

2023-AP-522

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

BOB HICKINGBOTTOM

PLAINTIFF

VS

23-249

THE MISSISSIPPI STATE DEMOCRATIC PARTY

DEFENDANT

**PETITION TO CONTEST AND OVERTURN THE MISSISSIPPI
STATE DEMOCRATIC EXECUTIVE COMMITTEE'S DISQUALIFICATION OF
BOB HICKINGBOTTOM FOR THE CANDIDACY OF GOVERNOR**

COMES NOW, Gubernatorial candidate Bob Hickingbottom (Hickingbottom) and contests his disqualification by the Mississippi Democratic State Executive Committee (MSDEC) pursuant to Miss. Code Ann. §23-15-961 and 23-15-299. The disqualification was based on the petition to contest Hickingbottom's qualifications as filed by Jim Newman (Newman). The challenges to Hickingbottom's qualifications as stated in the petition were 1) that he had not properly filed campaign finance reports related to a 2019 candidacy for Governor, and 2) that he had not timely filed a Statement of Economic Interests.

On Monday, February 13, 2023, at 3:13 pm State Democratic Party Chairman Tyree Irving notified Hickingbottom via email that a hearing would be held the following day, February 14, 2023, at 6:30 pm, some twenty-seven hours later to consider the issues raised by Mr. Newman and provided a copy of the letter and attachments that were to be examined.

Disregarding the proper functions of a Committee in certifying a candidate's qualifications, the MSDEC voted not to certify Hickingbottom as a Democratic candidate for Governor stating that he "did not meet the statutory requirements". (See Exhibit A)

FILED

MAY 03 2023

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SUPREME COURT
COURT OF APPEALS

Hickingbottom files this appeal of the decision of the Mississippi State Democratic Party Executive Committee, and would show unto this Court as follows:

PARTIES

1. Petitioner Bob Hickingbottom is an adult resident of the City of Jackson, Mississippi and duly qualified candidate for Governor of the State of Mississippi.
2. The Mississippi State Democratic Party Executive Committee is a committee among who's purpose is to certify candidates to run in Mississippi's Democratic Party primary elections to be held August 8, 2023, and its Chairman, Tyree Irving, can be served where he may be found in the state of Mississippi.

JURISDICTION AND VENUE

3. This Court has jurisdiction to hear this case and venue is proper in the First Judicial District of Hinds County Mississippi, pursuant to Miss. Code Ann. §23-15-961 and 23-15-299.
4. Miss. Code Ann §23-15-961 provides that upon receipt of a petition contesting the qualifications of another person as a candidate, the committee shall meet and rule upon the petition. At least two days before the hearing to consider the petition, the committee shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition.
5. Miss. Code Ann §23-15-299(7)(b) provides the basis on which a party executive committee finds an individual to be qualified as a candidate, stating the committee is to find whether a candidate: (i) is not a qualified elector, (ii) does not meet all qualifications to hold the office he or she seeks and fails to provide absolute proof, subject to no contingencies, that he or she will meet the qualifications on of before the date of the general or special election at which

he or she could be elected, or (iii) has been convicted of a felony or other disqualifying offense as described in paragraph (a) of this subsection, and not pardoned.

6. The MSDEC held a hearing twenty-three hours after providing notice to Hickingbottom; and the issues said to be discussed at that hearing were those raised in Mr. Newman's letter, specifically 2019 filings of campaign finance forms and 2023 filing of a Statement of Economic Interests.
7. None of the issues discussed at the hearing related to legal requirements to be a candidate for the office of Governor of the State of Mississippi as identified and stated in Miss. Code Ann §23-15-299.
8. The MSDEC advised Hickingbottom by email that the committee voted to reject his candidacy because "he did not meet the statutory requirements", The committee did not state which statutory requirement was not met, and no statutory requirement was discussed at the hearing.
9. Failure to provide proper notice to Hickingbottom and voting to not certify him based on reasons other than those contained in the petition filed by Newman revert the action of the MSDEC to an action to be considered under Miss Code Ann §23-15-299(7)(b).
10. With this petition properly filed, Hickingbottom has simultaneously filed his Cost Bond in the amount of Three Hundred Dollars (\$300.00) with two or more sufficient sureties conditioned to pay all costs in case his petition be dismissed.
11. Upon the filing of the petition and bond, the Circuit Clerk shall immediately by registered letter or by telegraph or by telephone, or personally, notify the Chief Justice of the Supreme Court, or in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify a Circuit Judge or retired judge on senior status, to proceed to

