

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI  
NO. 2007-TS-00673

RICHARD H. BENNETT, et al.

APPELLANTS


VS

PEARL RIVER COUNTY, MISSISSIPPI

APPELLEES

ON APPEAL FROM THE CIRCUIT COURT OF PEARL RIVER COUNTY

BRIEF OF APPELLANTS

WILLIAM H. JONES  
ATTORNEY AT LAW MSB   
P.O. BOX 282  
PETAL MS 39465  
(601) 545-8324  
FOR THE APPELLANTS

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the justices of the Supreme Court an/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Richard H. Bennett, Appellant
2. Concerned Citizens of Pearl River County, Appellant  
Gordon Ousset, Vice Chairman
3. Pearl River County Board of Supervisors, Appellee  
Anthony Hales  
Danny Wise  
Larry Davis  
Robert Thigpen  
Troy Stockstill
4. Hon. David L. Jones, Pearl River County Chancery Clerk
5. Hon. Vickie P. Hariel, Circuit Clerk of Pearl River County
6. Billy Warden, MSDEQ
6. Lawrence C. Gunn, Jr. Attorney for Pearl River County
7. Nova A. Carroll, Attorney at Law
8. William H. Jones, Attorney for the Appellants

RICHARD H. BENNETT

BY:

  
WILLIAM H. JONES

For the APPELLANT

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STATEMENT OF THE ISSUES

- (1) THE REMEDY OF MANDAMUS IS AVAILABLE TO ANY PRIVATE PERSON AND IS AUTHORIZED BY MISS.CODE ANN. § 11-41-1
- (2) THE RESIDENT CITIZENS OF PEARL RIVER COUNTY WERE AUTHORIZED TO BRING AN ACTION AGAINST THE PEARL RIVER COUNTY BOARD OF SUPERVISORS PURSUANT TO MISS. CODE ANN. § 19-3-55 CALLING FOR AN ELECTION CONCERNING EXPANSION OF A COUNTY LANDFILL
- (3) THE RESIDENT CITIZENS OF PEARL RIVER COUNTY HAD STANDING PURSUANT TO MISS.CODE ANN. §§ 11-41-1 AND 19-3-55.
- (4) A WRIT OF MANDAMUS SHOULD HAVE BEEN ISSUED TO THE PEARL RIVER BOARD OF SUPERVISORS DIRECTING THEM TO ACKNOWLEDGE JURISDICTION AND TO CALL FOR AN ELECTION CONCERNING EXPANSION OF A COUNTY LAND FILL PURSUANT TO MISS. CODE ANN. § 19-3-55

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STATEMENT OF THE CASE

The plaintiffs in this action are Dr. Richard H. Bennett, an adult resident of Pearl River County, Mississippi, and an association of individuals organized within Pearl River County. (CP3; RE10). The Defendant is the Board of Supervisors for Pearl River County, Mississippi. Dr. Bennett and the citizens association objected to a proposal of the Pearl River County Board of Supervisors to expand the Solid Waste Plan for Pearl River County [the county landfill]. The concerned citizens and Bennett turned in a petition containing the signatures of 8,120 qualified electors of Pearl River County. (CP8; RE15) The number of signatures collected exceeded 25% of the registered voters of the county and their petition was certified by the Circuit Clerk of Pearl River County, Hon. Vickie P. Hariel. (CP8-9; RE16)

The Petition requested that before the Board of Supervisors of Pearl River County put into effect an expansion of the existing county landfill, or Solid Waste Plan, that the matter be submitted to a vote of the qualified electors of the county. (CP8-9; RE15 )



