

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN ROBERT SMITH, SHIRLEY HALL
AND GENE WALKER

PLAINTIFFS

VS.

Civil Action No. 3:01-cv-855-HTW-DCB

DELBERT HOSEMANN, Secretary of State of
Mississippi; JIM HOOD, Attorney General for the State of
Mississippi; HALEY BARBOUR,
Governor of the State of Mississippi; MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE; and
MISSISSIPPI DEMOCRATIC EXECUTIVE
COMMITTEE

DEFENDANTS

and

BEATRICE BRANCH, RIMS BARBER,
L.C. DORSEY, DAVID RULE,
JAMES WOODWARD, JOSEPH P. HUDSON,
and ROBERT NORVEL

INTERVENORS

CONSOLIDATED WITH

KELVIN BUCK, ET AL.

PLAINTIFFS

VS.

Civil Action No. 3:11-cv-717 HTW-LRA

HALEY BARBOUR, ET AL.

DEFENDANTS

MOTION TO INTERVENE

The proposed intervenors named herein (the “Proposed Intervenors”) include sponsors of Initiative Measure 78; specifically, Hester Jackson McCrary, Kelly Jacobs and Mississippi Early Voting Initiative, a Mississippi non-profit (herein MEVI 78). As detailed hereafter, the sponsors’ initiative petition rights have been extinguished under the Mississippi Constitution of 1890 in part as a result of this case. The Proposed Intervenors respectfully move, pursuant to Federal Rule of Civil Procedure 24, to intervene in this action as plaintiffs for the sole purpose of moving this Court, pursuant to Federal Rule of Civil Procedure 60(b)(6), to amend its Final Judgment of February 26, 2002, as amended by its Final Judgment of December 30, 2011 (collectively, the “Final Judgment”). The reason for the intervention and proposed amendment is that the application of this Court’s Final Judgment substantially contributed to voiding Mississippi voters’ initiative petition rights under article 15, section 273 (3) of their State’s Constitution of 1890. “So important did the drafters of section 273 consider the right of the people to amend their constitution to be that, in section 273 (13), the Legislature is forbidden from in any way restricting or impairing ‘the provision of this section or the powers herein reserved to the people’” *Initiative Measure No. 65: Butler v. Watson*, No. 2020-1A-01199-SCT, __So.3d__, 2021 WL 1940821 at *1 (Miss. May 14, 2021) (quoting Miss. Constitution, Art. 15 Section 273(13). If the Mississippi Legislature is forbidden from in any way restricting or impairing Mississippians’ section 273(13) initiative petition rights, the federal judiciary is as well.

Intervention is warranted as of right because the existing parties in this action are not representing or protecting the Proposed Intervenors’ constitutionally embedded initiative petition rights and the Proposed Intervenors’ interest will be impaired if they are not permitted to intervene. *See* Fed. R. Civ. P. 24(a) (2). In the alternative, the Proposed Intervenors should be

granted permissive intervention under Rule 24(b) because the Proposed Intervenors' claim shares with this action common questions of law and fact.

Before filing this Motion, counsel for the Proposed Intervenors conferred with counsel for the existing parties. The Deputy Solicitor General for Mississippi expressed opposition to the intervention on behalf of the Governor of Mississippi and the Office of the Attorney General. Counsel for Gene Walker, John Robert Smith, and Shirley Hall expressed opposition to the intervention. The Secretary of the State of Mississippi did not consent to the intervention but did not expressly state opposition. Counsel for the Mississippi Republican Party represented that the party is unable to agree to the intervention but did not expressly state opposition. We have not received a response from the remaining parties.

For the reasons discussed herein and in the accompanying Memorandum of Law, the Proposed Intervenors respectfully request that the Court grant the Proposed Intervenors' Motion to intervene in this matter. The Proposed Intervenors attach a proposed Rule 60(b)(6) Motion and an accompanying Memorandum of Law.

Respectfully Submitted, this the 5th day of November, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following registered users:

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