Hinds County and determine the contest. The matter shall be tried to the trial judge, without a jury. After hearing the evidence, the trial judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed on the Democratic Party primary election ballot for the August 8, 2023, election.

HISTORY AND FACTS

12. The issues raised by Newman in his petition – the failure to file a statement of organization for Hickingbottom’s 2019 candidacy and the failure to have filed prior to February 10, 2023, a Statement of Economic Interest (SOEI) – are not matters for consideration by a party Executive Committee in determining a candidate’s qualification.
13. The MSDEC notice to Hickingbottom of the decision of the committee fails to provide a specific, or a legitimate, reason for their action – only that he “did not meet the statutory requirements”.
14. Eligibility requirements in order to serve as Governor are included in the Mississippi Constitution, which requires: “The Governor shall be at least thirty years of age and shall have been a citizen of the United States twenty years and shall have resided in this State five years next preceding the day of his election.” Mississippi Constitution Section 117:
SOURCES: 1817 art IV § 3; 1832 art V § 3; 1869 art V § 3.
15. At 75 years of age, Hickingbottom clearly meets the “over the age of thirty years old”¹; he is a qualified elector of the State of Mississippi, having been a registered voter in Hinds County, Mississippi for over twenty years. Having been born in Mississippi and lived his entire life in the United States and the State of Mississippi for over twenty years, he meets

¹ Hickingbottom was born August 27, 1947 and has lived at 3856 Noble Street, Apt 1613, Jackson MS 29209 for over twenty years.

the requirement of being a citizen of the United State, and a resident of Mississippi for over five years prior to August 8, 2023. Further, Hickingbottom has never been convicted of a felony.

16. Hickingbottom meets all the statutory requirements to be a qualified candidate for Governor of the State of Mississippi. The MSDEC found that he ‘failed to meet the statutory requirements’ but have refused to identify which statutory requirement he does not meet.
17. For a political party to refuse to certify a candidate for failing to file a SOEI prior to February 10, 2023 - or at any time - is an improper and illegal action. Miss. Code Ann §25-4-29(1)(b) states that a candidate for office is “required to file a statement within 15 days after the deadline for qualification for that office.”² §25-4-29(2) states that ‘any person who fails to file a SOEI within thirty days of the date the statement is due shall be deemed delinquent by the commission. The commission shall give written notice of the delinquency to the person by United States mail or by personal service of process. If within fifteen days of receiving written notice of delinquency, the delinquent filed has not filed this SOEI, a fine of Fifty Dollars.....”
18. Based on the statutory language related to the SOEI, it was not required to be filed prior to February 26, 2023, and was not considered to be delinquent until March 26, 2023, and then only if a notice had been mailed and received by Hickingbottom on February 26th.³
19. Further, the failure to have filed a termination report of a candidate’s campaign finance reports are not found in any statute as a disqualification as a candidate for office.
20. According to a report in the Mississippi Free Press on February 24, 2023 “in an interview Wednesday morning, Mississippi Ethics Commission Executive Director Tom Hood told the

² The deadline to qualify for office was February 11, 2023.

³ Hickingbottom filed a SOEI with the Mississippi Ethics Commission on

Mississippi Free Press that the law does not require candidates to be disqualified for failing to submit a statement of economic interest. “Nothing in the the law about candidate qualifications would prohibit someone from taking office if they don’t file a statement of economic interest but do get elected’ Hood said, speaking generally and not directly about the immediate situation.”