## STATEMENT OF THE FACTS

The plaintiffs in this action are Richard H. Bennett [Bennett], an adult resident of Pearl River County, Mississippi, and an association of individuals organized within Pearl River County. (CP3; RE10). The Defendant is the Board of Supervisors for Pearl River County, Mississippi. Dr. Bennett and the citizens association objected to a proposal of the Pearl River County Board of Supervisors to expand the county landfill. The concerned citizens and Bennett turned in a petition containing the signatures of 8,120 qualified electors of Pearl River County. (CP8; RE15) The number of signatures collected exceeded 25% of the registered voters of the county and their petition was certified by the Circuit Clerk of Pearl River County, Hon. Vickie P. Hariel. (CP8,9;RE15)

The Petition requested that before the Board of Supervisors of Pearl River County put into effect an expansion of the existing county landfill, or Solid Waste Plan, that the matter be submitted to a vote of the qualified electors of the county. (CP3-10;RE15-17)

The proposition was as follows:

**PETITION ADDRESSED TO BOARD OF SUPERVISORS OF  
PEARL RIVER COUNTY, STATE OF MISSISSIPPI,  
PURSUANT TO TITLE 19, MISSISSIPPI CODE SECTION 19-3-55**

We, being qualified electors of Pearl River County, Mississippi, hereby petition the Board of Supervisors of Pearl River County, Mississippi to either pass an order and/or ordinance putting the following proposition in force and effect or immediately submit the same to a vote of the qualified electors of this County, after giving 30-days notice of said election, said notice to contain a statement of the proposition to be voted on at said election: Proposition: As of June 1, 2005, there is in effect a Solid Waste Plan for Pearl River County, Mississippi, In order for there to be any

expansion of that Solid Waste Plan, either in service area or in size with respect to any existing Landfill situated within the territorial jurisdiction of Pearl River County, such expansion shall be authorized and permitted only through an election held pursuant to Title 19, Mississippi Code Section 19-3-55.

On October 14, 2005, the Circuit Clerk certified the petition (CP8;RE15) and on October 17, Bennett submitted it to the Board of Supervisors requesting that the Board submit the matter to the voters pursuant to Miss. Code Ann. § 19-3-55.(CP9;RE16)

The Board of Supervisors did not respond to the May 23, 2006 letter demand (CP 10;RE17) and on June 9, 2006, Bennett filed a Complaint for Writ of Mandamus (CP3-9;RE10) demanding that the Board of Supervisors acknowledge receipt of the Petition and enter an order assuming or denying jurisdiction. On August 9, 2006, the Defendant Board of Supervisors filed their Answer to the Complaint for Writ of Mandamus and in October 2006, the Plaintiffs filed a Motion to Strike the Defenses of the Board, again requested that a Writ of Mandamus issue compelling the Board to accept jurisdiction and that an election be held. (CP.20 - 26)

All pending motions were set to be heard before Honorable Prentiss Harrell, Pearl River County Circuit Court Judge, on March 13, 2007. (CP 68- 113) A memorandum Opinion and Order entered March 28, 2007 denied Plaintiffs' requested relief and granted Summary Judgment for the Defendant. (CP 114 - 120) Plaintiffs' Motion to Reconsider which was filed on March 30, 2007, was denied (CP 121 - 124) and Plaintiffs' Notice of Appeal was filed on April 25, 2007 (CP 126)

## SUMMARY OF THE ARGUMENT

Richard H. Bennett [Bennett], an adult resident of Pearl River County, Mississippi, and an association of individuals organized within Pearl River County, objected to the proposal of the Pearl River County Board of Supervisors [the Board] to expand the county's existing Solid Waste Plan landfill. Bennett and the concerned citizens submitted a petition objecting to the expansion of the landfill and calling for an election pursuant to Miss. Code Ann. § 19-3-55. The petition contained the signatures of 8,120 qualified registered voters. In October 2005, their petition was certified by the Circuit Clerk of Pearl River County. The Board of Supervisors ignored the petition as well as a May 2006 letter demanding the board accept jurisdiction and hold the election. On June 9, 2006, Bennett and the concerned citizens filed a Complaint for Writ of Mandamus demanding that the Board of Supervisors acknowledge receipt of the Petition and enter an order accepting jurisdiction - or denying jurisdiction. In August 2006, the Defendant Board of Supervisors filed an Answer and Motion for Summary Judgment.

