

FILED

JUL 24 2013

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

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

SHERIEL F. PERKINS and THE STATE
OF MISSISSIPPI ON RELATION OF
SHERIEL F. PERKINS

PLAINTIFF

v.

CIVIL ACTION NO. 4:13CV131-A-V

CAROLYN MCADAMS

DEFENDANT

NOTICE OF REMOVAL

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF MISSISSIPPI, GREENVILLE DIVISION

Honorable Elmus W. Stockstill
Clerk of the Circuit Court
Leflore County, Mississippi
P. O. Box 1953
Greenwood, MS 38935

LEFLORE COUNTY CIRCUIT CLERK

Willie J. Perkins, Esq.
P. O. Box 8404
Greenwood, MS 38935-8404

Linda F. Coleman, Esq.
P. O. Box 667
Cleveland, MS 38732-0667

ATTORNEYS FOR PLAINTIFF

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441 & 1446, Defendant Carolyn McAdams (“Defendant”), subject to all of her defenses, including her Rule 12 defenses, hereby removes this case and gives notice of the removal of this Action from the Circuit Court of Leflore County, Mississippi, to the United States District Court for the Northern District of Mississippi, Greenville Division. As grounds for this removal, Defendant states as follows:

1. On or about June 24, 2013, Plaintiff filed a Complaint in the Circuit Court of Leflore County, Mississippi, bearing Civil Action No. 2013-0047-CICI.

2. This Action is one of a civil nature, wherein the United States District Court for the Northern District of Mississippi, Greenville Division, has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367.

3. Plaintiff alleges in her Complaint that she is an adult resident citizen of Greenwood, Leflore County, Mississippi, and is the duly certified nominee of the Municipal Democratic Executive Committee of Greenwood, Mississippi for the office of Mayor for the City of Greenwood, Mississippi.

4. Defendant is also an adult resident citizen of Greenwood, Leflore County, Mississippi, and was one of two candidates for Mayor of the City of Greenwood, Mississippi.

5. According to the Official Recapitulation and Statement of Results of the General Election for Mayor of the City of Greenwood held on June 4, 2013, Defendant received 2,618 votes, or approximately 52% of the votes cast in the general election for Mayor, and Plaintiff Perkins received 2,412 votes, or approximately 48% of the total votes cast. *See* Cmpl. at ¶ 6.

6. According to Plaintiff, the final election result is “erroneous, arbitrary, capricious, incorrect” and includes absentee ballots that should not have been counted and affidavit ballots that should be counted. Cmpl. at ¶ 9. Plaintiff also claims that Defendant violated Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, and the Help America Vote Act, 42 U.S.C. § 15482. *See* Cmpl. at ¶¶ 19-25.

7. Pursuant to 28 U.S.C. § 1446(d), all adverse parties are being provided with written notice of removal, and a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Leflore County, Mississippi.

Federal Question Jurisdiction

8. This Action could have been filed originally in this Court pursuant to 28 U.S.C. §§ 1331 and 1367, as this Court has federal question jurisdiction of certain claims asserted by Plaintiff against Defendant and supplemental jurisdiction over all other claims because they are related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

9. Plaintiff makes the following allegations pursuant to federal law:

Sixth Cause of Action: Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973

20. The city Election Commission, City Clerk and certain poll workers who conducted the June 4, 2013, mayoral general election engaged in racially motivated manipulation of the electoral process to the detriment of African American voters in Greenwood, Mississippi, in violation of the anti-dilution provision of the Voting Rights Act of 1965, as amended and the judicial decision in *U.S. v. Brown*, 494 F. Supp. 2d 440 (S.D. Miss. 2007) aff'd 561 F. 3d 420 (5th Cir. 2009).

...

Seventh Cause of Action: Help America Vote Act, 42 U.S.C. § 15482

22. The City Election Commission, the City Clerk and certain poll workers who conducted the election engaged in racially motivated manipulation of the electoral process to the detriment of the African American voters in Greenwood, Mississippi, in violation of the provisional ballot requirements of the Help America Vote Act. The City Election Commission longstanding historical actions and conduct and the intentional refusal to count affidavit ballots and Help America Vote Act violate provisional ballot requirements of 42 U.S.C. § 15482.

