

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

CARLOS E. MOORE, ESQ.

PLAINTIFF

v.

Cause No. 3:16cv151-CWR-FKB

GOVERNOR DEWEY PHILLIP BRYANT, In his Official Capacity

DEFENDANT

THIRD AMENDED COMPLAINT

COMES NOW, CARLOS MOORE, ESQ., and files this, his Third Amended Complaint against the Defendant, Governor Dewey Phillip Bryant, In His Official Capacity, and alleges the following:

PARTIES

2. Plaintiff, Carlos E. Moore, Esq., (hereinafter Plaintiff), is an adult resident citizen of Mississippi residing in Grenada, Mississippi and having a business address of 306 Branscome Drive, Grenada, Mississippi 38901.

3. Defendant, Governor Dewey Phillip Bryant (hereinafter Defendant) is governor of the state of Mississippi, an adult resident citizen of Mississippi, and he may be served with process at the Governor's Mansion located at 300 East Capitol Street, Jackson, Mississippi 39201.

JURISDICTION

4. This court has jurisdiction over the subject matter herein pursuant to 28 USC Section 1331 as the issues presented concern federal questions.

5. This court has in personam jurisdiction over the Defendant in that the Defendant is a resident of and does business in Hinds County, Mississippi, located in the Southern District of Mississippi.

VENUE

6. Venue is proper in this Court pursuant to 28 USC Section 1391 as the Defendant resides in Jackson, Mississippi which is located in the Southern District of Mississippi.

FACTUAL ALLEGATIONS

7. In 1890 Mississippi adopted its current state Constitution with the specific aim of disenfranchising African-Americans recently emancipated and subjugating African-Americans to second class status and advancing the long held idea of white supremacy.

8. Shortly thereafter the current state flag was adopted in 1894 by the Mississippi Legislature incorporating the Confederate battle flag emblem as part of the official state flag with a racial discriminatory purpose to subjugate African-Americans to second class status and promote the notion of white supremacy.

9. Mississippi is the only state that still incorporates the confederate battle flag in its official state flag.

10. Mississippi has the largest percentage of African-Americans of any state in the United States of America with African-Americans accounting for nearly forty percent of the state's population.

11. Mississippi's official state flag with the embedded confederate battle flag is tantamount to hateful government speech that both has a discriminatory intent and disparate impact and violates the Equal Protection Clause of the 14th Amendment to the United States Constitution, damaging the Plaintiff personally and African-American residents of the state of Mississippi in general. Said hateful government speech, having a discriminatory intent, is subject to strict scrutiny. *See Hunter v. Underwood*, 471 US 222 (1985). Further said flag also violates the 13th Amendment which not only outlawed slavery but all "badges and indicia of slavery".

The current state flag is a badge, incident, relic and/or vestige of slavery and should be ruled unconstitutional. *See Jones v. Alfred H. Mayer Co.*, 392 US 409 (1968).

12. Not only does the current official state flag with its confederate battle flag emblem have a disparate impact on Plaintiff personally and African-Americans in general but it encourages or incites private citizens to commit acts of racial violence in violation of the Equal Protection Clause of the 14th Amendment. Said state flag also violates the Privileges and Immunities Clause of the 14th Amendment as it relates to non-residents of the state of Mississippi in that Mississippi is the only state that includes a symbol of a treacherous and insurrectionist Confederate army in its official state flag, restricting the liberty to be free from such tyranny said non-residents enjoy in all other states.

13. The current state flag is flown atop the state capitol, on state property, in all state office buildings, some public property, and at or near all public school property. Both the legislation establishing the current state flag and the flag's design are discriminatory and racist in nature.

14. Phil Bryant, as governor of the state of Mississippi, is chief executive of the state and should be ordered to not enforce the unconstitutional state statutes adopting the current state flag and mandating or allowing it to fly on public property in the state of Mississippi. Governor Phil Bryant should be ordered to immediately remove the current state flag from public display on all state or public property and in all state or public buildings.

15. Time is of the essence for the removal of the current state flag from all public display on public lands and adoption of a non-discriminatory state flag because there was a recent mass killing of nine black people in South Carolina on June 17, 2015 by a young white supremacist who was a confederate battle flag sympathizer and militant who was motivated by

the fact that the state of South Carolina sanctioned hate speech and encouraged racial violence by flying the confederate battle flag on its state property.

16. Similar violent conduct could occur any day in Mississippi. In fact a confederate battle flag fanatic who has been photographed wrapping himself in a Mississippi state flag with the confederate battle flag emblem recently bombed a Wal-Mart in the state of Mississippi on or about November 3, 2015 for stopping the sale of confederate related merchandise. Similarly, other national retailers have stopped selling the confederate battle flag and other confederate related merchandise which in turn makes purchase of the official Mississippi state flag with the confederate battle flag emblem embedded one of few options, if not the only, viable option, for purchase of the hateful symbol. Thus, there may soon be an influx of hate filled individuals to Mississippi.