21. In the same Mississippi Free Press article, the Mississippi Secretary of State’s Office weighed in with a statement on Tuesday: “The Mississippi Secretary of State’s Office has never used the Statement of Economic Interest as part of its process in qualifying candidates.: (Attachment B)
22. The only statutory penalty for failing to file a campaign finance report is found in Miss. Code Ann. §23-15-811 and 813, which provides for a possible fine and being found guilty of a misdemeanor. Nothing in the State of Mississippi Campaign Finance statutes provides for consideration of filing, or having failed to timely file, a campaign finance report in determining a candidate’s qualification to be a candidate for office or for holding the office.
23. No question has been raised at any point as to Hickingbottom being a citizen of the United States; a citizen and resident of Mississippi for the previous five years, a qualified elector of the State of Mississippi, or having been convicted of any felony. The reason given for his disqualification - that he “didn’t meet the statutory requirements” - was without merit or legal basis. The stated reason the MSDEC disqualified Hickingbottom (along with another African American candidate) was to eliminate competition for the party’s chosen candidate.
24. Taylor Vance a reporter for the Tupelo Daily Journal of reported on February 17, 2023, that Bobby Sacus, Chairman of the Mississippi Democratic Party Executive Committee’s Elections Committee stated “that Wash and Hickenbottom (sic) had not filed statements of

economic interest with the Mississippi Ethics Commission this year or when in 2019, something candidates are required to do by state law.” (Attachment C)

25. This statement by Bobby Sacus is the only stated reason given for the MSDEC’s action in refusing to certify Hickingbottom.
26. The petition filed by Newman included two reasons for his challenge: the failure to file campaign finance reports from 2019 and the failure to file a SOEI.
27. The MSDEC has not given Hickingbottom a reason for their action in refusing to certify him as a candidate for Governor; it cannot legally be based on the facts that were included in Newman’s letter challenge and which were purported to be the basis for the untimely hearing conducted in February.

PRAYER FOR RELIEF

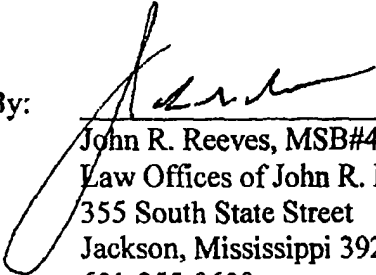
28. The Democratic Party’s State Executive Committee acted arbitrarily and capriciously when they refused to certify Hickingbottom as a candidate for the party’s nomination for Governor in the 2023 primary election. The reasons purportedly given to others do not include any statutory requirements. The statement given to Hickingbottom that he did not meet the statutory requirements fails to provide a legitimate or legal reason for their action.
29. Hickingbottom is duly qualified to be a candidate for the Democratic Party’s nomination for the office of Governor. The party determined to keep him (and it appears another candidate) off the ballot in order to give Brandon Presley a clear shot to the nomination without opposition, contrary to Mississippi statutes.
30. Petitioner prays his name be placed on the primary ballot for Governor and this Court reverse the invalid action of the Mississippi Democratic Party Executive Committee and that there be

an injunction prohibiting the printing and distribution of ballots until this matter might be heard and decided.

WHEREFORE PREMISES CONSIDERED, the plaintiff sues and demands judgment against The Mississippi Democratic Party Election Committee requiring it to place Bob Hickingbottom on the Democratic Primary Ballot for Governor of Mississippi. Further, that the Court would enjoin the printing and distribution of ballots until this matter is heard and decided.

