IN THE SUPREME COURT OF MISSISSIPPI

2009-CA-149

COPY

NO. P-204-7 W/4

IN THE MATTER OF THE ESTATE OF
THELMA M. McCULLOUGH, DECEASED

ARLEAN MORANT LEACH, ET AL.

Appellants

VERSUS

GERALDINE YATES, ADMINISTRATRIX and
JIM HOOD, ATTORNEY GENERAL OF MISSISSIPPI

Appellees

BRIEF FOR THE APPELLANTS:

ORAL ARGUMENT REQUESTED

ON APPEAL FROM THE CHANCERY COURT OF HINDS COUNTY
FIRST JUDICIAL DISTRICT

ARIN CLARK ADKINS (MSB#[redacted]
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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record for the Appellant certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

1. Arlean Morant Leach – Petitioner (Appellant)
2. Daniel Lawrence Morant– Petitioner (Appellant)
3. Linda Ann Morant – Petitioner (Appellant)
4. Tommy Earl Morant – Petitioner (Appellant)
5. Carolyn Ann Morant Fairley – Petitioner (Appellant)
6. Johnny Earl Morant – Petitioner (Appellant)
7. James Morant Jr. – Petitioner (Appellant)
8. Jessica Morant – Petitioner (Appellant)
9. Kendrian Collins – Petitioner (Appellant)

10. Lester Clark, Jr. and Nathan L. Clark, III; Arin Clark Adkins, Clark and Clark Attorneys, PLLC – Counsel for the Petitioners (Appellants)

11. Geraldine Yates – Administratrix, Respondent (Appellee)

12. Pat A. Catchings – Counsel for Administratrix, Respondent (Appellee)

13. Jim Hood – Miss. Attorney General, Respondent (Appellee)

14. Shawn Shurden – Assistant Attorney General, Respondent (Appellee)

THIS the 5th day of May 2009.

Arin Clark Adkins

ARIN CLARK ADKINS

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STATEMENT OF THE ISSUES

1. Whether Petitioners presented clear and convincing evidence that they are the natural children of Daniel Lawrence Morant, Sr. in compliance with Miss Code Ann. § 91-1-15(3)(c).

2. Whether the Chancellor committed reversible error in finding Petitioners' claim arose at the time of the death of their father Daniel Lawrence Morant, Sr. and therefore was time barred by Miss. Code Ann. § 91-1-15, rather than finding their claim arose at the time of death of their aunt, Thelma M. McCullough, the intestate.

3. The effect of Miss. Code Ann. § 91-1-15, as applied to the Petitioners herein, is unconstitutional under the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution as it denies children the ability to inherit via their natural father, and as applied herein forces an inheritance to escheat to the state.

STATEMENT OF THE CASE

I. Nature of the Case

This action arises from an Estate matter. The case is submitted to the Supreme Court of Mississippi to determine whether the Chancellor erred in her decisions.

II. Course of the Proceedings

Claimants properly preserved and pursued their claim with the Hinds County Chancery Court, thereafter seeking reconsideration, which was also rejected. Petitioners properly included the Mississippi Attorney General in this action. The Petitioners now bring their case to the Mississippi Supreme Court.

III. Statement of the Facts

For the Court's convenience and a better understanding of the facts of this case, Petitioners would show a brief timeline of related dates pertinent to this matter include:

01/27/1978	-	Date of Death: Daniel Lawrence Morant, Sr.
10/19/2003	-	Date of Death: Thelma M. McCullough (sister of Morant)
01/06/2004	-	The Estate of Thelma M. McCullough was opened
02/03/2004	-	Petition to Determine Heirship filed
02/24/2004	-	Publication of Notice to Creditors (Proof of Publication)
05/18/2004	-	Hearing held to Determine the Heirship of Thelma M. McCullough
02/08/2005	-	Judgment Determining Heirs entered
02/09/2005	-	Petition to Close Estate filed
01/23/2006	-	On its own Motion, the Chancellor set aside her previous Judgment Determining Heirship (dated 02/08/2005)
11/28/2006	-	Order and Opinion of the Court
02/12/2007	-	Amended Petition Requesting Reconsideration of Prior Order; Determination and Adjudication of Heirship In Petitioners; Or Alternatively, Contesting the Constitutionality Of Statute
09/21/2007	-	Hearing on Amended Petition
01/08/2008	-	Final Judgment and Opinion Of The Court
01/18/2008	-	Petitioners' Rule 59(e) Motion To Reconsider Final Judgment
01/05/2009	-	Order Denying Motion For Reconsideration
01/26/2009	-	Notice of Appeal Filed

