

IN THE SUPREME COURT OF MISSISSIPPI

ANTHONY “TONY” SMITH

APPELLANT

v.

NO. 2026-EC-00677-SCT

DAVID L. ARCHIE

APPELLEE

**APPELLEE’S AMENDED MOTION FOR EMERGENCY EXPEDITED
BRIEFING SCHEDULE AND DISPOSITION**

COMES NOW Appellee David L. Archie, by and through undersigned counsel, and, pursuant to Rules 2(c) and 27 of the Mississippi Rules of Appellate Procedure, respectfully moves this Court to expedite the briefing, submission, and disposition of this appeal, and in support thereof would state the following¹:

I. INTRODUCTION AND RELIEF REQUESTED

This appeal arises from the judgment of a special tribunal in a primary-election contest. The tribunal, presided over by Special Judge Barry W. Ford, found material failures in the statutory safeguards designed to preserve and verify the results of the August 8, 2023, Democratic primary for Hinds County Supervisor, District 2. Each of the four election commissioners serving on the advisory jury joined the tribunal’s findings of fact, and no commissioner objected. The tribunal declared the certification void *ab initio*, vacated the election, and ordered a special election. Under Miss. Code Ann. § 23-15-937 and the tribunal’s Amended Order, the Governor must set that election.

¹ This Amended Motion supersedes and replaces Appellee’s Motion for Expedited Briefing Schedule and Disposition filed on July 13, 2026.

On July 15, 2026, the Governor of Mississippi publicly stated that he will not call or set the special election until this appeal has been resolved. Because the law places responsibility for setting the special election upon the Governor, his announced position makes this Court's disposition the practical prerequisite to implementation of the electoral remedy. Unless this Court acts promptly, no special election will be set, and the voters of Hinds County District 2 will continue to be represented by an officeholder serving under a certification that the tribunal has declared void *ab initio*.

Accordingly, Mr. Archie respectfully requests that this Court exercise its authority under M.R.A.P. 2(c) to suspend the ordinary briefing requirements and enter an expedited briefing schedule. Specifically, Mr. Archie requests that the Court direct Appellant to file his principal brief within five (5) days of the Court's order or within such shorter period as the Court may deem appropriate; to direct Appellee to file his brief within five (5) days thereafter; and to direct Appellant to file any reply within five (5) days thereafter. Mr. Archie respectfully submits that extensions should be granted only upon a showing of extraordinary circumstances. Mr. Archie further requests that the Court advance this appeal for submission and disposition at the earliest practicable date and direct the Clerk, upon affirmance, to transmit certified copies of the Court's decision to the Governor, the Attorney General, the Secretary of State, and all relevant election officials in Hinds County, as this Court directed in *Moore v. Parker*, 962 So. 2d 558, 568 (¶ 36) (Miss. 2007).

II. PROCEDURAL HISTORY

Mr. Archie filed his election contest in the Circuit Court of the First Judicial District of Hinds County, Cause No. 1:23-CV-517. The special tribunal conducted evidentiary hearings on February 25, 2026, February 26, 2026, March 27, 2026, and April 29, 2026. Both parties submitted proposed findings of fact and conclusions of law on or before May 15, 2026. The tribunal announced its ruling from the bench on June 3, 2026, and entered its Order for Special Election on June 9, 2026. The written Order incorporated the transcript of the June 3 ruling by reference.

The June 9, 2026, Order, attached as Exhibit A, expressly makes the following findings of fact, among others:

4. This election contest arises from the August 8, 2023, Democratic primary election for Hinds County Supervisor, District 2. Petitioner David L. Archie was the incumbent; Respondent Anthony “Tony” Smith was the challenger. District 2 comprises twenty-six (26) precincts.
5. The Court expressly finds that there was no fraud and no sinister motive on the part of any person or entity involved in the conduct of the August 8, 2023, primary election. Nothing in this Order shall be construed as an inference that any election official or worker acted improperly or with wrongful intent. The statutory safeguards designed to preserve and verify election results nevertheless failed in a number of material respects, as set forth below.
6. Across all twenty-six precincts in District 2, the following materials were missing or unaccounted for: (a) all District 2 voting machines and/or reports showing machine serial numbers; (b) beginning and ending machine tapes; (c) chain of custody documentation for media sticks; and (d) voter registration sign-in books. These deficiencies are material to the integrity of the election record.
7. Subpoenas were issued to Circuit Clerk Wallace to bring to Court the election boxes. Circuit Clerk Wallace testified from the witness stand that he did not have possession of those boxes. Mississippi law imposes a clear statutory duty upon the circuit clerk to maintain secure possession of election boxes, to ensure that they remain locked, and to safeguard the contents therein. The circuit clerk’s failure to take

possession of the election boxes as required by law constitutes negligence per se.