Respectfully submitted,
Bob Hickingbottom, Plaintiff

By:



John R. Reeves, MSB#4699
Law Offices of John R. Reeves, P.C.
355 South State Street
Jackson, Mississippi 39201
601-355-9600
Attorney for Plaintiff

----- Forwarded message -----

From: Andre Wagner <wagner@mississippidemocrats.org>

Date: Fri, Feb 17, 2023, 9:42 AM

Subject: Certification Update

To: <bobh299@gmail.com>

Cc: MS Dems Information <info@mississippidemocrats.org>, Tyree Irving <tirving@mississippidemocrats.org>, Jim Newman <jimnewman42@gmail.com>

Good Morning Mr. Hickingbottom,

This email is to inform you that the Mississippi State Democratic Executive Committee has voted yesterday, not to certify you as a Democratic candidate for Governor. Sadly, you did not meet the statutory requirements; should you have any question please do not hesitate to give us a call.

Kind regards,

Andre J Wagner

Executive Director,

Mississippi Democratic Party

Office: (601) 969-2913



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Black Candidate Says Mississippi Dems Barred Him From Governor Primary to Help Presley

BY ASHTON PITTMAN (HTTPS://WWW.MISSISSIPPIFREEPRESS.ORG/AUTHOR/ASHTON-PITTMAN)
FEBRUARY 24, 2023 (HTTPS://WWW.MISSISSIPPIFREEPRESS.ORG/DATE/2023/02/24)



Bob Hickingbottom, who filed to run for governor in the August 2023 Mississippi Democratic Party primary, is alleging that party leaders barred him from running "to make sure that Brandon Presley doesn't have any competition, particularly from Black candidates." Hickingbottom is seen here at the Heshoba County Fair in 2019, when he ran on the Constitution Party platform. AP Photo/Rogelio V. Solis

Bob Hickingbottom is accusing the Mississippi Democratic Party of preventing him and another Black candidate, Gregory Wash, from running in the primary for governor after party leaders declined to vote against certifying either man's candidacy.

That decision leaves Brandon Presley, a white public service commissioner from Mississippi's northern district, as the only Democratic candidate on the ballot for governor in the August 2023 primaries.

In an interview with the Mississippi Free Press on Tuesday, Hickingbottom accused Democratic leaders of wanting "to make sure that Brandon Presley doesn't have any competition, particularly from Black candidates." Presley, who was not part of the decision-making process that barred Hickingbottom and Wash from the primaries, said he had no comment for this story.

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When the Mississippi Democratic Executive Committee met on Feb. 16, the Daily Journal reported (https://www.djournal.com/news/state-news/democrats-vote-to-strike-brandon-presleys-opponents-from-primary-ballot/article_e59e0226-3a308-5c46-849f-d00781aeeed9b.html) that

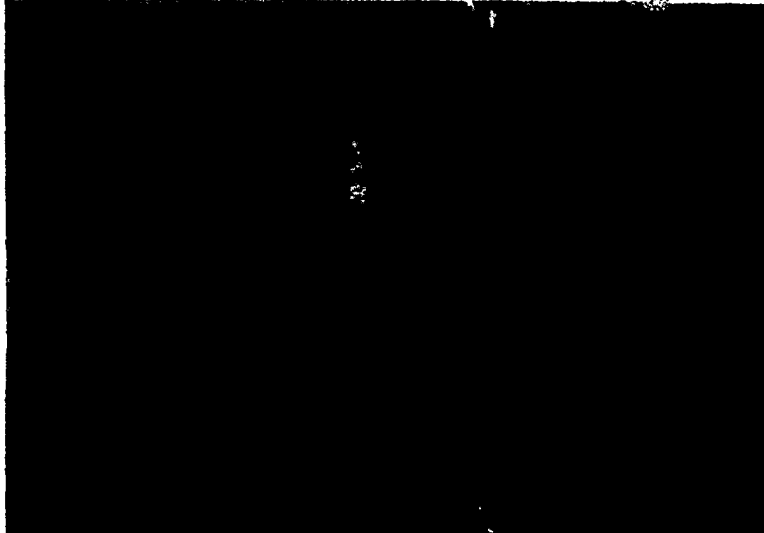
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(https://www.mississippifreepress.org/wp-content/uploads/2023/02/Brandon-Presley_AP19030836858000_AP-Photo-Rogelio-V.-Solis.jpg)