17. Further in February of 2014 at the University of Mississippi the statue of James Meredith, the first black student, to matriculate at said university was found with a noose around its neck and was draped with the confederate battle flag to send a strong, threatening, and hateful message to African-Americans in the state of Mississippi. Also, in 2015 a black man was found hanging from a tree in Claiborne County, Mississippi under suspicious circumstances. Five years earlier a black man was found hanging from a tree in Greenwood, Mississippi in a majority white neighborhood under suspicious circumstances. No white man or woman has been found hanging from a tree in the state of Mississippi in the twenty-first century.

18. Plaintiff fears for his safety and the safety of other African-Americans because of the state sanctioned hate speech communicated through the current state flag which has been shown to incite racial violence and terror both within the state of Mississippi and in a sister southern state with a similar history of racial discrimination and involuntary servitude better

known as slavery. There is no harm more irreparable than death and the preservation of life should be of utmost urgency to the state of Mississippi. No citizen should be forced to live in fear or terror under color of state law. With each passing day, Plaintiff and other African-American citizens are subjugated to second class status or citizenship by virtue of the official state flag bearing the Confederate battle flag emblem flying high and proud on public property within the state of Mississippi. It is past time for this unconstitutional practice to end.

**COUNT ONE
INJUNCTION PROHIBITING FUTURE CONDUCT
OF A SIMILAR CHARACTER, KIND OR NATURE**

19. The Plaintiff re-alleges and incorporates each and every preceding paragraph as if fully set forth herein.

20. The Plaintiff is entitled to, and hereby request, an injunction prohibiting the Defendant from committing conduct of the like, kind, character and nature as that demonstrated and described in this complaint at any time in the future within the jurisdiction of the Court.

**COUNT TWO
VIOLATION OF 13th AMENDMENT, 14th AMENDMENT, FEDERAL DUE PROCESS,
EQUAL PROTECTION, CIVIL RIGHTS LAWS UNDER 42 U.S.C. Sections 1981, 1983
and 28 U.S.C. Section 1343 et al**

21. The Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

22. Plaintiff would show unto the Court that the Defendant, with reckless disregard for Plaintiff's rights, took actions to deprive Plaintiff of his equal protection rights, by raising the current official Mississippi flag under color of state law. Plaintiff would also note that the Mississippi Constitution adopted in 1890 was done so without due process in that the state constitution was never ratified by the people after being drafted at the constitutional convention.

Further the fundamental liberties protected by the Fourteenth Amendment's Due Process Clause extend to certain choices to individual dignity and autonomy. (*Obergefell v. Hodges*, No. 14-556) (US June 26, 2015). Courts must exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect. *Id.* The laws challenged herein burden the liberty of African-Americans and they abridge central precepts of equality. *Id.*

23. Plaintiff suffered damages as a result of the aforementioned conduct as set out heretofore and/or hereinafter.

**COUNT THREE
REQUEST FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, AND DECLARATORY JUDGMENT**

24. The Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

25. Plaintiff would show unto the Court that it is desirous of immediate actions to remedy the ongoing racial discrimination caused by the current Mississippi state flag as immediate, irreparable harm is likely to Plaintiff and/or other African-American citizens residing in or individuals visiting the state of Mississippi. Thus Plaintiff requests an immediate Temporary Restraining Order be issued with or without notice followed by a Preliminary Injunction prohibiting the display of the current state flag on all public property within the state of Mississippi. Plaintiff also requests the Court issue a Declaratory Judgment finding the statute promulgating the current state flag, all related statutes, the current design of the state flag, and the current state constitution unconstitutional.

PRAYER FOR APPROPRIATE RELIEF

26. Plaintiff incorporates and adopts all prior paragraphs, averments, and statements.

27. As a result of the constitutional violations at the hands of the Defendant named

herein, the Plaintiff has suffered severe damages for which the Defendant should immediately be enjoined from continuing.

28. The Plaintiff prays for and should be granted all cognizable and available relief in equity as well as declaratory relief.

WHEREFORE, THE ABOVE BEING CONSIDERED, the Plaintiff respectfully prays for judgment against the Defendant, for all equitable, injunctive, and declaratory relief, including attorneys' fees and costs, to be decided by the Court under applicable federal law based on the evidence and damages herein proven at trial or otherwise.

This the 5th day of March, 2016.

RESPECTFULLY SUBMITTED,
CARLOS E. MOORE, PLAINTIFF

s/ Carlos E. Moore

By:

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