8. During the recapitulation of election results, Jacqueline Amos made statements, which were introduced into evidence at trial, indicating an adverse disposition toward Petitioner David L. Archie. The Court does not find that Ms. Amos acted with fraudulent intent; however, the existence of those statements, on the record, created at minimum the appearance of partiality. Ms. Amos was therefore required to recuse herself from any participation in the recapitulation or certification of the election results pertaining to David L. Archie and failed to do so.

9. Sandra McCall served as campaign manager for a candidate in the same election cycle and thereafter participated in the certification of the election. Having served in a partisan capacity during the election, Ms. McCall was required to recuse herself from the certification process and failed to do so. Her participation in and certification of the election results presents an impermissible conflict of interest.

Exhibit A at 2-3 (¶¶ 4-9).

Of particular significance under Miss. Code Ann. § 23-15-933, the Order further states:

At the close of testimony, the Court directed counsel for both parties to submit proposed findings of fact and conclusions of law, which were timely submitted on or before May 15, 2026. The Court thereafter convened with its advisory jury, consisting of the four remaining election commissioners, to review the proposed findings. **Each of the four remaining election commissioners joined in the Court's findings of fact as set forth herein, and no commissioner voiced any objection thereto.** Advisory juror Jamal [sic] Clark was not included in the advisory panel because testimony at trial established that thumb drives which should have been sealed in the election boxes were found at Mr. Clark's desk, creating an impermissible conflict that precluded his participation.

Id. at 1 (¶ 1) (emphasis added). Thus, the Order does not merely imply concurrence.

It expressly establishes that (a) every commissioner serving on the advisory jury who deliberated with the tribunal joined the tribunal's findings of fact and that (b) no commissioner objected thereto.

Mr. Smith requested a stay from the bench on June 3, 2026. The tribunal denied that request and expressly directed that all proceedings be conducted “on an expedited basis, with no delays.” Exhibit A at 5 (¶ 5). Mr. Smith filed his notice of appeal on June 16, 2026. On June 17, 2026, the tribunal entered the Amended Order for Special Election attached as Exhibit B. The Amended Order conforms the remedy to Miss. Code Ann. § 23-15-937, directs that the Governor set the special election, and provides that the tribunal’s prior Order otherwise remains in force. Mr. Smith has not obtained a stay from this Court of either Order. The judgment therefore remains unstayed and operative.

III. THE TRIBUNAL’S FINDINGS OF FACT ARE CONCLUSIVE UNDER SECTION 23-15-933

Mississippi Code Annotated § 23-15-933 provides that where the findings of fact of the special tribunal “have been concurred in by all the commissioners in attendance, provided as many as three (3) commissioners are and have been in attendance, the facts shall not be subject to appellate review.” The June 9 Order establishes that the advisory jury consisted of four election commissioners, that each of those four commissioners joined the tribunal’s findings of fact, and that no commissioner voiced any objection. Exhibit A at 1 (¶ 1). The Order further establishes that the fifth commissioner was not included in the advisory panel because the evidence created an impermissible conflict precluding his participation. *Id.* The factual findings joined by every commissioner serving on the advisory jury therefore are not subject to appellate review.

Where “all the election commissioners had agreed with the special tribunal’s findings of fact,” this Court may implement “expedited review ... without a record.” See ***Waters v. Gnemi***, 907 So. 2d 307, 332 (¶ 64) (Miss. 2005). Here, the written Order expressly establishes the concurrence that ***Waters*** contemplated. The historical facts necessary to disposition are fixed: (a) required election materials were missing or unaccounted for across all twenty-six precincts; (b) the circuit clerk never possessed the election boxes; (c) beginning and ending machine tapes were missing; (d) chain-of-custody documentation for the media sticks was missing or unaccounted for; and (e) voter-registration sign-in books were missing or unaccounted for. Those facts are not open to appellate reweighing under § 23-15-933.