Brandon Presley will be the only candidate on the Democratic ballot for the August 2023 primaries for governor after party officials barred two other challengers from running on Feb. 16, 2023. AP Photo/Rogelio V. Solis

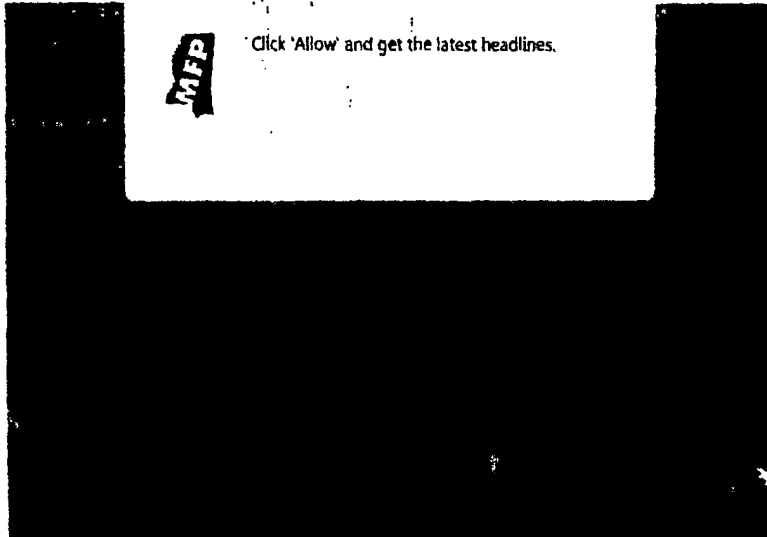
The party cited the fact that neither man has filed a statement of economic interest with the Mississippi Ethics Commission, and also failed to do so when they ran campaigns in 2019. However, Magnolia Tribune reported on Feb. 19 (<https://magnoliatribune.com/2023/02/19/democratic-certification-ruling-raises-questions/>) that 56 other Democratic candidates, including five running for statewide offices and 51 running for legislative seats, have not filed the statements. The party nevertheless certified their candidacies.

Mississippi election law (<https://law.justia.com/codes/mississippi/2018/title-25/chapter-4/article-1/section-25-4-29/>) says candidates must file a statement of economic interest "within fifteen (15) days after the deadline for qualification for that public office," or by Feb. 15 for the current primaries. Asked about the law, an official at the Mississippi secretary of state's office directed this reporter to contact the Mississippi Ethics Commission.

Ethics Commission, Secretary of State Weigh In

In an interview Wednesday morning, Mississippi Ethics Commission Executive Director Tom Hood told the Mississippi Free Press that the law does not require candidates to be disqualified for failing to submit a statement of economic interest.

"Nothing in the ethics law about candidate qualifications would prohibit someone from taking office if they don't file a statement of economic interest but do get elected," Hood said, speaking generally and not directly about the immediate situation. "The only penalties in the ethics law regarding a statement of economic interest are fines for late filing, and ultimately there can be a misdemeanor charge for refusing to file, but it's still just a fine."



(https://www.mississippifreepress.org/wp-content/uploads/2022/12/Tom-Hood_cred-Nick-Judin.jpg)

"Nothing in the ethics law about candidate qualifications would prohibit someone from taking office if they don't file a statement of economic interest but do get elected," Mississippi Ethics Commission Executive Director Tom Hood told the Mississippi Free Press on Feb. 21, 2023. File photo by Nick Judin

Hood confirmed that the commission has not fined either Bob Hickingbottom or Gregory Wash. The law says that candidates can face fines of up to \$50 per day up to \$1,000 only after receiving a notice of delinquency from the Mississippi Ethics Commission and continuing to fail to file the statement within 15 days of receipt. In a phone interview Friday, Hickingbottom said he has never received a notice of delinquency from the commission for his past campaign or the current one.

