

Certification Deadline for Ballot-Initiative Signatures

Personhood Mississippi v. Hood
(Daniel P. Jordan III, S.D. Miss. 3:10-cv-71)

Supporters of a ballot initiative alleged in a federal complaint that application of a year-long signature period was unconstitutional because county election officials were sometimes taking so long to certify ballot-petition signatures that the initiative supporters could not efficiently determine where to allocate signature-drive resources. The parties appeared in chambers on the day that the complaint was filed, and the state filed a response three days later. Four days after that, the district judge abstained from providing immediate relief because resolution of issues of state law could moot the federal constitutional issues. Later, the court dismissed the action on stipulation.

Subject: Ballot measures. *Topics:* Ballot measure; getting on the ballot.

On February 2, 2010, supporters of a ballot initiative that would establish conception as the beginning of personhood filed a federal complaint in the Southern District of Mississippi alleging an unconstitutional application of the year-long signature period, which was to conclude on February 13, because county election officials were sometimes taking too long to certify ballot-petition signatures so that the initiative supporters could not efficiently determine where to allocate signature-drive resources.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order or a preliminary injunction.²

On the day Plaintiffs filed suit, attorneys for the parties appeared in chambers to discuss Plaintiffs' concomitant motion for preliminary injunction. The parties agreed that the issues could be decided without evidentiary hearing and waived argument. The State filed an expedited response Friday, February 5, 2010. Plaintiffs filed their reply the evening of Monday, February 8, raising a new argument that the Voter Initiative Act is unconstitutional for lack of a deadline for circuit clerks to certify the signatures.³

On February 9, pursuant to *Railroad Commission v. Pullman Co.*, Judge Daniel P. Jordan III abstained from providing the plaintiffs with immediate relief "because resolution of the dispute over the interpretation of Mississippi law could moot the federal constitutional issues."⁴

1. Complaint, *Personhood Miss. v. Hood*, No. 3:10-cv-71 (S.D. Miss. Feb. 2, 2010), D.E. 1.

2. Motion, *id.* (Feb. 2, 2010), D.E. 3.

3. Opinion at 2, *id.* (Feb. 9, 2010), D.E. 11 [hereinafter *Personhood Miss. Opinion*], 2010 WL 538302.

4. *Id.* at 5–10; see *R.R. Comm'n v. Pullman Co.*, 312 U.S. 496 (1941) (holding that if resolution of an uncertain state-law matter might moot a federal constitutional question, "In the

On April 16, Judge Jordan approved a stipulated dismissal of the action.⁵ The initiative was certified for the November ballot,⁶ and it failed by a vote of 58% to 42%.⁷

absence of any showing that . . . methods for securing a definitive ruling in the state courts cannot be pursued with full protection of the constitutional claim, the district court should exercise its wise discretion by staying its hands.”).

Judge Jordan also determined that Mississippi had Eleventh Amendment immunity from a federal court’s interpretation of Mississippi law. *Personhood Miss.* Opinion, *supra* note 3, at 4–5.

5. Order, *Personhood Miss.*, No. 3:10-cv-71 (S.D. Miss. Apr. 16, 2010), D.E. 13.

6. See *Abortion Issue on 2011 Ballot*, Jackson Clarion-Ledger, Apr. 2, 2010, at A1.

7. See *Defeat May Not End “Personhood” Efforts in Miss.*, Delta Democrat Times, Nov. 12, 2011.