

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.

CAUSE NO. 4:13cv131-A-V

CAROLYN MCADAMS

DEFENDANT

ANSWER AND DEFENSES OF CAROLYN MCADAMS

COMES NOW Defendant Carolyn McAdams (“Defendant”) by and through counsel, and submits her answer and defenses to Plaintiff’s Complaint filed against her as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted and dismissal is warranted under Fed. R. Civ. P. 12(b)(6).

SECOND DEFENSE - ANSWER

AND NOW, without waiver of any of the above defenses, Defendant answers the specific allegations contained in Plaintiff’s Complaint as follows:

I. Jurisdiction and Venue

1. All averments and allegations contained in paragraph 1 of Plaintiff’s Complaint are denied.

II. Parties

2. Defendant admits upon information and belief only that Plaintiff is an adult resident citizen of Greenwood, Leflore County, Mississippi and that she was Plaintiff’s opponent in Greenwood’s June 4, 2013 mayoral election. Defendant lacks sufficient information to admit

or deny the remaining averments contained in paragraph 2 of Plaintiff's Complaint and therefore denies the same.

3. Defendant admits the allegations of paragraph 3.

III. Statement of Facts and Causes of Action

4. Defendant admits the allegations of paragraph 4.

5. Defendant admits the allegations of paragraph 5.

6. Defendant admits the allegations of paragraph 6 as they relate to the Ward tallies, but denies the total percentages stated for the individual candidates.

7. Defendant denies the allegations of paragraph 7.

8. Defendant denies the allegations of paragraph 8.

9. Defendant denies all averments and allegations contained in paragraph 9 of Plaintiff's Complaint.

**First Cause of Action: Wrongful, Arbitrary And Capricious
Rejection of Legal Affidavit and Absentee Ballots**

10. Defendant denies all averments and allegations contained in paragraph 10 of Plaintiff's Complaint.

11. Defendant denies all averments and allegations contained in paragraph 11 of Plaintiff's Complaint.

**Second Cause of Action: Illegal Machine Votes
Cast By Non-Residents of Greenwood, Mississippi**

12. Defendant adopts and reincorporates by reference her responses to paragraphs 1-11 above.

13. Defendant denies all averments and allegations contained in paragraph 13 of Plaintiff's Complaint.

14. Paragraph 14 of Plaintiff's Complaint states a legal conclusion to which no response is required. Defendant objects to paragraph 14 and refers all questions of law to the Court. To the extent paragraph 14 may be construed as containing factual averments or allegations, Defendant denies any and all averments and allegations contained in paragraph 14 of Plaintiff's Complaint.

Third Cause of Action: Illegal Absentee Ballots Cast

15. Defendant adopts and reincorporates by reference her responses to paragraphs 1-14 above.

16. Defendant denies all averments and allegations contained in paragraph 16 of Plaintiff's Complaint.

Fourth Cause of Action: The Invalidity of Absentee Ballot Votes That Lack The Signature Of Either The Voter Or Attesting Across The Flap Of The Absentee Ballot Envelope Under Miss. Code Ann. § 23-15-633 (Rev. 2001), Lack Signature Of Voter Or Witness On Application

16(b)(sic) Defendant adopts and reincorporates by reference her responses to paragraphs 1-16 above.

17. Paragraph 17 of Plaintiff's Complaint states a legal conclusion to which no response is required. Defendant objects to paragraph 17 and refers all questions of law to the Court. To the extent paragraph 17 may be construed as containing factual averments or allegations, Defendant denies any and all averments and allegations contained in paragraph 17 of Plaintiff's Complaint.

18. Paragraph 18 of Plaintiff's Complaint states a legal conclusion to which no response is required. Defendant objects to paragraph 18 and refers all questions of law to the Court. To the extent paragraph 18 may be construed as containing factual averments or

allegations, Defendant denies any and all averments and allegations contained in paragraph 18 of Plaintiff's Complaint.

Sixth (sic) Cause of Action: Section 2 Of The Voting Rights Act of 1965, 42 U.S.C. 1973