In response to the January 23, 2006 Order, on the Chancellor's own Motion, setting aside her previous Judgment and the court's subsequent Order and Opinion dated November 28, 2006 the Petitioners object and appeal.

STANDARD OF REVEIW

> Our appellate review is limited by familiar rules. This Court will not disturb the findings of a Chancellor when supported by substantial evidence unless the Chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Bowers Window and Door Co., Inc. v. Dearman,* 549 So.2d 1309, 1313 (Miss.1989); *Bullard v. Morris,* 547 So.2d 789, 791 (Miss.1989); *Johnson v. Hinds County,* 524 So.2d 947, 956 (Miss.1988); *Gibson v. Manuel,* 534 So.2d 199, 204 (Miss.1988); *Bell v. City of Bay St. Louis,* 467 So.2d 657, 661 (Miss.1985).
>
> *Herring Gas Co., Inc. v. Whiddon*, 616 So.2d 892, 894.

SUMMARY OF THE ARGUMENT

The Petitioners contend that the Chancellor was manifestly wrong and clearly erroneous in finding that the claim arose at the time of death of their father Daniel Lawrence Morant Sr. on January 27, 1978 and therefore their claim was time barred by Miss. Code Ann. § 91-1-15. Rather, the Court should find that Petitioners' claim arose at the time of death of the intestate at issue, Thelma McCullough, who died on October 19, 2003.

Petitioners further contend that due to the Chancellor being manifestly wrong and clearly erroneous in her determination of the appropriate time as to when Petitioners' claim arose, she consequently applied an erroneous legal standard. In the alternative, that the appropriate legal standard was applied, then the effect of Miss. Code Ann. § 91-1-15 is unconstitutional. But for their status as illegitimates, the Petitioners would have already taken their respective inheritances in the Estate of Thelma McCullough.

At the original hearing on May 18, 2004, the Petitioners had an opportunity to, and did, present sufficient evidence that they are the natural children of Daniel Lawrence Morant, Sr. Based upon the trial transcript of that heirship hearing, (T.T. pp. 3-37), it appeared that the Chancellor was satisfied with the proof there presented that Petitioners were the children, and/or grandchildren, of Daniel L. Morant, Sr., and therefore the nieces and nephews (and/or grand nieces and nephews) of Thelma McCullough, the decedent in this instance.

ARGUMENT

I. Petitioners presented clear and convincing evidence that they are the natural children of Daniel Lawrence Morant, Sr.

> As a procedural matter, the heirship determination must precede relief under either of the other remedies, for it is only by virtue of the belatedly established heirship that an illegitimate is entitled to share in the estate. Only after the plaintiffs are successful in their action under 91-1-27, et seq., will the constitutionality of 91-1-15(3)(d)(ii) come into play.
>
> 91-1-15 (3)(d)(ii)(Para. 2).

At the September 21, 2007 hearing, the Petitioners introduced unto the Chancellor additional verification of their father's open acknowledgement of them as his children to the Social Security Administration and that Petitioners herein drew Social Security minor's benefits through the Social Security Disability account of their father, Daniel L. Morant, prior to, and after, his death in 1978. Petitioners aver that this formal acknowledgement of his fatherhood, as verified by the Social Security Administration records, is proof by clear and convincing evidence that Mr. Morant acknowledged and held himself out as the father of these children.

This fact, along with the fact that Daniel L. Morant was listed as their father on Petitioners' birth certificates, as well as his first son being named, Daniel L. Morant, Jr., and that Mr. Morant lived with the children and their mother, led the Chancellor initially to properly conclude that they were indeed the heirs of Daniel L. Morant, Sr. However, Petitioners take no

issue with the lower court's decision that the Administratrix and others were, in fact, not heirs at law of Thelma M. McCullough.