The Mississippi secretary of state's office weighed in with a statement on Tuesday.

"The Mississippi Secretary of State's Office has never used the Statement of Economic Interest as part of its process in qualifying candidates. Statutes pertaining to the penalties for failure to submit a Statement of Economic Interest do not provide for disqualification as a penalty," the statement said.

But the office noted that, after a candidate files for election as a partisan candidate, "the respective party executive committee will determine whether the qualifications for those seeking political party nominations for the primary elections while the appropriate election commission will review the qualifications of those who have obtained the political party nomination or have qualified as an independent for the general election."

Hickingbottom Threatens Lawsuit

Since Monday, the Mississippi Free Press repeatedly asked the Mississippi Democratic Party for comment. Democratic Party Executive Director Andre Wagner told the Mississippi Free Press on Tuesday that he believed the party had "no comment at this time," but said the chairman, Tyree Irving, may agree to an interview on Wednesday. By press time, though, the party had not arranged for that interview despite multiple follow-up requests.

In a written statement to the Mississippi Free Press on Tuesday, Bob Hickingbottom said "it's unfair that they disqualified me and another African-American for not filing a report that 56 other Democrats haven't filed either. ... My party either has to qualify us all or none of us," he added.

Party leaders Wagner and Irving are both Black.

Hickingbottom said on Tuesday he plans to file a complaint challenging the decision unless the party reverses course. "If this does not work, I will consider filing a civil rights lawsuit against the Mississippi Democrat Party," he added. He reiterated those plans in an interview on Friday, but when asked to clarify, said it would be up to lawyers to decide whether he will file a lawsuit in court or a complaint with the ethics commission.

'I Am My Own

In the statement brought up Rep. Gov. Delbert Ho

"The only Repu real Democrat,"

has used insinuating that Hosemann is not a real Republican. "Delbert has been great for Democrats, the best thing the Democrats have going for us. Delbert's already been reaching out to the black community asking Democrats to cross over to the Republican Primary to help him beat McDaniel.

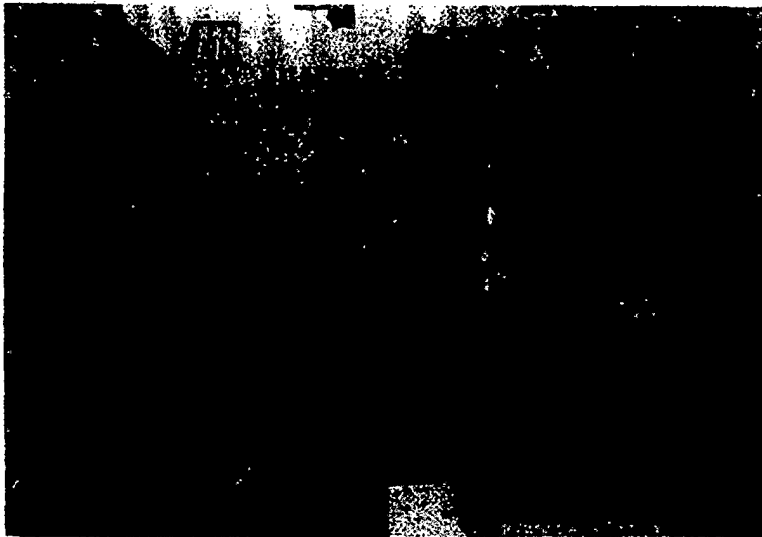
"But I think that would be a mistake. I need African-American voters to vote for me once I am placed back on the ballot. That way I can beat Brandon Presley, and we can have real representation."



