

By: Representatives Gunn, Ellington,
Fillingane, Hamilton (6th), Mayhall, Staples

To: Apportionment and
Elections

HOUSE BILL NO. 1488

1 AN ACT TO AMEND SECTION 23-15-921, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE COUNTY EXECUTIVE COMMITTEE SHALL HAVE
3 EXCLUSIVE JURISDICTION TO HEAR THE CONTEST OF A PRIMARY ELECTION;
4 TO AMEND SECTIONS 23-15-955 AND 23-15-957, MISSISSIPPI CODE OF
5 1972, TO PROVIDE THAT THE MISSISSIPPI STATE LEGISLATURE SHALL NOT
6 HEAR CONTESTS FOR PRIMARY ELECTIONS; TO AMEND SECTION 23-15-961,
7 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NO PETITION TO CONTEST
8 THE QUALIFICATIONS OF ANOTHER PERSON AS A CANDIDATE FOR NOMINATION
9 IN A POLITICAL PARTY PRIMARY ELECTION SHALL BE FILED WITH THE
10 MISSISSIPPI STATE LEGISLATURE; AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** Section 23-15-921, Mississippi Code of 1972, is
13 amended as follows:

14 23-15-921. Except as otherwise provided by Section
15 23-15-961, the county executive committee shall have exclusive
16 jurisdiction to hear the contest of a primary election. A person
17 desiring to contest the election of another person returned as the
18 nominee of the party to any county or county district office, or
19 as the nominee of a legislative district composed of one (1)
20 county or less, may, within twenty (20) days after the primary
21 election, file a petition only with the secretary, or any member
22 of the county executive committee in the county in which the
23 election was held, setting forth the grounds upon which the
24 primary election is contested; and it shall be the duty of the
25 executive committee to assemble by call of the chairman or three
26 (3) members of the committee, notice of which contest shall be
27 served five (5) days before said meeting, and after notifying all
28 parties concerned proceed to investigate the grounds upon which
29 the election is contested and, by majority vote of members
30 present, declare the true results of such primary.

31 **SECTION 2.** Section 23-15-955, Mississippi Code of 1972, is
32 amended as follows:

33 23-15-955. Except as otherwise provided by Section
34 23-15-961, the person contesting the seat of any member of the
35 Senate or House of Representatives shall comply with the
36 provisions of this section. Section 38, Mississippi Constitution
37 of 1890, provides that each house of the Mississippi State
38 Legislature shall judge the qualifications, return and election of
39 its membership. Pursuant to that authority, the House of
40 Representatives shall have exclusive jurisdiction over an election
41 contest regarding the seat of any member of the House of
42 Representatives, but shall not have jurisdiction over a primary
43 election contest, the Senate shall have exclusive jurisdiction
44 over an election contest regarding the seat of any member of the
45 Senate, and the county executive committee shall have exclusive
46 jurisdiction to hear the contest of a primary election. An
47 election contest regarding the seat of a member of the House of
48 Representatives or the Senate shall be filed with the Clerk of the
49 House or the Secretary of the Senate, as the case may be, within
50 thirty (30) days after a regular general election or ten (10) days
51 after a special election to fill a vacancy. The legislative
52 resolution of the election contest shall be conducted in
53 accordance with procedures and precedents established by the House
54 of Representatives or the Senate, as the case may be. Such
55 procedures and precedents may be found in the Journals of the
56 House of Representatives and of the State Senate and/or in the
57 published Rules of the House of Representatives and of the State
58 Senate.

59 **SECTION 3.** Section 23-15-957, Mississippi Code of 1972, is
60 amended as follows:

61 23-15-957. Each house of the Legislature, the Clerk of the
62 House of Representatives, the Secretary of the Senate, or any
63 committee appointed to investigate the facts concerning the

64 election, other than a primary election, or qualifications of any
65 member or persons claimed to be such, shall have power to issue
66 subpoenas and compel the attendance of witnesses and the
67 production of such documents or papers as may be required. In
68 addition, the clerk or the secretary, as the case may be, shall
69 have the authority to enforce any subpoena issued by him or her
70 and to enforce compliance with the time limitations set forth in
71 Section 23-15-955 or in any internal procedure or precedent of the
72 respective house of the State Legislature.

73 **SECTION 4.** Section 23-15-961, Mississippi Code of 1972, is
74 amended as follows:

75 23-15-961. (1) Any person desiring to contest the
76 qualifications of another person as a candidate for nomination in
77 a political party primary election shall file a petition
78 specifically setting forth the grounds of the challenge within ten
79 (10) days after the qualifying deadline for the office in
80 question. Such petition shall be filed with the executive
81 committee with whom the candidate in question qualified. No
82 petition to contest the qualifications of another person as a
83 candidate for nomination in a political party primary election
84 shall be filed with the Mississippi State Legislature.

