

**IN THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI**

**ANJUAN BROWN**

**PETITIONER**

**V.**

**NO: 2011-0098CI**

**PRESTON RATLIFF,  
THE LEFLORE COUNTY DEMOCRATIC  
EXECUTIVE COMMITTEE, THE LEFLORE  
COUNTY ELECTION COMMISSION AND  
THE LEFLORE COUNTY CIRCUIT CLERK**

**RESPONDENTS**

**OPINION AND ORDER**

1. The incumbent Preston Ratliff and the challenger Anjuan Brown were the only candidates running for the position of Supervisor District 3 of Leflore County, Mississippi in the August 2, 2011 Democratic Primary election. The LeFlore County Democratic Executive Committee initially certified Anjuan Brown as the winner of the primary election with a vote of 607 for Brown to 518 for Ratliff. On August 22, 2011, Ratliff filed a petition to contest the results pursuant to Mississippi Code Annotated § 23-15-921, et seq.

2. Two different small groups, each claiming to be acting on behalf of the Leflore County Democratic Executive Committee (LCDEC) met with different results. One group of six (6) purported LCDEC members chaired by Ross threw out all of the absentee ballots and declared Ratliff the winner of primary election. Another group of five (5) purported LCDEC members chaired by Griggs denied Ratliff's contest and reaffirmed Brown as the winner.

3. Legal proceedings were filed in both the Chancery and Circuit Courts of LeFlore County. The Circuit Court of LeFlore County entered an Order dated September 19, 2011 in Cause No. 2011-0086 finding that it lacked jurisdiction and opined that each candidate should file a petition contesting the findings by both the Ross and the Griggs groups who purported to respond to the contest filed by Ratliff. On September 20, 2011, Brown filed a Complaint in the

Nature of a Verified and Sworn Protest and Petition Concerning an Election Contest (Mississippi Code Annotated § 23-15-927), Petition for Writ of Certiorari, Declaratory Judgment, Writ of Prohibition and/or Mandamus and for any and all other Legal and Equitable Relief.

4. Via an Order dated September 22, 2011, the Mississippi Supreme Court appointed the undersigned as special judge to preside over the petition for judicial review pursuant to Mississippi Code Annotated § 23-15-929 (1972). On September 23, 2011, this Court heard argument on a motion filed by Brown requesting that the election officials be ordered to place Anjuan Brown on the general election ballot as a democratic candidate for district 3. After hearing oral argument on the motion and receiving supplemental briefs, this Court granted Brown's motion via Order dated September 27, 2011, without prejudice to the pending Petition for Judicial Review.

5. Via a conference call on September 28, 2011<sup>1</sup> this Court ruled on motions for discovery, set an expedited scheduling order, required the parties to submit a Pre-Trial Order on October 12, 2011 and attend a Pre-Trial Conference in LeFlore County on October 17, 2011. The trial of this matter was scheduled for October 20, 2011.

6. During the Pre-Trial Conference, the Court ruled that Ratliff, as the original contestant before the LeFlore County Democratic Executive Committee, would have the burden of persuasion to disqualify any ballots and further that the trial would be limited to those matters that were contained in Ratliff's petition before the LeFlore County Democratic Party Executive Committee.

7. Pursuant to the statute this Court issued subpoenas to require the attendance of the LeFlore County Election Commissioners to assist in hearing this case as a special tribunal. However, after reviewing the proposed Pre-Trial Order, and being advised by both sides that four

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<sup>1</sup> The Order erroneously says "October 28, 2011."

(4) of the five (5) election commissioners had participated in actually opening and counting all of the absentee ballots here in question, the Court excused the election commissioners from further participating in the trial of this cause prior to testimony beginning on October 20, 2011.

8. During Pre-Trial motions, Brown argued that absentee voters should not be questioned concerning their affidavits as a matter of public policy citing Texas cases<sup>2</sup> and because of the 5<sup>th</sup> Amendment incrimination concerns. Ratliff argued that the only way to prove fraud was through this testimony. The Court tried to strike a balance between these competing interests and allowed witnesses to be questioned and to testify as to how they were informed about voting absentee and how they got to the Courthouse, but did not allow questions about whether their stated reason to vote absentee was true until those voters had been given a warning about their 5<sup>th</sup> Amendment rights by the Court in very simple terms. When so advised most witnesses invoked their 5<sup>th</sup> Amendment right not to testify further. A couple of witnesses waived their 5<sup>th</sup> Amendment right and testified that they in fact gave truthful reasons on their application to vote absentee and a couple of witnesses waived their 5<sup>th</sup> Amendment right and testified that they gave false and untruthful reasons by indicating they intended to be out-of-town when they had no such intention.