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(https://www.mississippifreepress.org/wp-content/uploads/2023/01/Chris-McDaniel-Lt-Gov-Announcement3_cred-Kayode-Crown.jpg)

Mississippi Sen. Chris McDaniel, a Republican candidate for lieutenant governor, told the Mississippi Free Press that he has had no contact with Bob Hickingbottom.

After sharing his statement with the Mississippi Free Press on Tuesday, Hickingbottom also posted it on Facebook, where it drew the attention of Laurel Leader-Call publisher Jim Cegielski (https://www.leader-call.com/news/free_news/publisher-jim-cegielski-delbert-s-a-democrat-bet-your-hickingbottom-dollar-on-it/article_a37978dc-b47b-11ed-93f2-f3286f0a185.html). The Jones County newspaper's publisher seized on the post in a pro-McDaniel column on Friday, citing it as evidence that Hosemann "is a Democrat who, just as Mr. Hickingbottom points out, has only run as a Republican so that he could get elected."

Several sources who did not wish to speak on the record told the Mississippi Free Press that some Democratic officials believe Hickingbottom entered the Democratic primary to ensure Presley has an opponent in hopes of discouraging Democratic voters from crossing over and voting against McDaniel in the GOP primary.

When this reporter called Hickingbottom back Friday to ask him about the rumors that he is trying to help McDaniel, he categorically denied it.

"I don't even know McDaniel," he said. "I don't have no knowledge of Chris McDaniel. None, none whatso ever. That's a baldfaced lie. ... I'm my own man." When reached for comment Friday, McDaniel also said he has not been in contact with Hickingbottom, but that he is following the story.

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Hickingbottom
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with Democratic Rep. U.S. House Rep. Debbie Halpern, who represents Mississippi's 2nd Congressional District.

"I figured they would fight me, so I took the route to run on the Constitution Party," he said. "But many people are basically pulling for me and I need all the prayers."

Editor's Note: The Mississippi Free Press is currently appealing a Mississippi Ethics Commission determination that the Legislature is not a "public body" under the state's Open Meetings Act law. This does not affect our coverage of this story.



<https://www.mississippifreepress.org/author/ashton-pittman>

Ashton Pittman
(<https://www.mississippifreepress.org/author/ashton-pittman>)

Award-winning News Editor Ashton Pittman, a native of the South Mississippi Pine Belt, studied journalism and political science at the University of Southern Mississippi. Previously the state reporter at the Jackson Free Press, he drove national headlines and conversations with award-winning reporting about segregation academies. He has won numerous awards, including Outstanding New Journalist in the South, for his work covering immigration raids, abortion battles and even former Gov. Phil Bryant's unusual work with "The Bad Boys of Brexit" at the Jackson Free Press. In 2021, as a Mississippi Free Press reporter, he was named the Diamond Journalist of the Year for seven southern U.S. states in the Society of Professional Journalists Diamond Awards. A trained photojournalist, Ashton lives in South Mississippi with his husband, William, and their two pit bulls, Dorothy and Dru. Follow on Twitter @ashtonpittman. Send tips to ashton@mississippifreepress.org.

