

IN THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI

JOHNNY GARY

PLAINTIFF

V.

Cause No.: 2021-0021-CCT

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

DEFENDANT

**MOTION FOR DECLARATORY RELIEF,
FOR WRIT OF MANDAMUS AND/OR
PRELIMINARY AND PERMANENT INJUNCTION
(Demand for Speedy Hearing)**

COMES NOW Plaintiff, Johnny Gary, by and through his undersigned attorney, pursuant to M.R.Civ.P. 57(a) and (b)(1), M. R. Civ. P. 65(a) and Miss. Code Ann. §11-41-1 and moves the Court for declaratory relief against Governor Tate Reeves and for a writ of mandamus preliminary and/or permanent injunction against the Defendant, Leflore County Election Commission (hereinafter "LCEC"), and in support hereof would show unto the Court the following, to-wit:

1. That Plaintiff has filed a complaint for declaratory relief, writ of mandamus and/or preliminary and permanent injunction in this cause with attached exhibits. (Exh. "A").

2. That Plaintiff would show that the Governor issued a Writ of Election to LCEC directing it to hold and conduct a special election on April 16, 2024, for the position of chancery clerk in Leflore County.

3. That the position of chancery clerk of Leflore County is a county office within the meaning of Art. 6, §168 of the Mississippi Constitution and therefore is governed by Miss. Code Ann. §23-15-833.

4. That the order entered by the Circuit Court of Leflore declared a vacancy in the position of Chancery Clerk in Leflore County and thereby necessitating the setting of a special election.

5. That on March 6, 2024, the Governor set a special election on April 16, 2024.

6. That the setting of a special election on April 16, 2024, is in contravention of Miss. Code Ann. §23-15-833 which 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.”

7. The Governor’s Writ of Election further violates Miss. Code Ann. §23-15-835 because it mandates that LCEC set an election less than the ninety (90) days as required by said statute.

8. That the procedures for setting a special election for a county or county district office is clearly established law and the Governor is without authority or discretion to set a county or county district election 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. Plaintiff has a statutory right to an election on the first Tuesday after the first Monday in November and the writ issued by the Governor violates that right.

9. Therefore, Plaintiff requests, pursuant to M. R. Civ. P. 57(b)(1), that this court set a speedy hearing on the request for declaratory relief and at said hearing Plaintiff requests that this court, find and declare that the Governor lacks the authority to set a county or county district election on a day other than as provided for in §23-15-833 and that the Governor's Writ of Election issued to LCEC is, therefore, null and void.

10. Plaintiff further requests that the Court, pursuant to Miss. Code Ann. §11-41-1, issue a writ of mandamus to LCEC prohibiting it from holding an election on April 16, 2024 and/or without providing ninety (90) days notice as requested by Miss. Code Ann. §23-15-833 and §23-15-835 respectively.

11. In the alternative, Plaintiff requests, pursuant to M. R. Civ. P. 65(a), that LCEC be enjoined from holding a special election for a county or county

district office on any date other than the first Tuesday after the first Monday in November after providing ninety (90) days notice as requested by law.

12. In the alternative, pursuant to Miss. R. Civ. P 65(a), Plaintiff requests that the Court issue a preliminary and permanent injunction against LCEC enjoining it from setting and holding county and county district election except as provided for in §23-15-833 and §23-15-835.

13. That as a candidate Plaintiff has standing to bring this action and there is a substantial likelihood that he will prevail on the merits and will suffer irreparable harm unless this Court set an immediate hearing and determine whether the LCEC should be enjoined from scheduling and holding a special election on April 16, 2024, as set forth in said statute.

WHEREFORE, PREMISES CONSIDERED, Plaintiff moves the Court for declaratory relief against Governor Reeves declaring that he lacked authority to set a county or county district election on April 16, 2024 and a writ of mandamus or preliminary and permanent injunction against LCEC prohibiting it from scheduling and conducting an election on April 16, 2024, as ordered by the Governor on grounds such an election as ordered by the Governor in the Writ of Election would violate §23-15-833 and §23-15-835.

Respectfully submitted, this the 20th day of March, 2024.

Johnny Gary, Plaintiff

By:



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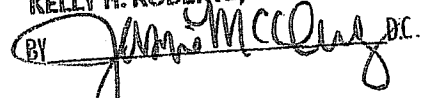
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Attorneys for Plaintiff

FILED
LEFLORE COUNTY

MAR 20 2024

KELLY H. ROBERTS, CIRCUIT CLERK

BY  D.C.