

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

JAMES W. LOWE

PETITIONER

VS.

CAUSE NO. 4:09CV035-P-S

DEMOCRATIC MUNICIPAL EXECUTIVE  
COMMITTEE OF THE CITY OF LELAND,  
MISSISSIPPI

DEFENDANT

**JUDGMENT**

THIS CAUSE was originally filed by the Petitioner Robert Lowe in the Circuit Court of Washington County, Mississippi in accordance with the provisions of Miss. Code Ann. Section 23-15-961 (4) as a Petition for Judicial Review of the Leland Democratic Executive Committee's decision to deny him certification as a candidate for the Democratic nomination for the office of Mayor of the City of Leland.

The Respondent, Democratic Municipal Executive Committee of the City of Leland (hereinafter the Executive Committee), removed the action to federal court on the basis that the petition asserted, *inter alia*, a violation of Section 5 of the Voting Rights Act of 1965, thereby invoking federal jurisdiction pursuant to Title 28 USC Section 1331, 1343 and 1443. In addition to answering Lowe's petition, the Executive Committee also filed a motion for interim relief pursuant to the Voting Rights Act of 1965 and a motion to stay proceeding pending preclearance decision.

On April 9, 2009, the Court convened a hearing in this matter pursuant to Rule 65 F.R.C.P. and/or the provisions of Miss. Code Ann. §23-15-961(4). Prior to the hearing, the Executive Committee requested a ruling on its motion to stay the instant proceeding pending preclearance. The Court found that said motion was not well taken and denied same.

The Court then conducted an evidentiary hearing and received live testimony, documentary evidence and stipulations of the parties. At the conclusion of the proof, the Court entertained oral argument and recessed the proceeding to consider its ruling.

After due consideration, the Court rendered a bench opinion, which is attached as Exhibit 1

hereto and incorporated by reference herein. In accordance with the Court's bench opinion, the Court finds as follows:

1. That the Court has jurisdiction of the parties and the subject matter.
2. That this is a proceeding for injunctive relief pursuant to Rule 65 F.R.C.P.
3. That the parties stipulated that Lowe meets the statutory requirements contained at Miss Code Ann. Section 23-15-309 to qualify as a candidate for the office of Mayor in the City of Leland, Mississippi Democratic primary election.
4. That the parties stipulated that the Chairman of the Executive Committee would testify that based upon the evidence before them, and based upon the evidence presented to this Court, the Executive Committee would not want to be associated with Mr. Lowe as a candidate because they believe he failed to conform to the concepts, ideas goals, and candidacies of the Democratic Party. His stipulated testimony would also be that the Executive Committee believes that, despite Mr. Lowe's representations to the Court, he will not support the Democratic primary candidates for office in this election cycle in the City of Leland, Mississippi.
5. That Mr. Lowe testified that he would support the party nominee in the upcoming election. A prospective loyalty oath is the sole requirement for compliance with Miss Code Ann. Section 23-15-575.
6. That under Miss. Code Ann. §23-15-309, party loyalty is not a recognized criterion for purposes of qualifying Lowe as a candidate for Mayor in the upcoming election.
7. That Miss. Code Ann. Section 23-15-575, as applied in this case, does not violate the Executive Committee's right to freedom of association under the First and Fourteenth Amendments to the United States Constitution or Article III, Sections 11 and 13 of the Mississippi Constitution of 1890.
8. That Miss. Code Ann. Section 23-15-309, as applied in this case, does not violate the Executive Committee's right to freedom of association under the First and Fourteenth Amendments to the United States Constitution or Article III, Sections 11 and 13 of the Mississippi Constitution of 1890.
9. That the Executive Committee's claim that placement of Lowe's name on the ballot as a Democratic candidate for Mayor is repugnant to the principles of free association recognized by the First and Fourteenth Amendments is rejected.
10. That the placement of Lowe's name on the Democratic Party's primary ballot as a statutorily qualified candidate does not place a significant burden on the Democratic Party's "freedom to select a standard bearer who best represents the party's ideologies and preferences" and it's right to "broaden the base of public participation in and support for its activities."
11. That the State's interest in affording its citizens broad participation in the political process is sufficient to uphold the statutory procedure in question.

12. That the Executive Committee exceeded its statutory authority in refusing to qualify Lowe as a Democratic Party candidate for the office of Mayor.
13. That the Executive Committee's recently adopted Rule Regarding Qualification of Candidates did not exist on either March 6, 2009, the date on which Lowe filed his qualifying papers or on March 17, 2009, the date on which the Executive Committee voted to deny Lowe certification on grounds of party disloyalty.
14. That the Rule Regarding Qualification of Candidates has not been precleared and this Court lacks the authority to grant interim relief based upon said rule.
15. That the recently adopted Rule Regarding Qualification of Candidates is unenforceable and therefore does not create a cognizable conflict with state election law and the Executive Committee's First and Fourteenth Amendment arguments stemming therefrom are not justiciable at this time.

IT IS THEREFORE ORDERED and ADJUDGED as follows:

- A. Defendant's Motion to Stay Proceedings Pending Preclearance is hereby denied.
- B. Petitioner's request for injunctive relief requiring the Defendant to place the Petitioner on the ballot for the May 5, 2009 Leland Municipal Democratic Primary Election is well taken, is hereby granted, and Defendant is ordered to do so forthwith.
- C. Defendant's Motion for Interim Relief pursuant to the Voting Rights Act of 1965 is not well taken and is hereby denied.
- D. Defendant's *ore tenus* Motion for Stay pending appeal to the United States Court of Appeals for the Fifth Circuit is hereby denied.

SO ORDERED, this the 16<sup>th</sup> day of April, 2009.

/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

s/ANDREW N. ALEXANDER III  
Andrew N. Alexander, III, MSB #1310  
Attorney for Petitioner  
James W. Lowe

s/CHARLES E. GRIFFIN  
Charles E. Griffin, MSB #5015  
Attorney for Defendant Democratic  
Municipal Executive Committee  
of the City of Leland, Mississippi