The Petitioners would further point out that around the time they were being born (September 27, 1963 – birth of first child, Daniel Morant, Jr.), common law marriage, which had long been recognized in Mississippi as a valid marriage, had only recently been abolished by our State Legislature from and after April 5, 1956. Until that time, common law marriage was not unusual in Mississippi and for whatever reasons, the natural parents of the Petitioners herein chose not to become legally married.

In the Chancellor's *Order And Opinion*, issued on November 28, 2006, she wrote:

> Daniel Lawrence Morant died in (sic) January 27, 1978. The action to determine paternity should have occurred within three (3) years after July 1, 1981; therefore, the time for Daniel Morant, Jr., Arleana Morant Leach, Linda Morant, Tommy Morant, Carolyn Morant Fairley, Johnny Morant, and James Morant should have brought (sic) to bring their claim for paternity expired July 1, 1984.

(Rec. 000154-000158).

Indeed, the Petitioners had previously demonstrated by clear and convincing evidence that they were the natural children of Daniel L. Morant. The Chancellor had also adjudicated them the rightful heirs with a Judgment Determining Heirship entered on February 8, 2005. Later the Chancellor, on her own motion, determined that despite their heirship, their claim was barred because it was brought shortly after the death of their aunt, Thelma M. McCullough, rather than no later than July 1, 1984. (Rec. 00158).

Daniel L. Morant died in 1978 with nothing of value to probate. As a result, his family never opened his estate, nor was there any need for an adjudication of paternity at that time. It was not until Mr. Morant's sister, Thelma McCullough, died in 2003 that the Petitioners had standing to an inheritance. Therefore, the central issue becomes whether the Petitioners' Responses to and their actual appearances at the Hearing to Determine Heirship on May 18, 2004

was timely; the Petition to Determine Heirship having been filed less than one (1) month after their aunt's estate was opened, and to which the Petitioners were all noticed by Publication and by actual notice.

II. The Chancellor committed reversible error in finding Petitioners' claim arose at the time of the death of their father Daniel Lawrence Morant Sr.

If it is true that the legislative intent of §91-1-15 is to create a new remedy for illegitimate heirs, then application of said statute should not bar an otherwise obtainable goal. Before the passage of the 1981 and subsequent 1983 Amendments to §91-1-15, there is case law supporting the right of an illegitimate grandson to take by representation. See *Miller v. Watson,* 467 So.2d 672 (Miss. 1985); the procedural history of which spans the time before, during, and after the Amendments.

In *Miller*, Mr. Miller's father pre-deceased him and only later, when his grandmother passed away, did his great aunt file her petition. Mr. Miller answered the petition. After two decisions and two appeals the Court determined that it had been established by clear and convincing proof that Frank Miller was the sole and only heir at law of J.D. Miller, this despite the protests of the Appellant, Mrs. Watson the great-aunt, and despite the fact that fact that nearly twenty (20) years had elapsed since the death of J. D. Miller.

Of significance is the fact that the Court found that the cause of action in *Miller* **only arose** when Mr. Miller's grandmother died, not when his pre-deceased father died. Just as the Petitioner's cause of action herein accrued upon the death of Thelma McCullough, and not upon the death of their father Daniel L. Morant. Mr. Miller was indeed able to take in his share of the estate.

In *Miller*, and in contrast to the case at bar, Mr. Miller faced opposition from his great aunt for a claim in the estate. However, no one stands opposed the Petitioners' current claim. In fact, the Administratrix acknowledged the Petitioners' claim from the outset and noticed them all

for the Heirship hearing. Thereafter, the Administratrix filed no objections to Petitioners' various Motions and the Attorney General's Office appeared only to contest constitutional issues. (T.T. 42; l. 10-14). As a result, it is only the existence or misapplication of §91-1-15 that will potentially force this property to escheat to the state, as there are no other heirs. "Since it is a well-established principle that escheats are not favored by the law, any doubt as to whether property is subject to escheat is resolved against the state." 27 Am Jur 2d; Escheats, Sec 5; at 877.

