

Serial: **184244**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2013-EC-00699-SCT

MARCUS WALLACE

v.

***ELECTION COMMISSION OF THE
TOWN OF EDWARDS, MISSISSIPPI***

EN BANC ORDER

Marcus L. Wallace presented to the City Clerk of the Town of Edwards, a Qualifying Statement of Intent, purporting to contain the names of a sufficient number of qualified electors to have his name placed on the ballot as an independent candidate for mayor of the City of Edwards. On March 8, 2013, the Town of Edwards Election Commission (“Commission”) informed Wallace by letter that his Statement of Intent “did not meet the required signatures.”

On March 18, 2013, the Commission met with Wallace and his counsel and accepted more of the names on Wallace’s qualifying papers, but the total number remained insufficient to have his name placed on the ballot.

On March 27, 2013, Wallace filed with the Commission a petition to have his name placed on the ballot, claiming there were eighteen names on his Qualifying Statement that the Commission had improperly rejected. Because the Commission did not act on his petition, Wallace filed an Emergency Complaint for Writ of Mandamus with the Circuit

Court of the Second Judicial District of Hinds County. He asked the court to “act on [his] Petition” and to “issue a Writ of Mandamus to the Election Commission to forthwith convene a hearing on the Petition to place Marcus L. Wallace on Ballot as an Independent Candidate for Mayor of the Town of Edwards” Before us today is Wallace’s appeal of the circuit court’s denial of his petition for a writ of mandamus.

We find that this case is controlled by our decision in *Meeks v Tallahatchie County*, wherein we held that when a candidate

files the proper qualifying papers and pays the requisite filing fee to become a candidate for public office, neither the state nor, in the case of a primary election, a political party may arbitrarily or capriciously deprive him or her of a place on the ballot¹

We went further to state that the candidate

was entitled to due process protection on two levels. First, he was entitled to the opportunity to be heard. Second, he was entitled that his name not be finally stricken from the ballot except that result be required by law.

* * *

Incident to the conduct of a party primary election, a political party’s county executive committee is required, upon the expiration of the qualifying deadline, to review the papers of all who have offered as candidates for the party nomination and decide in each instance whether the individual is qualified to run for the office. No advance notice and opportunity to be heard is required before that meeting. *Where the executive committee decides that a person is not eligible, however, and where that person wishes to be heard regarding the matter, the executive committee, as a matter of due process, is required to allow the disqualified candidate a reasonable opportunity to present his case.*²

¹ *Meeks v. Tallahatchie County*, 513 So. 2d 563, 565 (Miss. 1987).

² *Id.* (emphasis added).

While *Meeks* addressed issues before a political party's executive committee, and not an election commission, we find the principles quoted above are the same. We hold that the circuit court erred in failing to grant Wallace's petition for mandamus, and we reverse the circuit court's judgment and remand this case with instructions to the circuit court to grant Wallace's petition for mandamus.

We further find that, under this Court's authority to suspend the rules,³ and in light of imminent ballot printing deadlines, no motion for rehearing will be allowed and this Order shall be deemed final in all respects. We direct that the mandate in this matter shall immediately issue. The Appellee is taxed with all costs of this appeal.

SO ORDERED THIS 16th day of May, 2013.

/s/ Jess H. Dickinson
JESS H. DICKINSON, PRESIDING
JUSTICE

AGREE: DICKINSON AND RANDOLPH, P.JJ., LAMAR, KITCHENS, KING AND COLEMAN, JJ.

PIERCE, J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY WALLER, C.J., AND CHANDLER, J.

³ Miss. R. App. P. 2(c).

IN THE SUPREME COURT OF MISSISSIPPI

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Marcus Wallace

v.

*Election Commission of The Town of
Edwards, Mississippi*

**PIERCE, JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE
WRITTEN STATEMENT:**

¶1. The majority finds that Marcus Wallace’s due-process rights were violated by the Edwards Election Commission’s refusal to give him a second hearing. With all due respect, I disagree.

¶2. First, in the petition Wallace filed with the commission, he never asked for another hearing. Yet he now faults the commission for not giving him a hearing he didn’t request.

¶3. Second, Wallace was in fact given a reasonable opportunity to be heard. The hearing required by *Meeks v. Tallahatchie County*, 513 So. 2d 563 (Miss. 1987), was held on March 18. At Wallace’s request, the election commission met with Wallace and his two attorneys. The commission reviewed the signatures that had been previously invalidated. They also consulted with a contact in the Secretary of State’s office. There is no indication that the commission refused to allow Wallace to present his case completely. After that hearing, the commission determined that several of the names submitted by Wallace were in fact proper and those signatures were added to the ones previously validated. Hence, I would find that Wallace was given ample opportunity to be heard on his claims and that no due-process violation occurred.

¶4. Third, even if Wallace had been due a second hearing, his remedy was to appeal from the commission's decision pursuant to Mississippi Code Section 11-51-75. *Town of Terry v. Smith*, 48 So. 3d 507 (Miss. 2010). Wallace failed to perfect an appeal and chose to attempt to proceed by mandamus. This was clearly improper. See *Hinds County Democratic Executive Committee v. Muirhead*, 259 So. 2d 692 (Miss. 1972) (the trial court erred in issuing mandamus at the time the appellee had a statutory right to appeal). Mandamus was properly denied here.

¶5. I disagree with Wallace's claim that he is due another hearing on his written petition and that he should be given another opportunity to prove the validity of the signatures he submitted. I would affirm the trial judge.

WALLER, C.J., AND CHANDLER, J., JOIN THIS SEPARATE WRITTEN STATEMENT.