All pending motions were heard before the Pearl River County Circuit Court Judge on March 13, 2007. The lower court denied the plaintiff citizens' motion for writ of mandamus and granted the Board's motion for summary judgment holding that Richard Bennett and the concerned citizens lacked standing to bring the lawsuit.

Plaintiffs argue that, pursuant to Miss. Code Ann. § 19-3-55, they were entitled

to judgment as a matter of law and the granting of summary judgment for the county was error. The plaintiffs were entitled to a ruling on their petition for a writ of mandamus and entitled to an election as a matter of law.

Miss. Code Ann. § 11-41-1 authorizes the remedy of mandamus. It is available upon the complaint of any private person if three essentials coexist: (1) A clear right in petitioner to the relief sought.\*\*\* (2) the existence of a legal duty on the part of the defendant to do the thing which the petitioner seeks to compel. \* \* \* (3) there must be an absence of another adequate remedy at law. *Board of Supervisors of Prentiss County v. Mississippi State Highway Commission*, 207 Miss. 839, 847-848, 42 So.2d 802, 805 (1949).

The petitioners had a clear right to the relief sought. *Miss. Waste of Hancock County, Inc. v. Bd. of Supervisors of Hancock County*; 818 So.2d 326 (Miss. 2001) (the actions of the Board of Supervisors were lawful in calling for an election after more than twenty-five percent of the qualified electors of the county petitioned the Board to place the issue of the construction of a proposed landfill). See also, Miss. Code Ann. § 19-3-55; *Miss. Waste of Hancock County*, 818 So.2d at 331.

There was a legal duty on the part of the defendant Board to do the thing which the petitioners sought to compel. Miss. Code Ann. § 19-3-55; *Gill v. Woods*, 226 So.2d 912, 918 (Miss. 1969) (fn1) (cited in *J. H. Leigh, et al v. Board of Supervisors of Neshoba County*, 525 So.2d 1326, 1329 (Miss. 1988))

And, when the Board refused to accept jurisdiction and refused to order the election to be held, the petitioners had no other adequate remedy at law. They had no way to redress their grievances but for the filing of a formal complaint. *Gill v. Woods*, 226 So.2d 912, 918 (Miss. 1969) (fn1)

As the lower court held, usually for a private citizen to have standing to sue an administrative agency, he must show that he has "an interest separate from or in excess of that of the general public" before relief may be available to him on his own application. *Fondren v. State Tax Commission*, 350 So.2d 1329, 1332 (Miss. 1979) (emphasis added). The lower court in the case at bar cited *Wilson v. City of Laurel*, 249 So.2d 801 (Miss. 1971) as dispositive of the issue. There was no petition filed in *Wilson* signed by twenty-five percent of the qualified electors of the county certified by the Circuit Clerk of the County requiring the Board to call for an election, or in the other cases cited, as in the case at bar. Miss. Code Ann § 19-3-55.

Summary Judgment for the Board of Supervisors was error. Unless there is some law enacted by the legislature to the contrary, the Board of Supervisors must act when twenty-five percent of the qualified electors of the county file a petition with the Board touching matters affecting the entire county. The Board had a duty to either accept or refuse jurisdiction, to act on the petition or deny it. They could not just ignore it. *Gill v. Woods*, 226 So.2d 912, 918 (Miss. 1969) (fn1) (cited in *J. H. Leigh, et al v. Board of Supervisors of Neshoba County*, 525 So.2d 1326, 1329 (Miss. 1988))

