

**IN THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI**

**JOHNNY GARY**

**PLAINTIFF**

**V.**

**Cause No.:** 2024-0021-CIC I

**TATE REEVES, IN HIS OFFICIAL  
CAPACITY AS GOVERNOR OF  
THE STATE OF MISSISSIPPI AND  
THE LEFLORE COUNTY ELECTION  
COMMISSION**

**DEFENDANT**

**COMPLAINT FOR DECLARATORY  
RELIEF AGAINST THE GOVERNOR, AND  
FOR A PRELIMINARY AND PERMANENT  
INJUNCTION AND/OR WRIT OF  
MANDAMUS AGAINST THE LEFLORE  
COUNTY ELECTION COMMISSION**

COMES NOW Plaintiff, Johnny Gary, by and through counsel, and files this his complaint for declaratory relief against Tate Reeves, in his official capacity as Governor, and a writ of mandamus and/or preliminary and permanent injunction against the Leflore County Election Commission, defendants, and in support hereof would respectfully show unto the Court the following, to-wit:

1. That the Plaintiff is an adult resident citizen of Greenwood, Leflore County, Mississippi. Plaintiff is the Chancery Clerk of Leflore County, Mississippi and was a candidate and declared the winner of the August 7, 2023,

Democratic Primary and the November 7, 2023, General Election for chancery clerk in Leflore county and therefore has standing to bring the action.

2. Defendant, Tate Reeves, is the Governor of the State of Mississippi and, pursuant to M.R.Civ.P. 4 (d)(5) may be served with process by service upon the Attorney General of the State of Mississippi, Honorable Lynn Fitch at 550 High Street, Suite 1200, Jackson, Mississippi 39201.

3. Defendant, the Leflore County Election Commission (hereinafter "LCEC") may be served with process by service on its chairperson, Preston Ratliff, at the Leflore County Courthouse, Greenwood, Mississippi. Defendant LCEC is legally responsible for conducting all elections, general and special, in Leflore County, Mississippi.

#### **I. JURISDICTION AND VENUE**

4. That this Court has jurisdiction pursuant to Art. 6, § 156 of the Mississippi Constitution M.R.Civ.P. 57(a) and Miss. and Code Ann. §11-41-1.

5. That venue is proper because the LCEC is domiciled in Leflore County, Mississippi.

#### **II. STATEMENT OF THE FACTS**

6. That the Democratic primary for chancery clerk of Leflore County was held on August 7, 2023, and Plaintiff was certified as the winner of said primary.

7. That the loser of the primary filed and election contest and on February 15, 2024, the Circuit Court of Leflore County entered a final judgment setting aside the results of the August 7, 2023 Democratic Primary and November 7, 2023 General Election for the position of Chancery Clerk and declared a vacancy in said position. (Exhibit “1”).

8. Miss. Code Ann. §23-15-937 authorizes the Governor to “call” a special election yet said statute does provide the Governor guidance on when the special election may be held or set. The Mississippi Supreme Court has held that while §23-15-97 authorizes the Governor to “call” a special election this call is subject to “other applicable laws governing [county] elections.” *Moore v. Parker*, 962 So.2d 558, 568 (¶35) (Miss. 2001).

9. That the Governor did more than “call” a special election to fill a vacancy in a county or county district office, he set an election on April 16, 2024 in direct contravention of “other applicable laws”, i.e., Miss. Code Ann. §23-15-833 and Miss. Code Ann. §23-15-835. (Exhibit “2”).

10. That the Writ of Election sets a special election in contravention of Miss. Code Ann. §23-15-833 which requires all county and county district elections to be held on the first Tuesday after the first Monday in November and

the scheduling of elections for county and county district offices violates the Legislature's mandate and are null and void.

11. More specifically, Miss. Code Ann. §23-15-833 provides in pertinent part that:

“Except as otherwise provided by law, the first Tuesday after the first Monday in November of each year shall be designated the regular special election day, and on that day, and on that day an election shall be held to fill any vacancy in county, county district, and district attorney elective offices.”

12. That the office of chancery clerk of Leflore County is a county office within the meaning of §23-15-833.

13. That the Writ of Election (Exh. “2”) further sets an election without providing ninety (90) days notice as required by Miss. Code Ann. §23-15-835.

