

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

JOSEPH E. "JOEY" FILLINGANE

PLAINTIFF

VS.

DELBERT HOSEMANN, in his official capacity as
The Secretary of State of the State of Mississippi, and
HALEY BARBOUR, in his official capacity as the
Governor of the State of Mississippi



CAUSE NO. G2009-399 O/3

A TRUE COPY
FILED

JUN 02 2009

EDDIE JEAN CARR, CHANCERY CLERK

DEFENDANT

OPINION AND JUDGMENT

BY *E. Morris* D.C.

THIS MATTER is before the Court on a Complaint for Declaratory Judgment filed by Plaintiff. Having heard arguments on the matter and all premises considered, this Court finds that Plaintiff's Complaint is not well taken and as such a Declaratory Judgment is DENIED. This Court further finds as follows:

DISCUSSION

The Plaintiff is a member of the Mississippi Senate and has begun an initiative process to amend the Mississippi Constitution. Section 23-17-1 of the Miss. Code Ann. (2008), pursuant to Miss. Const. Ann. Art. 15, §273(3) (2008), sets forth the following requirements for petitions seeking to amend the Mississippi Constitution by voter initiative:

The people reserve unto themselves the power to propose and enact constitutional amendments by initiative. An initiative to amend the Constitution may be proposed by a petition signed over a twelve-month period by qualified electors equal in number to at least twelve percent (12%) of the votes for all candidates for Governor in the last gubernatorial election. The signatures of the qualified electors from any congressional district shall not exceed one-fifth (1/5) of the total number of signatures required to qualify an initiative petition for placement upon the ballot. If an initiative petition contains signatures from a single congressional district which exceed one-fifth (1/5) of the total number of required signatures, the excess number of signatures from that congressional district shall not be considered by the Secretary of State in determining whether the petition qualifies for placement on the ballot.

At the time §273(3) was adopted, Mississippi had five (5) congressional districts. Now, Mississippi has four (4) congressional districts. Thus, the Plaintiff contends that the congressional districts existing at the time of the enactment of §273(3) should be used to determine the voter signature requirement. The Secretary of State took a position identical to that of the Plaintiff. That is, the Secretary of State also contends that the congressional districts existing at the time, namely five (5), shall be utilized. Thus, the Secretary of State intends to certify the petition based on five (5) congressional districts.

As of the date of the hearing on this matter, the foregoing was and is to this Court's knowledge, the position of the parties. Therefore, this Court is persuaded that because the parties contend identical notions as to how §273(3) is interpreted, there exists no actual controversy, at this time.

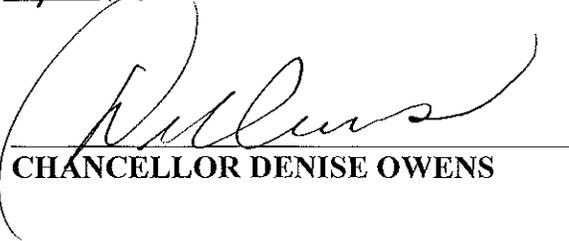
Rule 57 of the Mississippi Rules of Civil Procedure relates to trial courts rendering Declaratory Judgments. Broadly, a Declaratory Judgment is to "permit adjudication of the rights or status of the parties without the necessity of a previous crime or breach." *Sumrall v. Preferred Risk Mutual Insurance Company*, 339 So. 2d. 568 (Miss. 1976). Further, "[t]he essential distinction between an action for declaratory judgment and the usual action is that no actual wrong need have been committed or loss have occurred in order to sustain the declaratory judgment action, but there must be no uncertainty that the loss will occur or that the asserted right will be invaded." *Sumrall*, 339 So. 2d. 568. This Court is not persuaded that the Plaintiff will sustain a loss or an invasion of rights.

The comment to Rule 57 states, "[i]t is always the duty of the court to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief." The two principal criteria in favor of rendering declaratory judgments are: 1) when the judgment will

serve a useful purpose in clarifying and settling the legal relations in issue, and 2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.” *Hall v. Lynne*, 749 So. 2d 182 (Miss. 1999). Here, there is no issue to clarify or settle because the parties agree.

Furthermore, the comment to Rule 57 clearly states that “the purpose of Rule 57 is to create a procedure by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached the stage at which either party may seek a coercive remedy, or in which the party entitled to such a remedy fails to sue for it.” Declaratory Judgments seek to assess rights and obligations in cases involving an actual controversy. At this time, there is no controversy between the parties. The existence of controversy in this matter is merely speculative at this time. The Plaintiff can only speculate as to whether the Secretary of State will in fact certify the petition based on five (5) congressional districts rather than the four (4) congressional districts that exist today. Thus, this Court finds that the rendering of a Declaratory Judgment of this nature is premature.

Based on the foregoing reasons, this Court finds that the Plaintiff is not entitled to a Declaratory Judgment and as such the Declaratory Judgment is hereby DENIED. SO ORDERED, ADJUDGED, and DECREED this the 2nd day of June 2009.


CHANCELLOR DENISE OWENS