23. Of the 156 affidavit (provisional) ballots cast and counted in the June 4, 2013, general election, 108 affidavit (provisional) ballots were cast by African American voters; of the 200 affidavit (provisional) ballots rejected in the June 2013 general election, 123 affidavit (provisional) ballots were cast by African American voters.

...

Eighth Cause of Action: Section 2 of the Voting Rights Act of 1965

25. The City Election Commission and the poll worker's actions and conduct amount to racially motivate manipulation of the electoral process to the detriment of African American voters in Greenwood, Mississippi. Many African American voters were given incorrect information concerning affidavit (provisional) ballots and not allowed to cast affidavit (provisional) ballots and denied African American voters an equal

opportunity to participate in the electoral process on an equal footing with white voters and denied and prevented the will of the voters in Greenwood, Mississippi, in violation of the anti-dilution provision of the Voting Rights Act of 1965, as amended and the judicial decision in *U.S. v. Brown*, 494 F. Supp. 2d 440 (S.D. Miss. 2007) aff'd 561 F. 3d 420 (5th Cir. 2009).

(Cmpl. at ¶¶ 20, 22, 23 & 25).

10. Accordingly, this Court has federal question jurisdiction of this action under 28 U.S.C. § 1331.¹

11. Additionally and alternatively, to the extent all of Plaintiff's state law claims are not extinguished or noncognizable, this Court has supplemental jurisdiction over such claims pursuant to 28 U.S.C. § 1367.

12. Attached hereto as collective Exhibit A is a certified copy of the documents that appear in the state court record as of the date of certification on those documents. Attached hereto as Exhibit B is all process, orders and pleadings that have been putatively served on Defendant.

13. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Defendant's rights to assert any defense or affirmative matter, including but

¹ "The well-pleaded complaint rule focuses on whether the plaintiff has affirmatively alleged a federal claim, thus providing a basis for federal jurisdiction." *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 328 (5th Cir. 2008). "Jurisdiction ... is not defeated ... by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Bell v. Hood*, 327 U.S. 678, 682 (1946). "In circumstances where 'the defendant's challenge to the court's jurisdiction is also a challenge to the existence of a federal cause of action, the proper course of action for the district court ... is to find that jurisdiction exists and deal with the objection as a direct attack on the merits of the plaintiff's case' under either Rule 12(b)(6) or Rule 56." *Montez v. Department of the Navy*, 392 F.3d 147, 150 (5th Cir. 2004) (citing *Williamson v. Tucker*, 645 F.2d 404, 415 (5th Cir. 1981)).

not limited to Defendants' right to move to dismiss Plaintiff's claims for failure to state a cause of action upon which relief can be granted.

WHEREFORE, Defendant files this Notice of Removal and removes this civil action from the Circuit Court of Leflore County, Mississippi, to the United States District Court for the Northern District of Mississippi, Greenville Division. Plaintiff is hereby notified to proceed no further in state court.

This the 24th day of July, 2013.

Respectfully submitted,

CAROLYN MCADAMS

By:


Lem Montgomery (MB #100686)

Mark W. Garriga (MB #4762)

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HER ATTORNEYS

CERTIFICATE OF SERVICE

I, Lem E. Montgomery III, one of the attorneys for Carolyn McAdams, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means indicated by CM/ECF and as additionally indicated:

Honorable Elmus W. Stockstill (via Hand Delivery)
Clerk of the Circuit Court
Leflore County, Mississippi
P. O. Box 1953
Greenwood, MS 38935

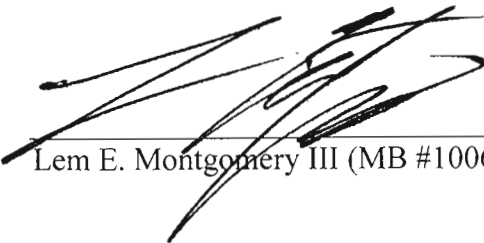
LEFLORE COUNTY CIRCUIT CLERK

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P. O. Box 8404
Greenwood, MS 38935-8404

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P. O. Box 667
Cleveland, MS 38732-0667

ATTORNEYS FOR PLAINTIFF

THIS the 24th day of July, 2013.


Lem E. Montgomery III (MB #100686)