## ARGUMENT

STANDARD OF REVIEW: An agency's decision will not be disturbed on appeal absent a finding that it was not supported by substantial evidence, was arbitrary or capricious, was beyond the power of the administrative agency to make, or violated some statutory or constitutional right of the complaining party. *Board of Supervisors of Harrison Co. V. Waste Management of Miss., Inc.*, 759 So.2d 397, 400 (Miss. 2000) (citing *McDerment v. Mississippi Real Estate Comm'n*, 748 So.2d 114, 118 (Miss. 1999)). Plaintiffs argue that the Pearl River County Board of Supervisors violated a statutory right of the Plaintiffs in this action in not calling for an election concerning expansion of an existing landfill pursuant to Miss. Code Ann. § 19-3-55 after the concerned citizens presented the Board with a proper certified petition. The scope of appellate review is limited to the administrative record and the findings of the agency. *Board of Law Enforcement Officers Standards & Training v. Butler*, 672 So.2d 1196, 1199 (Miss. 1996).

The Court can grant summary judgment only where, viewing the evidence before the Court in the light most favorable to the non-movant, the movant establishes that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. Miss. R.Civ.P.56(c); *Nationwide Mutual Ins. Co. v. Garriga*, 636 So.2d 658, 661 (Miss. 1994)

- (1) THE REMEDY OF MANDAMUS IS AVAILABLE TO ANY PRIVATE PERSON AND IS AUTHORIZED BY MISS.CODE ANN. § 11-41-1

Richard H. Bennett [Bennett], an adult resident of Pearl River County, Mississippi, and an association of individuals organized within Pearl River County objected to the proposal of the Pearl River County Board of Supervisors [the Board] to expand the existing Solid Waste Plan landfill and petitioned the Board to reconsider their plans. The concerned citizens and Bennett turned in a petition containing the signatures of 8,120 qualified registered voters and their petition was certified by the Circuit Clerk of Pearl River County, Hon. Vickie P. Hariel on October 14, 2005.

The Petition requested that before the Board of Supervisors of Pearl River County put into effect an expansion of the existing county landfill, or Solid Waste Plan, that the matter be submitted to a vote of the qualified electors of the county pursuant to Miss. Code Ann § 19-3-55. The certified petition was presented to the Board on October 17, 2005. Demand that the Board acknowledge jurisdiction or respond was made by letter dated May 23, 2006.

The Board of Supervisors failed to respond and on June 9, 2006, Bennett filed a Complaint for Writ of Mandamus demanding that the Board of Supervisors acknowledge receipt of the Petition and enter an order assuming or denying jurisdiction.

Miss. Code Ann. § 11-41-1 authorizes the remedy of mandamus. It is available upon the complaint of any private person. But, before a writ of mandamus may issue three essentials must coexist:

(1) A clear right in petitioner to the relief sought.\*\*\* (2) the existence of a legal duty on the part of the defendant to do the thing which the petitioner seeks to compel. \* \* \* (3) there must be an absence of another adequate remedy at law.

*Board of Supervisors of Prentiss County v. Mississippi State Highway Commission* , 207 Miss. 839, 847-848, 42 So.2d 802, 805 (1949). This Court has always been deeply concerned that every person, claiming a legal right, shall have an opportunity to be heard and have his day in court. *Powell v. State Tax Commission*, 233 Miss. 185, 191-192, 101 So.2d 350, 353 (1958).

The Board could not just ignore the petition filed by more than twenty-five percent of the electors of Pearl River County. The Board had a duty to either accept or refuse jurisdiction, to act on the petition or deny it. *Gill v. Woods*, 226 So.2d 912, 918 (Miss. 1969) (fn1) (cited in *J. H. Leigh, et al v. Board of Supervisors of Neshoba County*, 525 So.2d 1326, 1329 (Miss. 1988) When the Pearl River County Board of Supervisors failed to act, the concerned citizens of Pearl River County had no other remedy at law or otherwise but for the procedure of mandamus.