14. Therefore, the Governor has ordered the LCEC to act in violation of its statutory duty to conduct all special elections for county and county district offices on the first Tuesday after the first Monday in November of each year and only after giving ninety (90) days notice.

15. Hence, the writ of election constitutes a nullity is unenforceable and void as a matter of law.

16. Plaintiff would further show that the writ commands LCEC to act without authority of law and conduct an election of April 16, 2024 and without providing ninety (90) days notice.

### **III. REQUEST FOR DECLARATORY RELIEF**

17. That Plaintiff restates and realleges ¶1-16 and incorporates them herein.

18. That pursuant to M. R. Civ. P. 57(a) and (b)(1) Plaintiff requests that the Court declare the Writ of Election issued by the Governor setting the special election for chancery clerk in Leflore County on a date other than the first Tuesday after the first Monday in November to be violative of rights granted to him by Mississippi Code Ann. §23-15-833 to have an election on the first Tuesday after the first Monday in November and therefore to the extent it seeks to schedule the election on a date other than November 5, 2024, the writ is null and is void as a matter of law because the Governor lacks the constitutional and/or legal authority or discretion to set such an election for the position of chancery clerk in Leflore.

19. That plaintiff further alleges that the writ (Exh. "2") violates his right to ninety (90) days notice of an election and requests that the Court declare that the Writ of Election issued by the Governor sets a special election on April 16, 2024 and prevents the election commissioners from "posting notices at the courthouse and in the county for ninety (90) days prior to such election ..." and is null and void because it compels the members of LCEC to violate their mandatory duty set in Miss. Code Ann. §23-15-835 and the rights of Plaintiff.

20. That for the foregoing reasons Plaintiff requests that the Court declare the Writ of Election null and void.

**IV. REQUEST FOR WRIT OF MANDAMUS  
AND/OR INJUNCTIVE RELIEF  
AGAINST LCEC UNDER §23-15-833**

21. That Plaintiff restates and realleges ¶¶ 1-20 above and incorporates them herein as if fully copied herein.

22. That the Writ of Election orders LCEC to schedule and hold an election on April 16, 2024, in violation of their oath to obey and comply with the laws of the State of Mississippi and rights afforded to Plaintiff under said statute.

23. More specifically, the Governor, by and through the Writ of Election, has directed the members of LCEC to violate the duty imposed on them under §23-15-833 and 23-15-835 by scheduling and holding an election on April 16, 2024.

24. That Plaintiff therefore requests that this Court issue a writ of mandamus, or preliminary and permanent injunction against LCEC and its members enjoining them from setting or holding a county or county district special election on a date other than the first Tuesday after the first Monday in November or in this case on November 5, 2024.

**V. Request for Writ of Mandamus  
and/or Injunctive Relief under  
§23-15-835**

25. That Plaintiff restates and realleges ¶1-24 and incorporates them within this herein by reference.

26. That the Writ of Election imposes a duty on LCEC to schedule and hold an election only forty-one (41) days after it was issued in violation of Miss. Code Ann. §23-15-835 which provides that all such elections shall be held after the election commission provides at least ninety (90) days notice to the public and Plaintiff as a member of the public.

27. That Plaintiff requests that the Court find that the scheduling of said election is therefore violation of law and issue a writ of mandamus or injunction enjoining LCEC and its members from scheduling a special election for Chancery Clerk in Leflore County without first posting notices for at least ninety (90) days prior to the election as required by Miss. Code Ann. §23-15-835.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests the following relief:

A. A declaratory judgment declaring that the Governor's Writ of Election is null and void because it violates Miss. Code Ann. §23-15- 833 and/or §23-15-835 and therefore the Governor lacks the authority or discretion to schedule an election for a county or county district office on a date other than the first Tuesday after the first Monday in November or at a time less than ninety (90) days prior to the election;

B. A writ of mandamus or preliminary and permanent injunction enjoining LCEC from holding and/or conducting a special election for a county or county district office on a date other than the first Tuesday after the first Monday in November of each year as required by §23-15-833.

C. A writ of mandamus and/or preliminary and permanent injunction against LCEC enjoining it from holding and/or conducting a special election for a county and/or county district office without first posting notice of the same for at least ninety (90) days prior to said election.

Respectfully submitted, this the 20<sup>th</sup> day of March, 2024.

Johnny Gary, Plaintiff

By:



Willie Griffin, His Attorney, MSB #5022

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**FILED**  
LEFLORE COUNTY

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