

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

BOB HICKINGBOTTOM

PLAINTIFF

VS.

NO. 23-249

THE MISSISSIPPI STATE  
DEMOCRATIC PARTY

DEFENDANT

ORDER TO PLACE CANDIDATE ON PRIMARY BALLOT

This cause comes before the court upon the plaintiff's Petition to Contest and Overturn the Mississippi State Democratic Executive Committee's Disqualification of Bob Hickingbottom for the Candidacy of Governor, Response and Answer of the Defendant the Mississippi State Democratic Party, and Motion for Summary Judgment of the Defendant and Motion for Judgment on the Pleadings. The plaintiff was present with counsel, attorney John R. Reeves. The defendant was present through counsel, attorney Gerald A. Mumford.

The court finds that it is undisputed and not contested that the plaintiff ran for governor of Mississippi on the Constitution Party in 2019 and did not file a statement of economic interest with the Mississippi Ethics Commission, as required by law, and has not filed it to date. The court further finds that it is undisputed and not contested that the plaintiff is thirty years of age or older, has been a citizen of the United States for more than twenty years, and has resided in the State of Mississippi for more than five years. Therefore, the court finds that there are no issues of fact, only issues of law and the application thereof.

After hearing the arguments of counsel and authorities cited, the court does find and order the following:

There is a difference between qualifications for governor as set out in Article 5 of the Mississippi Constitution and penalties for failure to file an economic statement of interest in Section 23-15-811 of the Mississippi Code. Qualifications are the core, personal eligibility requirements set out by the Mississippi Constitution. Either you are or you are not. The penalties of Section 23-15-811 are punishment for failure to take required action by law, which include being guilty of a misdemeanor crime, being barred from certification if nominated, and no salary if elected to office.

The court concludes that a candidate can't be disqualified from candidacy due to violations of Section 23-15-811, only subjected to enforcement of the penalties if he or she wins. Therefore, Jim Newman's petition to disqualify Bob Hickingbottom was invalid on its face because it did not call into question any "qualifications" of Article 5 of the Mississippi Constitution, which is uncontested that he meets. It only called into question violations of the law for failing to file a statement of economic interest with the Ethics Commission, also uncontested that he failed to file and continues to, which involve "penalties" in Section 23-15-811.

The court further finds that the action of the State Democratic Executive Committee, which said only by email that "you did not meet the statutory requirements" and did not set out any specific Article 5 qualifications was deficient in due process, invalid and improper.

The only remaining question for the court is the defendant's motion and position that the plaintiff waited too late, some 77 days after being informed that he was denied

certification to file this action in circuit court. That is a valid question raised by the defendant. In resolving that question, the court must look to what kind of right is the plaintiff seeking to have enforced.

The right to run for elected office, the right of candidacy or ballot access has not been fully recognized by the U. S. Supreme Court as a fundamental right, as has the right to vote. Some state restrictions, such as excessive filing fees, not core personal qualifications, have been struck down in cases such as *Bullock v. Carter* (1972) 405 U.S. 134. The right to candidacy does implicate the right to vote because it affects not just the candidate, but also the voter's choice of candidates to vote for.

We are a constitutional democracy in this nation. Voting is a fundamental pillar of our democracy. The right of citizens to run for elected office, while not yet recognized on the same level as voting itself, is at least a quasi-fundamental pillar of our democracy. More democracy is better than less democracy. In summary, the plaintiff's right of ballot access in this case prevails over his delay in seeking relief from this court.

It is therefore ordered that the State Democratic Executive Committee of the Mississippi Democratic Party be ordered to place the name of Bob Hickingbottom on the primary ballot for governor. This order is without prejudice of the defendant or any party to seek enforcement of the penalties set out in Section 23-15-811. The clerk is directed to forward certified copies to the parties, through counsel, and also to the Mississippi Secretary of State.

SO ORDERED, this the 26<sup>th</sup> day of May, 2023.

  
FORREST A. JOHNSON, JR.  
SPECIAL JUDGE

Order Prepared by Court

Filed 5-26-23  
Forrest A. Johnson, Jr.  
Special Judge