

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
Western Division**

GORDON VANCE JUSTICE, JR.; SHARON BYNUM;
MATTHEW JOHNSON; ALISON KINAMAN AND
STANLEY O'DELL;

Plaintiffs,

v.

Civil Action No.
3:11-CV-138-SA-SAA

DELBERT HOSEMANN, in his official capacity as
Mississippi Secretary of State; JIM HOOD, in his
official capacity as Attorney General of the State
of Mississippi,

Defendants.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56(c), Plaintiffs Gordon Vance Justice, Jr., Sharon Bynum, Matthew Johnson, Alison Kinaman, and Stanley O'Dell, hereby submit their Motion for Summary Judgment, and would show unto the Court the following:

PREMISES

As set forth more fully in the Memorandum in Support of Plaintiffs' Motion for Summary Judgment, Plaintiffs challenge Mississippi registration, reporting, and mandatory disclosure requirements that are universally acknowledged to burden the exercise of speech and association rights at the core of the First Amendment. These campaign finance laws apply even to ad hoc groups that speak about ballot measures such as Plaintiffs. Because these laws chill speech and associational rights at the core of the First Amendment's protections, the government must justify its regulatory scheme by demonstrating both a sufficient governmental interest and sufficient tailoring of the scheme to achieve that interest while preserving individual rights. The

government cannot make its showing here because that scheme, as applied, is not supported by any sufficiently important interest nor is it sufficiently tailored.

UNDISPUTED FACTS

1. Plaintiffs' political speech and association have been and continue to be limited by Mississippi's campaign finance laws. Verified Compl. ("Compl.") ¶¶ 8-12, 16, 18, 46-48, 56, 61-62.¹
2. Mississippi's campaign finance laws force formal formation, registration, record-keeping, record-retention, and reporting requirements on Plaintiffs and speakers like them. Mississippi Code Annotated §§ 23-17-47, -49, -51, -53, and -61; Mississippi Code Annotated §§ 23-15-801, -803, -805, -807, -811, and -813.
3. Mississippi's campaign finance laws are complex—so complex in fact that the State itself cannot consistently interpret them, gives erroneous guidance to speakers about them, and cannot conform its own campaign finance forms to those laws. Mississippi Code Annotated §§ 23-17-47, -49, -51, -53, and -61; Mississippi Code Annotated §§ 23-15-801, -803, -805, -807, -811, and -813; Office of the Mississippi Secretary of State, Statement of Organization for a Political Committee, Ex. 1; Political Committee Report of Receipts and Disbursements, Initiative Monthly Report, Ex. 2; Political Committee Report of Receipts and Disbursements, 2012 Election, Ex. 3; Mississippi Secretary of State, 2012 Campaign Finance Guide, Ex. 4; Mississippi Secretary of State, 2011 Campaign Finance Guide, Ex. 5; Mississippi Secretary of State, Constitutional Initiative in Mississippi: A Citizen's Guide, Ex. 6; Mississippi Secretary of State, Itemized Receipts, Ex. 7; Excerpts of Deposition of Kimberly P. Turner, Ex. 11.

¹ "On summary judgment, factual allegations set forth in a verified complaint may be treated the same as when they are contained in an affidavit." *Hart v. Hairston*, 343 F.3d 762, 765 (5th Cir. 2003).

4. These laws have real-world, negative effects on Mississippians' ability to talk about salient political issues of the day. Excerpts of Deposition of Atlee Breeland, Ex. 12; Excerpts of Deposition of Kimberly P. Turner, Ex. 11; Excerpts of Defendant's Responses to Interrogatories, Ex. 9; Expert Report of David M. Primo, Ph.D., Ex. 14; Decl. of Diana Simpson, Ex. 15.
5. Mississippi's campaign finance laws provide virtually no informational benefits to voters. Expert Report of David M. Primo, Ph.D.

SUPPORTING DOCUMENTS

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| Exhibit 1 | Office of the Mississippi Secretary of State, Statement of Organization for a Political Committee, <i>available at</i> http://www.sos.ms.gov/links/elections/home/tab1/Statement%20of%20Organization%20PC.pdf . |
| Exhibit 2 | Political Committee Report of Receipts and Disbursements, Initiative Monthly Report, <i>available at</i> http://www.sos.ms.gov/links/elections/2012/CF/2012%20Initiative%20Monthly%20Report.pdf . |
| Exhibit 3 | Political Committee Report of Receipts and Disbursements, 2012 Election, <i>available at</i> http://www.sos.ms.gov/links/elections/2012/CF/2012%20Judicial%20Political%20Committee%20CF%20Form.pdf . |
| Exhibit 4 | Mississippi Secretary of State, 2012 Campaign Finance Guide, <i>available at</i> http://www.sos.ms.gov/links/elections/2012/2012%20Campaign%20Finance%20Guide.pdf . |
| Exhibit 5 | Mississippi Secretary of State, 2011 Campaign Finance Guide, <i>available at</i> http://www.sos.ms.gov/links/elections/candidates_lobbyist_center/tab2/CampaignFinanceGuide.pdf . |
| Exhibit 6 | Mississippi Secretary of State, Constitutional Initiative in Mississippi: A Citizen's Guide, <i>available at</i> https://www.sos.ms.gov/links/elections/home/tab2/InitiativeGuide.pdf . |
| Exhibit 7 | Mississippi Secretary of State, Itemized Receipts, <i>available at</i> http://www.sos.ms.gov/links/elections/home/tab1/Itemized%20Receipts_SS04-05b.pdf . |
| Exhibit 8 | Mississippi Secretary of State, Initiative 31 Educational Brochure |

- Exhibit 9 Excerpts of Defendant's Responses to Interrogatories
- Exhibit 10 Mississippi Secretary of State, Initiative 27 (Voter Identification) information page, *available at* <http://www.sos.ms.gov/page.aspx?s=7&s1=1&s2=84>.
- Exhibit 11 Excerpts of Deposition of Kimberly P. Turner
- Exhibit 12 Excerpts of Deposition of Atlee Breeland
- Exhibit 13 Letter to David Waide
- Exhibit 14 Expert Report of David M. Primo, Ph.D. (with appendices)
- Exhibit 15 Decl. of Diana Simpson in Support of Plaintiffs' Motion for Summary Judgment
- Exhibit 16 Mississippi Secretary of State, Initiative 26 Educational Brochure

BASIS FOR RELIEF

Plaintiffs file herewith the Memorandum in Support of Plaintiffs' Motion for Summary Judgment, which provides a statement of the undisputed material facts.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, by and through counsel of record, pursuant to FED. R. CIV. P. 56(c) respectfully move this Court to enter summary judgment against Defendants, find Mississippi's campaign finance statutes that apply to constitutional amendment ballot measure committees unconstitutional,² and permanently enjoin their enforcement.

Dated: November 16, 2012

Respectfully Submitted on Behalf of Plaintiffs

WELLS MARBLE & HURST, PLLC

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² Mississippi Code Annotated §§ 23-17-47, -49, -51, -53, and -61, and Mississippi Code Annotated §§ 23-15-801, -803, -805, -807, -811, and -813.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiff's Motion for Summary Judgment with attached supporting documents has been filed electronically with the Clerk of Court using the Court's ECF system and thereby served on the following persons:

Harold E. Pizzetta, III
Assistant Attorney General
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Post Office Box 220
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THIS the 16th day of November, 2012.

/s/ Paul Avelar
Paul V. Avelar