it Ruled
that the Governor’s Change to the
Leflore County Election Commission
is “ambiguous, inconsistent” and
fails to provide a “clear directive”**

The Circuit Court got it correct. While the Governor has the authority to issue a writ of election under §23-15-937, that authority is subject to other laws. *Moore v. Parker. Id.* This includes laws governing notice and absentee voting among others. See §23-15-835 and §23-15-715. In other words, the authority is not absolute.

The Governor’s suggestion that he can simply ignore the notice provisions, absentee ballot provisions and other statutory provisions adopted by the Legislature to ensure that elections are conducted in a fair, impartial, legal, constitutional and orderly fashion is without merit. An election without notice would violate citizens’ constitutional rights and create chaos in the political system in Mississippi.

VI. Conclusions

The Circuit Court had authority to determine whether the writ of election conformed with the law. The Circuit Court correctly concluded that the writ of election did comply with §23-15-833 but did not comply with the requirements of §23-15-835. Further, because the writ of election did not set an election that comports with the ninety (90) day requirement for notice under §23-15-835, the circuit court declared it null and void as a matter of law. Therefore, Gary was entitled to a declaratory judgment and Mitchell was entitled to the same relief. Further an injunctive relief against Leflore County Election Commission justified to prevent them from conducting an illegal election. For these reasons, the Appellee and the Intervenor requests that the decision of the trial judge be affirmed.

Respectfully submitted, 10th of April, 2024.

Willie Griffin

Willie Griffin, His Attorney, MSB #5022

Bailey & Griffin, P. A.

1001 Main Street

Greenville, MS 38701

Phone #: (662) 335-1966

Fax #: (662) 335-1969

Email: wgriffinlawyer@aol.com

Kimberly J. Merchant, Esq., MSB#10699

549 S. Washington Street

Greenville, MS 38701

Phone #: (662) 347-3921

Email: kmerchant@kjmpa.com

Attorneys for Appellee and Intervenor