

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

JERRY YOUNG and
CHRISTY COLLEY

Plaintiffs,

v.

DELBERT HOSEMANN, in his official
capacity as the Secretary of State of Mississippi;
KRISTIN BUSE, DEBBY McCAFFERTY,
JOHN M. WAGES, HARRY GRAYSON, Jr., and
JOHN H. EDWARDS, in their official capacities
as Election Commissioners of Lee County; and
VIVIAN BURKLEY, JULIUS HARRIS,
JIMMY HERRON, BONNIE G. LAND, and
RONALD McMINN, in their official capacities as
Election Commissioners in Panola County,

Defendants.

CIVIL ACTION

NO. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. Plaintiffs, who have felony convictions, bring this civil action under federal and state law to remedy Defendants' arbitrary and unconstitutional deprivations of their fundamental right to vote in federal elections. Specifically, Plaintiffs allege that Article 12, Section 241 of the Mississippi Constitution explicitly allows for individuals who have been convicted of a crime to vote for President and Vice President of the United States. Plaintiffs assert that they meet all of the qualifications for an elector in the State of Mississippi and, despite their felony convictions, retain the right to vote for President and Vice President. Defendants' disfranchisement of Plaintiffs violates Article 12, Section 241 of the Mississippi Constitution, the equal protection clause of the

Fourteenth Amendment of the United States Constitution, and the National Voter Registration Act (42 U.S.C. §§ 1973gg – 1973gg-10). Plaintiffs seek declaratory and injunctive relief that will restore their right to vote as guaranteed by state and federal law.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 42 U.S.C. § 1983. This Court may exercise ancillary jurisdiction under 28 U.S.C. § 1367(a) to hear claims under the Constitution and laws of Mississippi. This Court has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

3. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because Defendant Hoseman is situated within this judicial district.

PLAINTIFFS

4. Plaintiff Jerry Young is a citizen of the United States and a resident of Lee County, Mississippi. He was convicted of a felony within the State of Mississippi.

5. Plaintiff Christy Colley is a citizen of the United States and a resident of Panola County, Mississippi. She was convicted of a felony within the State of Mississippi.

DEFENDANTS

6. Delbert Hosemann is the Secretary of State of Mississippi (“Secretary of State”) and, as such, is the chief election officer for the State. Miss. Code Ann. § 23-15-211.1. He is sued in his official capacity only for actions that he took under color of state law.

7. Defendants Buse, McCafferty, Wages, Grayson, and Edwards are the Election Commissioners for Lee County and are responsible for the conduct of elections in Lee County. Miss. Code Ann. § 23-15-485. They are sued in their official capacities only for actions that they took under color of state law.

8. Defendants Burkley, Harris, Herron, Land, and McMinn are the Election Commissioners for Panola County and are responsible for the conduct of elections in Panola County. Miss. Code Ann. § 23-15-485. They are sued in their official capacities only for actions that they took under color of state law.

FACTUAL ALLEGATIONS

9. The State of Mississippi enacted its first constitution in 1817 and, since then, there have been three state constitutions: the Constitution of 1832, the Constitution of 1868, and the present-day Constitution of 1890.

10. The 1817 constitution provided that: “Laws shall be made to exclude from office and from suffrage those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors.” Miss. Const. art. VI, § 5 (1817). The constitutions of 1832 and 1868 retained all of the disqualifying crimes of the 1817 constitution. Miss. Const. art. VII, § 4 (1832); Miss. Const. art. XII, § 2 (1868).

11. The 1890 constitution expanded the list of disfranchising crimes, but allowed individuals convicted of the enumerated offenses to vote for President and Vice President. Miss. Const. art. 12, § 241 (1890). The exact language is as follows:

Every inhabitant of this state, except idiots and insane persons, who is a citizen of the United States of America, eighteen (18) years old and upward, who has been a resident of this state for one (1) year, and for one (1) year in the county in which he offers to vote, and for six (6) months in the election precinct or in the incorporated city or town in which he offers to vote, and who is

duly registered as provided in this article, and who has never been convicted of murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy, is declared to be a qualified elector, **except that he shall be qualified to vote for President and Vice President of the United States if he meets the requirements established by Congress therefore and is otherwise a qualified elector.** (emphasis added).

12. Section 23-15-11 of the Mississippi Code sets forth the qualifications for voters:

Every inhabitant of this state, except idiots and insane persons, who is a citizen of the United States of America, eighteen (18) years old and upwards, who has resided in this state for thirty (30) days and for thirty (30) days in the county in which he offers to vote, and for thirty (30) days * * * in the incorporated city or town in which he offers to vote, and who shall have been duly registered as an elector pursuant to Section 23-15-33, and who has never been convicted of any crime listed in Section 241, Mississippi Constitution of 1890, shall be a qualified elector in and for the county, municipality and voting precinct of his residence, and shall be entitled to vote at any election.

13. A person with a criminal conviction is otherwise eligible to vote in presidential and vice presidential elections if he or she is a citizen of the United States, is at least eighteen (18) years old, meets the residency requirements, and has not been adjudicated “non compos mentis.” Miss. Code Ann. § 23-15-11; Miss. Const. art. 12, § 241.