(2) THE RESIDENT CITIZENS OF PEARL RIVER COUNTY WERE AUTHORIZED TO BRING AN ACTION AGAINST THE PEARL RIVER COUNTY BOARD OF SUPERVISORS PURSUANT TO MISS. CODE ANN. § 19-3-55 CALLING FOR AN ELECTION CONCERNING EXPANSION OF A COUNTY LANDFILL

The Petition addressed to the Board of Supervisors of Pearl River County requested that before the Board put into effect an expansion of the existing county landfill, or Solid



Waste Plan, that the matter be submitted to a vote of the qualified electors of the county pursuant to Miss. Code Ann § 19-3-55. The certified petition was presented to the Board on October 17, 2005. Demand that the Board acknowledge jurisdiction or respond was made by letter dated May 23, 2006 and then later by written Complaint filed in Pearl River County Chancery Court.

The petition addressed to the Board of Supervisors of Pearl River County was as follows:

We, being qualified electors of Pearl River County, Mississippi, hereby petition the Board of Supervisors of Pearl River County, Mississippi to either pass an order and/or ordinance putting the following proposition in force and effect or immediately submit the same to a vote of the qualified electors of this County, after giving 30-days notice of said election, said notice to contain a statement of the proposition to be voted on at said election: Proposition: As of June 1, 2005, there is in effect a Solid Waste Plan for Pearl River County, Mississippi, In order for there to be any expansion of that Solid Waste Plan, either in service area or in size with respect to any existing Landfill situated within the territorial jurisdiction of Pearl River County, such expansion shall be authorized and permitted only through an election held pursuant to Title 19, Mississippi Code Section 19-3-55.

In *Gill v. Woods*, 226 So.2d 912 (Miss. 1969) this Court said:

Unless there is some law enacted by the legislature to the contrary, the Board of Supervisors *must act* when twenty-five percent of the qualified electors of the county file a petition with the Board touching matters affecting the entire county. The Board must either put the proposition sought by the electors into effect or the Board may submit the proposition to a vote of the qualified electors. (emphasis in original)

The Board has no discretion except the choice expressed in Section 3018, Mississippi Code 1942 Annotated (1956). When such a petition is filed, it becomes the duty of the Board to immediately determine whether or not (1) the petition contains matter affecting the entire county, (2) whether or not it contains the names of twenty-five percent of the qualified electors

of the county; (3) whether or not it is possible for the county to carry into effect the proposition within the legal power of the Board of Supervisors. If the Board determines the issue in the affirmative, the Board must proceed as the statute directs . . . . The Board cannot ignore the petition filed by the citizens of the county.

*Gill v. Woods*, 226 So.2d 912, 918 (Miss. 1969) (fn1) (cited in *J. H. Leigh, et al v. Board of Supervisors of Neshoba County*, 525 So.2d 1326, 1329 (Miss. 1988)

In *Leigh vs. Neshoba County*, a petition was filed with the Neshoba County Board of Supervisors calling upon them to submit a proposition to the voters of Neshoba County regarding the sale of a hospital and nursing home. The petition contained the signatures of over 6,400 registered Neshoba County voters. The Mississippi Supreme Court held that the petition was adequate in that it substantially complied with the requirement of the statute (§ 19-3-55) and reasonably sufficient to authorize the board of supervisors to take jurisdiction of the matter and make the order for election.

**(3) THE RESIDENT CITIZENS OF PEARL RIVER COUNTY HAD STANDING PURSUANT TO MISS.CODE ANN. §§ 11-41-1 AND 19-3-55.**

Miss. Code Ann. § 11-41-1 authorizes the remedy of mandamus. It is available upon the complaint of any private person; but, before a writ of mandamus may issue three essentials must coexist:

(1) A clear right in petitioner to the relief sought.\*\*\* (2) the existence of a legal duty on the part of the defendant to do the thing which the petitioner seeks to compel. \* \* \* (3) there must be an absence of another adequate remedy at law.