The questions remaining are questions of law: whether the conclusively established failures require the certification and election to be vacated and whether Miss. Code Ann. § 23-15-937 requires a special election. Those questions are reviewed *de novo*. See ***Moore***, 962 So. 2d at 562 (¶¶ 9-10). Because the facts necessary to answer those questions are conclusive and contained in the attached orders, this appeal is uniquely suited to expedited briefing and disposition without awaiting preparation and transmission of the full trial record.

IV. ELECTION CONTESTS ARE FAST-TRACK MATTERS

This Court has instructed that election contests “are by their very nature required to be put on a ‘fast-track’ by both election officials and the courts.” ***Waters***, 907 So. 2d at 316 (¶ 16). While fairness and the will of the voters must be assured, the courts “must move promptly so as to not disrupt the election process.” *Id.* In

Barbour v. Gunn, 890 So. 2d 843, 847 (¶ 16) (Miss. 2004), this Court explained the animating concern: if such contests are not resolved promptly, “a contested primary might very well drag on past the general election, thereby disenfranchising the members of a political party. This is not permissible.” The tribunal followed that command. It denied a stay and directed that all proceedings be conducted “on an expedited basis, with no delays,” emphasizing that there were to be “no stop signs and no red lights.” Exhibit A at 5 (¶ 5). Mr. Archie respectfully asks this Court to continue the expedited treatment ordered below.

V. SETTLED LAW CONTROLS THE MERITS

Although the merits will be addressed fully in the parties’ briefs, the controlling legal principles are settled. Because the underlying facts are conclusive under § 23-15-933, application of those principles does not require preparation or review of the full evidentiary record.

Waters controls the central legal issue. There, the seals on all six election-day boxes were broken, and the circuit clerk failed to maintain the custody required by statute. This Court held that those failures constituted a “gross deviation and total departure from the mandatory election procedure,” destroyed the evidentiary integrity of the boxes, deprived the contestant of his statutory examination rights, and required a special election—even in the absence of fraud. *See Waters*, 907 So. 2d at 335 (¶¶ 74-76). This Court emphasized that when the statutory safeguards collapse to the point that the will of the voters cannot be ascertained, the election

must be voided, even without proof of fraud or proof that a specific number of votes were changed. The Court explained:

We readily acknowledge that there have been no allegations or proof of fraud by Gnemi against the voters or election officials. While Waters thus maintains that Gnemi's election contest fails due to his failure to claim fraud, it is Gnemi's inability to even be able to detect fraud that mandates today's extraordinary remedy. Like secret vote counting, removal of the ballot boxes and their contents from the secure and prescribed custody of the circuit clerk for sixteen days, during which time the contents were removed, commingled and placed in insecure cardboard boxes, not only prevented Gnemi and objective reviewing bodies from properly ascertaining the accuracy and substance of the result posted on election day, but also prevented any discovery of ballot irregularities or outright fraud in the election. Moreover, Gnemi, in a tightly contested race, has been unable to compare the total number of voted, unvoted and spoiled ballots in each separate precinct or even be certain that they equal the total number of ballots the receiving election manager in a particular precinct swore he received and took to the precinct at the time the polls opened on election day, such being a fundamental check for fraud readily exercised by a candidate in a post-election examination of sealed ballot boxes. Miss. Code Ann. § 23-15-591.

Waters, 907 So. 2d at 335 (¶ 75).

The conclusively established failures here are more pervasive than those in ***Waters***. In ***Waters***, the clerk at least took initial custody of the ballot boxes before they were removed. Here, the tribunal found that the circuit clerk never took possession of the election boxes at all, a failure the tribunal held to be negligence *per se*. Exhibit A at 2-3 (¶ 7). Across every one of the twenty-six precincts in District 2, entire categories of statutorily required election materials were missing or unaccounted for: (a) all District 2 voting machines and/or reports showing machine serial numbers; (b) beginning and ending machine tapes; (c) chain-of-custody

documentation for the media sticks; and (d) voter registration sign-in books. Exhibit A at 2 (¶ 6).