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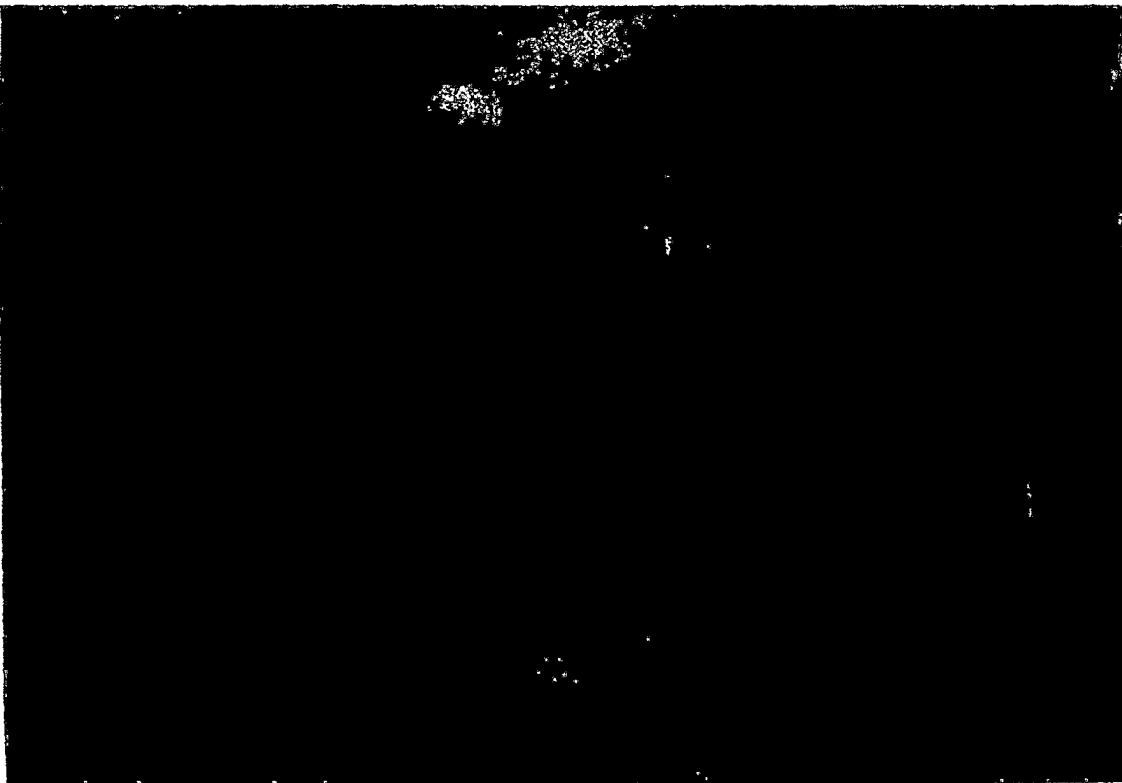
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Democrats vote to strike Brandon Presley's opponents from primary ballot

By TAYLOR VANCE Daily Journal
Feb 17, 2023



Northern District Public Service Commissioner Brandon Presley, speaks about the Mississippi Public Service Commission securing a \$300 million settlement with Entergy Mississippi, an integrated energy company on June 23, 2022, in Jackson, Miss. Presley, a Democrat, said Thursday, Jan. 12, 2023, that he is running for Mississippi governor.

Rogelio V. Solis | AP

JACKSON — Northern District Public Service Commissioner Brandon Presley will be the Democratic Party's nominee for governor long before the party's August primary.

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The Mississippi Democratic Party's executive committee voted Thursday that Presley's two opponents in the Democratic party primary — Gregory Wash and Bob Hickingbottom — did not meet the requirements to run for governor, according to Bobby Sacus, the chairman of the party's elections committee.

Both candidates unsuccessfully ran for statewide office during the 2019 election cycle.

Sacus told the Daily Journal that Wash and Hickingbottom had not filed statements of economic interest with the Mississippi Ethics Commission this year or when in 2019, something candidates are required to do by state law.

Presley declined to comment.

The Daily Journal was unable to locate contact information for Hickingbottom and Wash, but they could appeal the party's decision to Hinds County Circuit Court.

Wash and Hickingbottom were two little-known candidates who did not appear to have any serious funding or momentum behind their campaigns.

Wash unsuccessfully ran for governor during the 2019 statewide election cycle and cut a televised ad of him using a Barbie doll as a microphone and called himself the "rock and roll governor."

Presley is almost certain to face incumbent Republican Gov. Tate Reeves in the November general election. Reeves will compete against two obscure candidates in the Republican primary, John Witcher and David Grady Hardigree.

taylor.vance@djournal.com

Taylor Vance

Reporter

Taylor covers politics and government for the Daily Journal.