*Board of Supervisors of Prentiss County v. Mississippi State Highway Commission* , 207

Miss. 839, 847-848, 42 So.2d 802, 805 (1949). This Court has always been deeply concerned that every person, claiming a legal right, shall have an opportunity to be heard and have his day in court. *Powell v. State Tax Commission*, 233 Miss. 185, 191-192, 101 So.2d 350, 353 (1958)

In *Miss. Waste of Hancock County, Inc. v. Bd. of Supervisors of Hancock County*; 818 So.2d 326 (Miss. 2001) this Court held that the actions of the Board of Supervisors were lawful in calling for an election after more than twenty-five percent of the qualified electors of the county petitioned the Board to place the issue of the construction of a proposed landfill. In fact, this Court held that the actions taken by the Board were required by the statute, Miss. Code Ann. § 19-3-55. *Miss. Waste of Hancock County*, 818 So.2d at 331. Section 19-3-55 provides:

(Unless otherwise specifically required by law,) the board of supervisors of any county shall upon the filing of a petition touching any matter affecting the entire county and over which it has jurisdiction, signed by twenty-five per cent of the qualified electors of the county, either pass an order putting said proposition in force and effect or immediately submit the same to a vote of the qualified electors of the county, . . .

Miss. Code Ann. § 19-3-55

It is true that the writ of mandamus is of only limited value for a private citizen who seeks to litigate a matter of general public interest, because Miss. Code Ann. § 11-41-1 (1972) provides that the writs may ordinarily be sought only by the attorney general or a district attorney. Usually, a private citizen to have standing must show that he has "an interest separate from or in excess of that of the general public" before relief may be available to him on his *own*

application. *Fondren v. State Tax Commission*, 350 So.2d 1329, 1332 (Miss. 1979) (emphasis added). The lower court in the case at bar cited *Wilson v. City of Laurel*, 249 So.2d 801 (Miss. 1971) as dispositive of the issue. In that case, Wilson and Lee filed a petition for a writ of mandamus seeking to require the City of Laurel to call an election pursuant to a public welfare housing authority statute. The Court found that they had no damages, if any, or injury, if any, that were any different than any other of the citizens of Laurel and denied the writ. There was no petition filed in *Wilson* signed by twenty-five percent of the qualified electors of the county and certified by the Circuit Clerk of the County, requiring the Board to call for an election, as in the case at bar. Miss. Code Ann § 19-3-55.

Unless there is some law enacted by the legislature to the contrary, the Board of Supervisors must act when twenty-five percent of the qualified electors of the county file a petition with the Board touching matters affecting the entire county. The Board must either put the proposition sought by the electors into effect, or the Board may submit the proposition to a vote of the qualified electors.

The Board has no discretion. When such a petition is filed, it becomes the duty of the Board to immediately determine whether or not (1) the petition contains matters affecting the entire county; (2) whether or not it contains the names of twenty-five percent of the qualified electors of the county; (3) whether or not it is possible for the county to carry into effect the proposition with the legal power of the Board of Supervisors. If the Board determines the issue in the affirmative, the Board must proceed as the statute [Miss. Code Ann. § 19-3-55] directs. If the Board determines that the petition is not sufficient on

one of the reasons enumerated above, the Board must make such a determination of the issues of record on its minutes. The Board cannot just ignore the petition filed by the citizens of the county. *Gill vs. Woods and the Board of Supervisors of Marshall County*, 226 So.2d 912, 918 (Miss. 1969) *Gill* involved an appeal from a judgment of the Circuit Court of Marshall County which sustained a decision of the Board of Supervisors to disregard a petition filed by citizens of the County requesting the Board to hold a second county-wide election to determine whether or not Marshall County would continue the Food Stamp Program. The lower court held that Marshall County was bound by the statute calling for an election.

