

**IN THE SUPREME COURT OF MISSISSIPPI
CAUSE NO.24-EC-00406-SCT**

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

APPELLANT

V.

JOHNNY GARY

APPELLEE

RESPONSE TO EMERGENCY MOTION TO STAY OR VACATE

Come now, the Leflore County Election Commission, (hereinafter Commission), by and through undersigned counsel, and file its Response to the Emergency Motion For Stay or Vacate, and would say to this Honorable Court, the following:

The Commission agrees with the Appellant's recitation of the procedural history of the case. However, the Commission denies that this Court should stay or vacate the Judgment of the Circuit Court of Leflore County and permit the special election scheduled to take place on Tuesday, April 16, 2024 to proceed.

FACTUAL BACKGROUND

The Commission is the entity designated by state law to conduct and administer county wide elections in Leflore County, Mississippi. In August 2023, the Commission conducted what it believed to be a full and fair primary election for all county wide positions, including the position of Chancery Clerk. After tallying all votes, the incumbent, Johnny Gary, was declared the winner. His opponent, feeling aggrieved by the results filed an election contest which ended with the Special Judge setting aside and vacating the election and ordered the Governor to order a special election. That judgment was filed on February 15, 2024. On March 6, 2024, the

Governor issued a Writ of Election requiring the Commission to hold a special election on April 16, 2024, 41 days from the issuance of the Writ. In another section of the Writ, the Governor mandated that notice shall be given in a manner consistent with Miss. Code Ann. Section 23-15-835, which requires a 90 day notice to the public before a special election can be held. On one hand, the Commission was required to conduct a special election on April 16, 2024, which they could potentially do, but on the other hand they were mandated by the same Writ to give 90 days notice to the public before the date of the special election, which under no circumstances could they do. Therein lies the irreconcilable conflict of the Commission. If the Commission holds the election on April 16, 2024, as ordered by the Governor, without the 90 day notice to the public, it will undoubtedly result in the results of the special election being contested again by the losing candidate or members of the public who were not aware of the special election date and did not get to vote for the candidate of their chose. Such a senario could result in an endless cycle of litigation, with each special election costing the county between \$35,000.00 to \$40,000.00.

THE CIRCUIT COURT JUDGE RULING.

The Circuit Court Judge who heard the complaint filed by Appellee, Johnny Gary, ruled that since the Writ issued by the Governor contained conflicting mandates to the Commission within the same Writ, that the Commission should be enjoined from holding the special election on April 16, 2024. The Commission agrees with the Circuit Court Judge. Today is April 10, 2024, six days before the mandated date for the special election and the public still does not know when the election will be held.. Because the Writ created such confusion for the Commission, notices to the public have not been posted for 90 days announcing April 16, 2024 as the date of the special election. Additionally, qualified voters, including disabled or

elderly voters, have been confused about whether to request absentee ballots. As a point of comparison, in the primary election in August, 2023, the Clerk's office advises that 928 absentee ballots were requested and 840 were returned. As of today, the Clerk's office advises that 96 absentee ballots have been requested, 85 have been sent out and 18 have been returned. It is the obligation of the Commission to conduct full and fair elections and that obligation cannot be fulfilled under these circumstances.

The Commission realizes that this Court will have the final say on this issue but as a practical matter, the Commission believe that the most appropriate remedy for this situation is for the Governor to issue another Writ setting the special election for a date that allows for the 90 days notice to the voting public, or set this matter for the general election date in November, 2024.

CONCLUSION

For the above stated reasons, including judicial economy and the economy of Leflore County, the Commission request that the judgment of the Circuit Court Judge be sustained.

RESPECTFULLY SUBMITTED, THIS THE 10TH DAY OF April, 2024.

THE LEFLORE COUNTY ELECTION
COMMISSION

BY: 

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CERTIFICATE OF SERVICE

I, Fredrick B. Clark, do hereby certify that on this date I filed the foregoing document with the Clerk of this Court and sent a copy via U. S. Mail and email to:

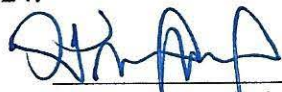
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So certified this the 10th day of April, 2024.



Fredrick B. Clark