14. Mississippi’s voter registration application form does not allow individuals to register only for presidential and vice-presidential federal elections. See Ex. A.

15. Plaintiff Jerry Young was convicted of armed robbery on or about May 1980.

16. On August 26, 2008, Plaintiff Young attempted to register to vote in Lee County for the November 4, 2008 presidential election, but was told that he was ineligible to register and would first have to get his voting rights restored. See Ex. B.

17. Plaintiff Young wishes to vote in upcoming elections, but is unable to do so because Mississippi's voter registration application form does not allow him to register only for presidential and vice-presidential federal elections.

18. Plaintiff Christy Colley was convicted of embezzlement on or about January 1999.

19. On August 26, 2008, Plaintiff Colley attempted to register to vote in Panola County for the November 4, 2008 presidential election, but was told that she was ineligible to register and would first have to get her voting rights restored. See Ex. C.

20. Plaintiff Colley wishes to vote in upcoming elections, but is unable to do so because Mississippi's voter registration application form does not allow her to register only for presidential and vice-presidential federal elections.

21. Plaintiffs are without an adequate remedy at law and will suffer irreparable harm unless Defendants' actions of failing and/or refusing to allow Plaintiffs to register and vote in presidential and vice-presidential federal elections are enjoined.

FIRST CAUSE OF ACTION

VIOLATION OF STATE CONSTITUTION

22. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

23. Article 12, Section 241 of the Mississippi Constitution secures the rights of individuals convicted of crimes to vote for President and Vice President of the United States.

24. Despite their felony convictions, Plaintiffs Young and Colley retain the right to vote for President and Vice President of the United States.

25. Defendants' actions of failing and/or refusing to allow Plaintiffs to register and vote for President and Vice President violate Article 12, Section 241 of the Mississippi Constitution.

SECOND CAUSE OF ACTION

VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

26. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

27. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

28. Although Plaintiffs Young and Colley have felony convictions, they remain eligible to vote for President and Vice President of the United States.

29. Defendants' action of failing and/or refusing to allow Plaintiffs to register and vote for President and Vice President treats them differently from other qualified voters and violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

THIRD CAUSE OF ACTION

VIOLATION OF THE NATIONAL VOTER REGISTRATION ACT

30. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

31. The National Voter Registration Act (the “NVRA”) requires each state to establish procedures to increase the number of eligible citizens who register to vote in federal elections. 42 U.S.C. § 1973gg(b).

32. The Act also mandates that states maintain accurate and current voter registration rolls through the use of programs and activities that are uniform and non-discriminatory. 42 U.S.C. § 1973gg-6(b)(1).

33. The NVRA further requires states to include a voter registration application form for federal elections as part of a state driver’s license application. 42 U.S.C. § 1973gg-3.

34. Mississippi’s driver’s license application form does not include a voter registration form only for federal elections.

35. The “State Instructions” part of the federal voter registration application form provides that a person is eligible to vote if they have not been convicted of one of the ten crimes enumerated in Section 241 of the Mississippi Constitution and that the form serves “as registration for voting for all state and federal offices.” Ex. D (emphasis added).

36. Defendants were put on notice on October 6, 2006, that they were violating the NVRA when they were sued in the case Strickland v. Clark, Civil Action No. G2006-1753 S/2 (Ch. Ct. Miss. Oct. 6, 2006).

37. Although Plaintiffs Young and Colley have felony convictions, they remain eligible to vote for President and Vice President of the United States.

38. Defendants' actions of failing and/or refusing to allow Plaintiffs to register and vote in presidential and vice-presidential federal elections violate the NVRA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court to:

(1) Declare that individuals who have been convicted of crimes retain the right to vote for President and Vice President of the United States;

(2) Declare that Defendants' actions of failing and/or refusing to allow individuals who have been convicted of a crime to register and vote for President and Vice President of the United States violate Article 12, Section 241 of the Mississippi Constitution, the Equal Protection Clause of the Fourteenth Amendment, and the National Voter Registration Act;

(3) Enter a preliminary and permanent injunction forbidding Defendants, their agents and representatives from discouraging, interfering with, or preventing individuals who have been convicted of a crime from registering to vote and voting for President and Vice President, and directing Defendants to instruct the various persons responsible for supervising voter registration in Mississippi's counties to accept voter registration application forms from such individuals;

(4) Order Defendants to amend the voter registration application form to allow individuals convicted of crimes to register to vote for President and Vice President;

(5) Award Plaintiffs their expenses, costs, fees, and other disbursements associated with the filing and maintenance of this action, including reasonable attorneys' fees pursuant to 42 U.S.C. §§ 1988 and 1973l(e);

(6) Exercise continuing jurisdiction over this action during the enforcement of its judgment; and

(7) Award such other equitable relief as this Court deems just and proper.

Respectfully Submitted,

By: /s Kristy Bennett
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*Pro Hac Vice Motions to Follow