9. The trial in this matter was conducted over six (6) different non-consecutive days over a period of time beginning on October 20, 2011 and ending on November 11, 2011<sup>3</sup>.

Trial dates were October 20-21, 2011, October 25-26, 2011, and November 10-11, 2011.

During the course of the trial, the Court heard testimony from 42 witnesses and received over 222 exhibits.

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<sup>2</sup> See e.s., Tiller v. Martinez, 974 S.W. 2d 769 (Tx. App. 1998).

<sup>3</sup> The trial days were scheduled based on the availability of the Court and the attorneys, the availability of a courtroom and the availability of a court reporter in LeFlore County.

10. After hearing the testimony and reviewing the exhibits there are several matters which are disturbing to this Court. Those include the following:

a. Apparently the membership of the LeFlore County Democratic Executive Committee LCDEC is in doubt as well as who are its officers.

b. The absentee ballots cast during the August 2, 2011 party primary, although included in the boxes delivered to each precinct, were apparently never examined, rejected, accepted or challenged at the precincts. This resulted in all absentee ballots being returned to the courthouse and opened by the LeFlore County Election Commissioners the day after the election. There was no written agreement for the election commissioners to assist the Democratic Party.

c. All absentee ballots for each box were co-mingled, so that when the ballots were later inspected and canvassed there was no way to determine which ballots may have been the result of defective applications or defective ballot envelopes.

11. The above referenced concerns are not controlling, however, on the Court's decision on this case. What is determinative is that the Court finds that Campaign workers for Anjuan Brown engaged in a concerted, widespread and intentional effort to solicit persons to vote early by absentee ballot and to tell the circuit clerk personnel they were going to be out-of-town even if they had no such intention. At least 32 witnesses confirmed this solicitation.

12. As a result of that effort, the Court is convinced that numerous voters signed applications for absentee ballots falsely giving as a reason that they would be out-of-town despite the language in bold type on the application for absentee ballots which stated:

I realize that I can be fined up to five thousand dollars (\$5,000.00) and sentenced up to five (5) years in the penitentiary for making a false statement in this application and for selling my vote and violating the Mississippi Absentee Voter Law.

13. In addition, Andrew Powell and Lakeitha Stigler, campaign workers for Brown, testified that they signed the absentee ballot envelopes of 41 and 21 voters respectively, indicating they had rendered the voter assistance, but that their "assistance" amounted to only advising the voter of the requirement to make sure they signed across the flap of the sealed envelope. However, the language on the absentee ballot envelope that they each signed clearly states:

(TO BE COMPLETED ONLY IF THE VOTER HAS RECEIVED ASSISTANCE IN MARKING THE ENCLOSED BALLOT) I, under penalty of perjury, hereby certify the above named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions.

14. Below the signature line for persons providing assistance there is printed the following language:

Penalties for vote fraud are up to five (5) years in prison and a fine up to five thousand dollars (\$5,000.00) Mississippi Code Annotated § 23-15-753. Penalties for voter intimidation are up to one (1) year in jail and a fine up to one thousand dollars (\$1,000.00). Mississippi Code Annotated § 97-13-37.

15. Neither Powell or Stigler claimed the 41 or 21 voters they assisted were blind, disabled or unable to read and write.

16. The Circuit Clerk's final absentee report for the August 2, 2011 Democratic Primary shows there were a total of 478 absentee votes cast in the county; 258 of those absentee ballots were cast in the District 3 Supervisor's race (Exhibit C-2). This number is significant, when you compare it to the fact that in the November 2, 2010 general election, only 55 absentee ballots were cast in District 3 (Exhibit C-1) and in the November 6, 2007 general election there were only 118 absentee ballots cast in District 3 (Exhibit C-4). Finally, in the August 7, 2007 Democratic Primary there were only 34 absentee ballots cast in District 3 (Exhibit C-3).