In *Kimble v. Kimble,* 447 So.2d 1278 (Miss. 1984), the Mississippi Supreme Court directly addressed the issue of when such a claim arises. There, Darlene Larsen was the daughter of an illegitimate daughter who pre-deceased her putative father, Earl B. Kimble, the intestate therein. Darlene Larsen made two petitions to the Court. First, to prove paternity of her deceased mother, as the daughter of Earl B. Kimble, and secondly, to re-open his estate, such that she could take by representation.

In addressing the first issue regarding proving paternity, the Mississippi Supreme Court expressed the same logic as present by the Petitioners in the case at bar, that the claim arose when Darlene Larsen's grandfather, Earl B. Kimble died in 1980, not when her pre-deceased mother died in 1976.

> In *Estate of Kidd v. Kidd,* 435 So.2d 632 (Miss.1983), we held: "A cause of action accrues only when it comes into existence as an enforceable claim; that is, when the right to sue becomes vested." See also, *Rankin v. Mark,* 238 Miss. 858, 120 So.2d 435 (1960); *Aultman v. Kelly,* 236 Miss. 1, 109 So.2d 344 (1959); *Walley v. Hunt,* 212 Miss. 294, 54 So.2d 393 (1951); *Forman v. Mississippi Publishers Corp.,* 195 Miss. 90, 14 So.2d 344 (1943).
>
> It is obvious then that Darlene Larsen had a remedy as of July 1, 1981, contingent upon her establishing that Earl B. Kimble was the father of her deceased illegitimate mother. We are now faced with our second inquiry. Was her cause of action timely filed? Section 91-1-15 contains two separate periods of limitation. The first appears in subsection (3)(c) wherein an adjudication of paternity after the death of the intestate is permitted if such action is filed within one (1) year after the death of the intestate or within ninety (90) days after the first

> publication of notice to creditors, whichever is less. The second period of limitation is in subsection (3)(d)(ii)¶; 2 wherein the legislature provided that any claims existing prior to July 1, 1981, concerning the estate of an intestate whose death occurred prior to such date (July 1, 1981) by or on behalf of an illegitimate or an alleged illegitimate child to inherit from or through its natural father to be brought within three years from date. As we interpret the legislative intent the three year period relates solely to those claims **accruing to an illegitimate** as a result of the death of an intestate prior to July 1, 1981. The one year or ninety (90) day period of limitation is therefore applied only to those cases where the intestate died subsequent to July 1, 1981. *In the instant case, Earl B. Kimble died prior to July 1, 1981. Because that is so, Darlene Larsen had until June 30, 1984 in which to assert her claim as an heir to the estate of Earl B. Kimble.* Clearly then, this suit was timely filed. *Kimble at 1282* [Emphasis added].

The *Kimble* case, however, is distinguishable from the case at bar because the death of Earl B. Kimble was before the 1981 amendment, whereas Thelma McCullough died after the 1981 and 1983 amendments and thus § 91-1-15(3)(c) becomes applicable. The significance of *Kimble* is the **Mississippi Supreme Court held that the action accrued upon the death of Earl B. Kimble, the intestate, and not upon the death of the illegitimate child, the mother of Darlene Larsen, the petitioner therein**. Likewise, the Petitioners in the case at bar, assert that their action accrued upon the death of Thelma McCullough, the *intestate*, and not upon the death of their father, Daniel L. Morant, Sr. The Petition to Determine Heirship, to which the Petitioners were all duly noticed, was filed less than one (1) month after Thelma McCullough's estate was opened, and as such, their action was timely filed.

Clear parallels between the parties in *Kimble* and those in the case at Bar can be drawn as follows:

Earl B. Kimble	→	Thelma McCullough	
Irene Stuart Kimble	→	Daniel L. Morant, Sr.	(pre-deceased)
Darlene Larsen	→	Petitioners herein	

Petitioners, as well as others similarly situated, cannot be expected to have complied with a statue by attempting to determine heirship following the death of their father who had no estate

to probate. Without anything of value to probate, Daniel L. Morant's death did not trigger any type of enforceable claim. Likewise, if Thelma McCullough had not died or left anything of value to probate, then Petitioners' claim would still not have accrued. As such, Petitioners contend that *Kimble* is clear authority that their claim did not arise when their father died because Darlene Larsen's claim did not arise when her mother died. The *Kimble* case appears to be well-settled law that claims like these arise upon the death of the intestate, when something of value arises for probate.