19. Defendant adopts and reincorporates by reference her responses to paragraphs 1-18 above.

20. Defendant denies any and all averments and allegations contained in paragraph 20 of Plaintiff's Complaint.

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

21. Defendant adopts and reincorporates by reference her responses to paragraphs 1-20 above.

22. Defendant denies any and all averments and allegations contained in paragraph 22 of Plaintiff's Complaint.

23. Defendant denies any and all averments and allegations contained in paragraph 23 of Plaintiff's Complaint.

**Eighth Cause of Action: Denial of Statutory Assistance
To Voters Under Miss. Code Ann. § 23-15-549 (Supp. 1987)**

24. Defendant adopts and reincorporates by reference her responses to paragraphs 1-23 above.

25. Defendant denies any and all averments and allegations contained in paragraph 25 of Plaintiff's Complaint.

**Ninth Cause Of Action: Denial Of Statutory Assistance
To Voters Under Miss. Code Ann. § 23-15-549 (Supp. 1987)**

26. Defendant adopts and reincorporates by reference her responses to paragraphs 1-25 above.

27. Defendant denies any and all averments and allegations contained in paragraph 27 of Plaintiff's Complaint.

Tenth Cause of Action: No Statutory Locks And Seals On Certain Ballot Boxes

28. Defendant adopts and reincorporates by reference her responses to paragraphs 1-27 above.

29. Defendant denies any and all averments and allegations contained in paragraph 29 of Plaintiff's Complaint.

Eleventh Cause of Action: Denial Of Substantive and Procedural Due Process Law

30. Defendant adopts and reincorporates by reference her responses to paragraphs 1-29 above.

31. Defendant denies any and all averments and allegations contained in paragraph 31 of Plaintiff's Complaint.

**Twelfth Cause of Action: Voter And Absentee Ballot
Fraud Under Miss. Code Ann. Section 23-15-753**

32. Defendant adopts and reincorporates by reference her responses to paragraphs 1-31 above.

33. Defendant denies any and all averments and allegations contained in paragraph 33 of Plaintiff's Complaint.

34. Defendant denies any and all averments and allegations contained in paragraph 34 of Plaintiff's Complaint.

**Thirteenth Cause of Action: Mere Error Or Omission By
City Clerk To Place Absentee Ballots In The Proper Precinct Box**

35. Defendant adopts and reincorporates by reference her responses to paragraphs 1-34 above.

36. Defendant denies any and all averments and allegations contained in paragraph 36 of Plaintiff's Complaint.

37. Defendant denies any and all averments and allegations contained in paragraph 37 of Plaintiff's Complaint.

General Cause of Action

38. Defendant adopts and reincorporates by reference her responses to paragraphs 1-37 above.

39. Defendant denies any and all averments and allegations contained in paragraph 39 of Plaintiff's Complaint.

40. Defendant denies any and all averments and allegations contained in paragraph 40 of Plaintiff's Complaint.

41. Defendant denies any and all averments and allegations contained in paragraph 41 of Plaintiff's Complaint.

42. Defendant denies any and all averments and allegations contained in paragraph 42 of Plaintiff's Complaint.

43. Defendant denies any and all averments and allegations contained in paragraph 43 of Plaintiff's Complaint.

44. Defendant denies any and all averments and allegations contained in paragraph 44 of Plaintiff's Complaint.

45. Defendant denies any and all averments and allegations contained in paragraph 45 of Plaintiff's Complaint.

46. Defendant denies any and all averments and allegations contained in paragraph 46 of Plaintiff's Complaint.

Defendant denies the final unnumbered paragraph in Plaintiff's Complaint beginning with the word "WHEREFORE" and ending with the word "Mississippi", including subsections (a)-(d)(4.) thereunder, and denies Plaintiff is entitled to any relief whatsoever, including the relief specifically requested.

THIRD DEFENSE

Defendant hereby asserts and affirmatively invokes all defenses available unto it as set forth in Fed. R. Civ. P. 12(b)(1) through 12(b)(7) for which a good faith legal and/or factual basis exists or may exist on its behalf or in its favor.

FOURTH DEFENSE

In the event supported by facts developed through discovery or otherwise, which facts are presently unknown, Defendant pleads the defense that Plaintiff's claims are barred by the applicable statute(s) of limitations, including but not limited to Miss. Code Ann. § 15-1-29.

FIFTH DEFENSE

Plaintiff's claims are barred by the doctrines of estoppel, waiver and/or laches.

SIXTH DEFENSE

Defendant acted only in her individual interest and not as a state actor and is not a proper defendant under Section 2 of The Voting Rights Act.

SEVENTH DEFENSE

Plaintiff is not an “aggrieved person” and therefore lacks standing to sue under the Voting Rights Act.

EIGHTH DEFENSE

Although Defendant was the incumbent Mayor of the City of Greenwood at the time of the election at issue, Plaintiff has not alleged any particular acts on the part of the Defendant, but rather, that the actions of the City Election Commission, City Clerk, and unnamed poll workers were racially motivated and violated federal law. Therefore, Plaintiff has failed to join persons who are required to be joined if feasible, pursuant to Rule 19, and Rule 12(b)(7) of the Federal Rules of Civil Procedure.

NINTH DEFENSE

The Help America Vote Act, 42 U.S.C. § 15301, *et seq.*, does not provide for a private cause of action and, therefore, Plaintiff has failed to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6).

TENTH DEFENSE

The averments of the Complaint fail to give Defendant reasonable notice of facts sufficient to evaluate all of its defenses. For that reason, Defendant affirmatively pleads accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, failure of consideration, fraud, illegality, injury by fellow servant, license, payment, release, res judicata, statute of frauds, statute of limitation, and any other matter constituting an avoidance or affirmative defense that is available to it.

ELEVENTH DEFENSE

Plaintiff’s claim, as pled, does not rise to the level of constitutional deprivation.

TWELFTH DEFENSE

Defendant reserves the right to amend its pleadings to assert any additional defenses that may become apparent during the course of this lawsuit.

WHEREFORE, PREMESIS CONSIDERED, Defendant prays that Plaintiff's Complaint be dismissed with prejudice, with costs assessed to Plaintiff.

Respectfully submitted,

CAROLYN MCADAMS

By: /s/ Lem Montgomery III
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HER ATTORNEYS

CERTIFICATE OF SERVICE

I, Lem Montgomery III, one of the attorneys for Carolyn McAdams, do hereby certify that I have this day served a true and correct copy of the foregoing **Answer and Defenses** by filing same with the District Court's CM/ECF system which automatically served an electronic copy to the following attorneys of record:

Willie J. Perkins, Esq.
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ATTORNEYS FOR PLAINTIFF

THIS the 24th day of July, 2013.

/s/ Lem Montgomery III
Lem Montgomery III (MB #100686)