85 (2) Within ten (10) days of receipt of the petition
86 described above, the appropriate executive committee shall meet
87 and rule upon the petition. At least two (2) days before the
88 hearing to consider the petition, the appropriate executive
89 committee shall give notice to both the petitioner and the
90 contested candidate of the time and place of the hearing on the
91 petition. Each party shall be given an opportunity to be heard at
92 such meeting and present evidence in support of his position.

93 (3) If the appropriate executive committee fails to rule
94 upon the petition within the time required above, such inaction
95 shall be interpreted as a denial of the request for relief
96 contained in the petition.

97 (4) Any party aggrieved by the action or inaction of the
98 appropriate executive committee may file a petition for judicial
99 review to the circuit court of the county in which the executive
100 committee whose decision is being reviewed sits. Such petition
101 must be filed no later than fifteen (15) days after the date the
102 petition was originally filed with the appropriate executive
103 committee. Such person filing for judicial review shall give a
104 cost bond in the sum of Three Hundred Dollars (\$300.00) with two
105 (2) or more sufficient sureties conditioned to pay all costs in
106 case his petition be dismissed, and an additional bond may be
107 required, by the court, if necessary, at any subsequent stage of
108 the proceedings.

109 (5) Upon the filing of the petition and bond, the circuit
110 clerk shall immediately, by registered letter or by telegraph or
111 by telephone, or personally, notify the Chief Justice of the
112 Supreme Court, or in his absence, or disability, some other judge
113 of the Supreme Court, who shall forthwith designate and notify
114 from the list provided in Section 23-15-951 a circuit judge or
115 chancellor of a district other than that which embraces the
116 district, subdistrict, county or any of the counties, involved in
117 the contest or complaint, to proceed to the county in which the
118 contest or complaint has been filed to hear and determine the
119 contest or complaint. It shall be the official duty of the
120 circuit judge or chancellor to proceed to the discharge of the
121 designated duty at the earliest possible date to be fixed by the
122 judge or chancellor and of which the contestant and contestee
123 shall have reasonable notice. The contestant and contestee are to
124 be served in a reasonable manner as the judge or chancellor may
125 direct, in response to which notice the contestee shall promptly
126 file his answer, and also his cross-complaint if he has a
127 cross-complaint. The hearing before the circuit court shall be de
128 novo. The matter shall be tried to the circuit judge, without a
129 jury. After hearing the evidence, the circuit judge shall

130 determine whether the candidate whose qualifications have been
131 challenged is legally qualified to have his name placed upon the
132 ballot in question. The circuit judge may, upon disqualification
133 of any such candidate, order that such candidate shall bear the
134 court costs of the proceedings.

135 (6) Within three (3) days after judgment is rendered by the
136 circuit court, the contestant or contestee, or both, may file an
137 appeal in the Supreme Court upon giving a cost bond in the sum of
138 Three Hundred Dollars (\$300.00), together with a bill of
139 exceptions which shall state the point or points of law at issue
140 with a sufficient synopsis of the facts to fully disclose the
141 bearing and relevancy of such points of law. The bill of
142 exceptions shall be signed by the trial judge, or in case of his
143 absence, refusal or disability, by two (2) disinterested
144 attorneys, as is provided by law in other cases of bills of
145 exception. The filing of such appeals shall automatically suspend
146 the decision of the circuit court and the appropriate executive
147 committee is entitled to proceed based upon their decision unless
148 and until the Supreme Court, in its discretion, stays further
149 proceedings in the matter. The appeal shall be immediately
150 docketed in the Supreme Court and referred to the court en banc
151 upon briefs without oral argument unless the court shall call for
152 oral argument, and shall be decided at the earliest possible date,
153 as a preference case over all others. The Supreme Court shall
154 have the authority to grant such relief as is appropriate under
155 the circumstances.

156 (7) The procedure set forth above shall be the sole and only
157 manner in which the qualifications of a candidate seeking public
158 office as a party nominee may be challenged prior to the time of
159 his nomination or election. After a party nominee has been
160 elected to public office, the election may be challenged as
161 otherwise provided by law. After a party nominee assumes an

162 elective office, his qualifications to hold that office may be
163 contested as otherwise provided by law.

164 **SECTION 5.** The Attorney General of the State of Mississippi
165 shall submit this act, immediately upon approval by the Governor,
166 or upon approval by the Legislature subsequent to a veto, to the
167 Attorney General of the United States or to the United States
168 District Court for the District of Columbia in accordance with the
169 provisions of the Voting Rights Act of 1965, as amended and
170 extended.

171 **SECTION 6.** This act shall take effect and be in force from
172 and after the date it is effectuated under Section 5 of the Voting
173 Rights Act of 1965, as amended and extended.