III. Miss. Code Ann. § 91-1-15 is unconstitutional under the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment of the U.S. Constitution

As clearly set out under Mississippi law, " . . . if the particular facts of a case make it possible to resolve the matter without reaching the constitutional issue, then it is incumbent upon the Court to do so." *Western Line Consol. School Dist. v. Greenville Mun. Separate School Dist.*, 433 So. 2d 954, 957 (Miss. 1983). Accordingly, the points set out thus far should allow for a finding that Petitioners are the heirs at law of Thelma McCullough and that they should take in her Estate without having to reach any constitutional issue. If that is the case, then there has been no opposition from the Attorney General's Office, for, as Mr. Shurden stated at the September 21, 2007 Hearing to Reconsider Judgment, "the State takes no position on when their [Petitioners'] cause of action accrued." (T.T. 50, l. 3-5).

Indeed, if § 91-1-15(3)(c) is found to be controlling because Petitioners' claim accrued upon the death of Thelma McCullough pursuant to the *Miller, Kimble* and *Kidd* cases *supra,* then the Petitioners' remedy hinges on whether they complied with the requisite time periods in the estate of their great aunt, Thelma McCullough. We believe the record and trial transcripts indicate that this was done in a timely manner.

If however that result is not this Court's conclusion and the constitutional issue becomes the central focus, it is then incumbent upon the Petitioners to establish that § 91-1-15 presents a

set of circumstances that cannot be considered valid, as required by *U.S. v. Salerno,* 481 U.S. 739, 745 (1987). §91-1-15 is unconstitutional to the extent that it precludes an illegitimate child from inheriting by intestate distribution from the child's father unless the father subsequently married the child's mother and then acknowledges the child as his own.

The question herein becomes whether or not it is constitutional for the Petitioners to be denied their inheritance, strictly because their parents were never married. In today's climate, this issue is ripe for review, as more and more couples are having children without marriage. Consequently, many more people than ever before are going to be faced with issues similar to the case at bar; " . . . we have expressly considered and rejected the argument that a State may attempt to influence the actions of men and women by imposing sanctions on the children born of their illegitimate relationships." *Trimble v. Gordon,* 430 U.S. 762, 769 (1977).

The record of the Hearing on this matter reflects discussion of *Trimble* as it relates to Petitioners' claim, suggesting they should not be punished for something their parents did or did not do. But for their status as "illegitimates" the Petitioners would certainly be entitled to this inheritance. If Petitioners fail on their § 91-1-15(3)(c) argument, this Court should consider whether the State is able to constitutionally justify this denial, based solely on the classification as per the application of § 91-1-15(3)(d)(ii)(Para.2).

A. Acknowledgement of Petitioners

Petitioners contend that open acknowledgement was made by Daniel L. Morant during his lifetime that he was their father. It was definitive to the Court in *Miller*, discussed *supra*, that the Petitioner, Mrs. Watson, (the great aunt), acknowledged Mr. Miller as the illegitimate son of her deceased brother. She subsequently stipulated to this in a reply to his counterclaim. Here, similarly, the Administratrix of the Estate of Thelma McCullough knew of the Petitioners and knew to notice them for the heirship determination since they were known to be the children of

Daniel L. Morant, deceased. They subsequently entered their Entry of Appearances and Waivers to said Notice before the Heirship Hearing was actually held, and to which they actually appeared and testified.

Furthermore, this same Administratrix was noticed, had opportunity to answer, appear in Court, and defend against Petitioners' Amended Motion For Reconsideration, but chose not to do so. She did appear through her attorney of record at the September 21, 2007 hearing, but took part in that hearing. Likewise, the Attorney General's office appeared for constitutional arguments only, and made certain the record reflected it had no opinion as to when Petitioners' claim arose.

