

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**DR. ORLY TAITZ, ESQ., BRIAN FEDORKA,
LAURIE ROTH, LEAH LAX, and TOM
MacLERAN**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:12-cv-280 HTW-LRA

**DEMOCRAT PARTY OF MISSISSIPPI,
SECRETARY OF STATE MISSISSIPPI,
BARAK HUSSEIN OBAMA, OBAMA
FOR AMERICA, NANCI PELOSI,
DR. ALVIN ONAKA, LORETTA FUDDY,
MICHAEL ASTRUE, JOHN DOES, JOHN
DOES 1-100**

DEFENDANTS

**MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE COMMITTEE'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

COMES NOW the Mississippi Democratic Party, through its governing entity, the Mississippi Democratic Party Executive Committee (“MDEC”), and by and through its undersigned counsel, and hereby moves for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, and states the following:

1. The Plaintiffs’ challenge to President Obama’s running as a candidate in the Mississippi Democratic Preference Primary is time barred under *Miss. Code Ann.* § 23-15-961 because Plaintiff Orly Taitz failed to lodge her petition for judicial review in the Circuit Court of Hinds County in a timely manner and, additionally, Plaintiffs Fedorka, Roth, Lax and MacLeran have failed to first file a petition with the MDEC setting forth a challenge to President Obama’s qualifications. Moreover, such challenge is now a moot question, depriving the Court of jurisdiction, as the March 13, 2012 presidential preference primary election has already occurred.

2. The Plaintiffs' challenge to President Obama's appearing on the November 2012 general election ballot in Mississippi is time barred under *Miss. Code Ann.* § 23-15-963 because the Plaintiffs failed to lodge their election contest petition for judicial review in the Circuit Court of Hinds County in a timely manner and, moreover, none of the Plaintiffs filed an election contest petition with the MDEC, or with any other election officials, and did not post a \$300.00 cost bond with two sureties, as required by each statute. Additionally, the Plaintiffs' challenge to President Obama appearing on the November 2012 general election ballot is barred by the doctrine of ripeness because President Obama has not yet been selected as the Democratic Nominee for President of the United States.
3. None of the Plaintiffs are "aggrieved parties" under either Section 23-15-961 or Section 23-15-963. In particular, Plaintiffs Taitz, Roth, Lax and MacLeran are not qualified electors of the State of Mississippi. Further, Plaintiffs Fedorka, Roth, Lax and MacLeran are not "aggrieved" by any decision of the MDEC, in that they never first filed an election contest petition with the MDEC.
4. Sections 23-15-961 and 23-15-963 are inapplicable to candidates for President qualifying to run in Mississippi.
5. Section 23-15-963 only applies to independent candidates, and President Obama is a political party candidate.
6. None of the Plaintiffs have standing to bring this suit, because none of them are any different than any other citizen or voter of the United States and thus have suffered no discrete injury required to satisfy the respective standing doctrines established under Mississippi and federal jurisprudence.
7. The MDEC has no statutory duty under *Miss. Code Ann.* § 23-15-1089 and *Miss. Code Ann.* § 23-15-781 *et seq.* to determine the qualifications of any candidate running in the March 2012 presidential preference primary or running as the Democratic nominee for President, selected this

summer by the delegates to the Democratic National Convention, to be placed on the 2012 general election ballot in Mississippi.

8. Mississippi election officials, including the MDEC, have no jurisdiction over the qualifications of candidates for President of the United States since federal constitutional and statutory laws set forth the exclusive procedure by which objections to the qualifications of a presidential candidate may be registered and resolved.
9. The Plaintiffs' legal claims purporting to expand the constitutional requirements beyond those requiring that the President be a "natural born citizen" fail as a matter of law since there is no constitutional or legal requirement to justify the Plaintiffs' demands that President Obama show them "identification papers" satisfactory to them.
10. Any contention that Barack Obama is not a "natural born citizen" because his father was not a citizen when President Obama was born is without merit since it is well settled that a person born in the United States is considered a natural born citizen, regardless of the citizenship of his parents.
11. The Plaintiffs' claim that President Obama is ineligible because of purportedly "invalid" "identification papers" is frivolous. The Plaintiffs have failed to even claim, or provide any factual allegations to support such a claim, that President Obama was not born in the United States. Moreover, the Court should take judicial notice of the fact that the State of Hawaii has fully verified that President Obama was born in Hawaii, as evidenced by the Hawaii Department of Health press release dated July 27, 2009, in which the Director states that he has seen the original vital records maintained on President Obama, confirming that he was born in Hawaii as a natural born citizen, and the press release dated April 27, 2011, in which the Director stated that she had seen the original birth records of President Obama, and thus attested to the authenticity of the certified copies of the long

form birth certificate the Department provided to the President, that further proves the fact that President Obama was born in Hawaii.

12. The Plaintiffs' RICO action should be dismissed against the MDEC and all other defendants because they have alleged no allegations of fraud with reasonable particularity. Moreover, there are no allegations that the MDEC acted in concert with anyone, conspired with anyone, or did anything that would constitute a pattern of racketeering activity. Rather, the only allegation on which the Plaintiffs base their RICO claim against the MDEC is that it ignored Plaintiff Taitz's preposterous claims about the President. The RICO claim is further barred because no Plaintiff has alleged any injury to his or her business or property, but only injury to their purported political rights, which is not sufficient under RICO. Finally, the Plaintiffs have failed to plead an "enterprise" and have failed to plead that the Defendants "conducted" an enterprise as required for a RICO claim; nor does the complaint allege that any of the Defendants "conducted the affairs" of any enterprise.

13. Arguments and authorities in support of this Motion are set forth in the MDEC's Memorandum Brief being filed today and through the Exhibits relating to the Hawaii birth certificate matter attached to this Motion.

WHEREFORE, PREMISES CONSIDERED, the Mississippi Democratic Party Executive Committee hereby moves the Court to grant its Motion for Judgment on the Pleadings and dismiss the matter with prejudice because amendment cannot cure any of these defects.

THIS the 4th day of May, 2012.

Respectfully submitted,

**THE MISSISSIPPI DEMOCRATIC PARTY
EXECUTIVE COMMITTEE**

By: /s/ Samuel L. Begley
Samuel L. Begley (MSB No. 2315)

By: /s/ Scott J. Tepper
Scott J. Tepper (Admitted *pro hac vice*)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth hereinafter, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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THIS the 4th day of May, 2012.

/s/ Samuel L. Begley
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