17. Minor technicalities in the casting of ballots will not be grounds for invalidation of the election absence evidence of fraud or intentional wrongdoing. (emphasis added). Boyd v. Tishomingo County Democratic Executive Committee, 912 So. 2d 124 (Miss. 2005). Absent evidence of fraud or intentional or willful wrongdoing the burden is upon the contestant to prove the existence of illegal absentee votes and that there were enough votes cast to change the election results.

18. Likewise, an election may be invalidated when there has been a substantial failure to comply materially with the applicable statutes and the intent of the voters is impossible to ascertain. *See Boyd.*

19. The imposition of a new election is a last resort and a Court seeks to avoid using it as a remedy if at all possible. The key consideration in making the decision to hold a special election is whether there is a radical departure from our election laws so as to require a special election. Harpole v. Kemper County Democratic Executive Committee, 908 So. 2d 129 (Miss. 2005).

20. Absent fraud, disenfranchisement of a significant number of voters may create sufficient doubt as to the election results to warrant a special election, and invalidation of more than 30% of the total votes cast is generally sufficient to require a special election. On the other hand, even where the percentage of illegal votes is small, if attended by fraud or willful violations of the election procedures, the Court will order a new election without reservation. Harpole v. Kemper County Democratic Executive Committee, 908 So. 2d 129, 138 (Miss. 2005). Citing Rizzo v. Bizzell, 530 So. 2d 121, 128 (Miss. 1988); Harris v. Stewart, 187 Miss 489, 193 So. 339 (1940).

21. Ratliff's Petition to Contest alleges a variety of perceived problems with the primary voting such as some voters not marking a reason to vote absentee on their application (¶16); that there was no application (¶17); that some applications did not contain the initial and seal of the clerk (¶19); that some absentee signatures on the absentee envelopes did not cross the flap (¶20); and that some voters were not residents of the District (¶21,22)

22. As to those allegations, the Court finds that the proof failed to sustain these allegations; that the defects were technical and/or inadvertent; or that there were too few of such

defective ballots to affect the election results. As to all such complaints, there was no evidence of fraud or willful violations.

23. However, in ¶13 of his contest petition, Ratliff charges that 152 voters marked on their absentee applications that they would be out-of-town or they gave no reason when said voters had no intent to be out-of town.

24. In ¶15, Ratliff charges Brown and his supporters encouraged voters to falsely or fraudulently mark on their absentee application that they would be out-of-town.

25. This Court is of the opinion that there is clear and convincing evidence that there was a concerted effort on behalf of certain campaign workers to solicit voters to violate the Mississippi Absentee Voter Laws by encouraging voters to go to the Circuit Clerk's office and obtain absentee ballots by routinely stating they would be out-of-town regardless of whether that was the truth or not, and regardless of whether those voters may have had other legitimate reasons to vote absentee - - such as being over 65 years of age. While it may be true in most of those cases that the voters actually intended to vote for Anjuan Brown and did in fact vote for Anjuan Brown, the fact remains that the evidence clearly shows that there was an intentional, systematic effort to get voters to break the law by voting early when they did not have a legitimate, legal reason to do so under our current voting laws.

26. The Court is aware that some states allow early voting without needing a reason. That system of voting may or may not be a good system, but it is not the voting system currently authorized by our legislature, and candidates, their workers and political parties are not at liberty to flagrantly ignore our state's absentee ballot requirements.



In view of this finding of willful violations of the absentee ballot laws, the Court is of the opinion that the appropriate remedy is not to throw out all of the absentee ballots and declare Preston Ratliff winner of the Democratic Party primary for Supervisor District 3, but rather to invalidate both the Democratic primary election for District 3 Supervisor and the general election for LeFlore County District 3 Supervisor and to direct the Governor of the State of Mississippi to call a special election to fill said seat as soon as possible.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the 2011 LeFlore County Democratic primary election and general election for Supervisor District 3 be, and the same are hereby, declared invalid.

IT IS FURTHER ORDERED that the Governor of the State of Mississippi call a special election to fill said seat as authorized by law, and that a certified copy of this Order be sent by the Circuit Clerk of LeFlore County to the Governor and Secretary of State of the State of Mississippi.

SO ORDERED this the 18 day of November, 2011.

  
M. JAMES CHANEY, JR.  
SPECIAL JUDGE