In *Waters*, “the evidentiary value of the sealed ballot boxes was lost the moment the seal was broken.” 907 So. 2d at 331 (¶ 62). Here, the boxes required by statute to be secured were never placed in the circuit clerk’s possession and were never available for examination by the contestant or the tribunal. The tribunal expressly found that Archie “was not afforded the opportunity to fully review the election boxes as required by law.” Exhibit A at 4 (¶ 13). The evidentiary failure here therefore preceded any possible judicial examination. Where the statutory safeguards have failed to such an extent that the will of the voters cannot be determined, a new election is required. *Waters*, 907 So. 2d at 315 (¶ 15). And once judgment is rendered for the contestant in a primary-election contest, § 23-15-937 directs that the election be vacated and that the Governor call a special election. *Moore*, 962 So. 2d at 568 (¶ 36).

VI. DELAY INFLECTS CONCRETE AND IRREPARABLE HARM

Every day this appeal remains pending compounds a harm that no later remedy can cure. The tribunal has declared the certification of the August 8, 2023, primary void *ab initio* and has vacated the election. Under the tribunal’s interim directive, Smith nevertheless continues to discharge the duties of Hinds County Supervisor, District 2, until the special election is held and a winner is certified. Each day of delay therefore extends representation under a certification that the tribunal has adjudged void.

The harm described above is no longer speculative. On July 15, 2026, during an official press conference, the Governor of Mississippi confirmed that he will not set a date for the special election while this appeal remains pending. The Governor stated that “[o]nly the Governor can call a special election, and I will be happy to do that as soon as the litigation is over,” and that “[o]nce they rule that there should be a special election in that particular case, I will . . . set the election at that time.” Press Conference of the Governor of Mississippi (July 15, 2026), *video available at* <https://www.youtube.com/watch?v=Jlb5hdCR988> (last visited July 15, 2026). The Governor’s announcement establishes that this appeal is the present obstacle to implementation of the judgment. Unless and until this Court rules, the Governor will not call the special election, and no election date will be set.

The electoral calendar magnifies the harm. The regular election cycle for this office culminates in November 2027. Because the Governor has stated that he will not set the special election until this appeal is resolved, each month of appellate delay consumes a portion of the remaining term and increases the risk that the special-election remedy will become practically meaningless before the next regular election. Without expedited disposition, the voters of District 2 may be deprived of validly elected representation for the balance of the present term. That is the very type of disenfranchisement that the fast-track requirements recognized in *Barbour* and *Waters* are intended to prevent. And because the facts necessary to disposition are conclusive under § 23-15-933, this Court can provide prompt finality without awaiting the full record. *Cf. Waters*, 907 So. 2d at 332 (¶ 64).

WHEREFORE, PREMISES CONSIDERED, Appellee David L. Archie respectfully prays that this Court:

- (1) pursuant to M.R.A.P. 2(c), suspend the ordinary briefing deadlines and direct Appellant to file his principal brief within five (5) days of the Court's order (or within such shorter period as the Court deems proper), direct Appellee to file his brief within five (5) days thereafter, and direct Appellant to file any reply within five (5) days thereafter, with extensions granted only upon a showing of extraordinary circumstances;
- (2) direct that this appeal be briefed and decided upon the attached Orders, the incorporated transcript of the tribunal's ruling, and the tribunal's conclusive findings of fact, without awaiting preparation and transmission of the full trial record, subject to such limited supplementation as this Court may specifically direct;
- (3) advance this appeal for submission and decision immediately upon completion of the expedited briefing and at the earliest practicable date;
- (4) upon affirmance, direct the Clerk of this Court immediately to transmit certified copies of the Court's decision to the Governor, the Attorney General, the Secretary of State, and all relevant election officials in Hinds County; and
- (5) grant such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on this the 15th day of July 2026,

DAVID L. ARCHIE

By: /s/ Matthew D. Wilson
Matthew D. Wilson, MSB No. 102344
Attorney for Appellee David L. Archie

The Law Office of Matthew Wilson, PLLC
2204 West Main Street
Tupelo, MS 38801
662-260-6544
lawyermatt@betteraskmatt.com

CERTIFICATE OF SERVICE

I, Matthew D. Wilson, do hereby certify that I have on this date transmitted the foregoing pleading to the following counsel of record via the MEC system:

The Hon. Warren L. Martin, Jr.
attywarrenmartin@gmail.com

Respectfully submitted on this the 15th day of July 2026,

/s/ Matthew D. Wilson