- (4) A WRIT OF MANDAMUS SHOULD HAVE BEEN ISSUED TO THE PEARL RIVER BOARD OF SUPERVISORS DIRECTING THEM TO ACKNOWLEDGE JURISDICTION AND TO CALL FOR AN ELECTION CONCERNING EXPANSION OF A COUNTY LAND FILL PURSUANT TO MISS. CODE ANN. § 19-3-55

Miss. Code Ann. § 11-41-1 authorizes the remedy of mandamus. It is available upon the complaint of any private person; but, before a writ of mandamus may issue three essentials must coexist:

- (1) A clear right in petitioner to the relief sought.\*\*\* (2) the existence of a legal duty on the part of the defendant to do the thing which the petitioner seeks to compel. \* \* \* (3) there must be an absence of another adequate remedy at law.

*Board of Supervisors of Prentiss County v. Mississippi State Highway Commission* , 207 Miss. 839, 847-848, 42 So.2d 802, 805 (1949). The lower court in the case at bar found that the extraordinary relief of mandamus was not warranted due to alternative avenues of

relief and that ordering an election for disputes would set a grave precedent.

Plaintiffs had (1) a clear right to the relief sought pursuant to Miss. Code Ann. § 19-3-55. In fact, according to the statute and *Miss. Waste of Hancock County*, after more than twenty-five percent of the qualified electors of the county petitioned the Board to place the issue of the construction of a proposed landfill to a vote of the electors, the Board was required by the statute to call for an election. *Miss. Waste of Hancock County*, 818 So.2d 326, 331 (Miss. 2001); Miss. Code Ann. § 19-3-55

The Pearl River County petitioners had a right to the relief sought and (2) the Board had a legal duty to do the thing which the petitioners sought to compel. *Gill v. Woods*, 226 So.2d 912, 918 (Miss. 1969) (fn1) (cited in *J. H. Leigh, et al v. Board of Supervisors of Neshoba County*, 525 So.2d 1326, 1329 (Miss. 1988))

The Pearl River County Board of Supervisors, pursuant to Miss. Code Ann. § 19-3-55 had a legal duty to act and when they did not, when they would not accept or refuse jurisdiction, call for an election or deny the relief requested in the petition, the concerned citizens who filed the petition had no other remedy. (3) There is no method in place to demand or require the Board in this case to act but for the Writ of Mandamus. Miss. Code Ann. § 11-41-1.

## CONCLUSION

The Pearl River County Board of Supervisors violated a statutory right of the Plaintiffs in this action in not calling for an election concerning expansion of an existing

landfill pursuant to Miss. Code Ann. § 19-3-55 after the concerned citizens presented the Board with a proper certified petition of more than twenty-five percent of the qualified electors of the county. The lower court was in error in granting summary judgment to the County Board of Supervisors because the plaintiff movants had standing and were entitled to judgment as a matter of law. Plaintiffs respectfully submit that the matter should be reversed and remanded, that the writ of mandamus should issue and the Board of Supervisors directed to hold the statutory election.

Respectfully submitted,

RICHARD H. BENNETT and  
CONCERNED CITIZENS OF PEARL  
RIVER COUNTY

BY: \_\_\_\_\_

WILLIAM H. JONES

For the APPELLANT

#### CERTIFICATE OF SERVICE

I, WILLIAM H. JONES, MSB #03284, do hereby certify that I have this day caused to be mailed, postage prepaid, a true and correct copy of the above and foregoing BRIEF OF APPELLANT to the following:

LAWRENCE C. GUNN, JR.  
ATTORNEY AT LAW MSB [REDACTED]  
GUNN & HICKS PLLC  
P.O. BOX 1559  
HATTIESBURG MS 39403-1588

NOVA A. CARROLL  
ATTORNEY AT LAW  
111 EAST CANAL STREET  
PICAYUNE MS 39466

HONORABLE PRENTISS G. HARRELL  
JUDGE  
PEARL RIVER COUNTY CIRCUIT COURT  
DISTRICT XV  
15 ST. MARTIN ROAD  
PO BOX 488  
PURVIS, MS 39475

This, the 24<sup>th</sup> day of August 2007.



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WILLIAM H. JONES  
ATTORNEY AT LAW MSB [REDACTED]  
P.O. BOX 282  
PETAL MS 39465  
(601) 545-8324