But for this classification as "illegitimate", Petitioners would not be subject to the requirements set out under § 91-1-15(3)(d)(ii)(Para.2), and would be able to take under the law. Petitioners argue that such disparate treatment, based solely on classification, is patently unfair and a violation of Equal Protection under the Fourteenth Amendment of the United States Constitution.

Petitioners argue that they should not be barred from the inheritance because of §91-1-15(3)(d)(ii)(Para.2), which becomes an unnecessary imposition to place upon the illegitimate children of a decedent, when, as here, they had no knowledge that they may eventually be parties in an estate. In the present case, the interest did not accrue until twenty-five (25) years in the future. Constitutionally, this is a deprivation of property without notice, and a violation of the Due Process Clause. The parties must have notice that they stand to lose something, otherwise the systematic denial of same, by virtue of law, is unconstitutional.

B. Legitimate State interest

In order to justify any disparate treatment, as with legitimate and illegitimate children in the present case, the State must demonstrate a legitimate state interest. As the *Trimble* Court

stated, the imposition of sanctions on illegitimate children was expressly rejected. Further, in *Trimble,* the United States Supreme Court concluded that " . . . the statutory discrimination against illegitimate children is unconstitutional." (*Trimble* at 766). Therefore, for the Petitioners to be sanctioned in this way, strictly based on their classification as illegitimates, the State is required to demonstrate what interest justifies this treatment.

Justice Rehnquist, in his dissenting opinion in *Trimble* stated; "Illegitimacy . . . has never been held by the Court to be a 'suspect classification.' Nonetheless, in several opinions . . . statements are found which suggest that, although illegitimates are not members of a 'suspect class', laws which treat them differently from those born in wedlock will receive a more far-reaching scrutiny under the Equal Protection Clause than will other laws regulating economic and social conditions." *Id.*

Consequently, the question becomes, what "compelling state interest" does the State use in balancing interests and denying the Petitioners their inheritance in this instance. Traditionally the motivation is explained as, "the State's proper objective of assuring accuracy and efficiency in the disposition of property at death." *Id.* at 770. "Difficulties in proving paternity in some situations do not justify the total statutory disinheritance of illegitimate children whose fathers die intestate." *Id.* at 772.

As discussed at the Hearing on September 21, 2007, the legitimate state interests put forth in the 1983 Amendment to §91-1-15 are for "preventing stale and fraudulent claims and avoiding uncertainly as to the titles of real property". No such issues are present in the case at bar under this philosophy, therefore the State cannot claim the balancing of a legitimate state interest is at play.

The integral issue is balancing the State's interest in properly disposing of the intestate's property. Other than that, the State can have no arguable interest in the issue of illegitimacy, as

the morality of individuals cannot constitutionally be called into question.

Petitioners suggest that denying them this inheritance because they had no knowledge of the need to begin a filiation proceeding, shortly after the death of their father, will in no way balance the State's interest in properly disposing of Thelma McCullough's property. There is no question regarding additional heirs, or how Mrs. McCullough's property will be distributed. The answer is clear, the property will escheat to the state, which is not favored by the law.

Petitioners are not subject to § 91-1-15(3)(d)(ii)(Para.2), because Daniel L. Morant, Sr. had no property of which to dispose of when he died in 1978. It was not until Thelma McCullough died, that any property came into issue for distribution. No proper distribution of property was at issue until the death of Thelma McCullough. Consequently, denial of a right, before there was a right, balances no state interest and cannot be squared constitutionally.

CONCLUSION

Petitioners urge the Court to find that Petitioners are the natural children of Daniel L. Morant, Sr., and by virtue of this status are thus the heirs of Thelma McCullough, pursuant to §91-1-27 and §91-1-29. Using the case law cited herein, the Court should also find that Petitioners' claim accrued at the death of Thelma McCullough and not upon the death of Daniel L. Morant, Sr.

In finding Petitioners the sole heirs at law of Thelma M. McCullough, and that their claim arose only at her death, Petitioners have complied with § 91-1-15(3)(c) in that their claim was, in fact, timely noticed, such that the net proceeds of Thelma McCullough's Estate should be disbursed to Petitioners herein, share and share alike, as her rightfully adjudicated heirs at law.

In the alternative, if this Court finds that Petitioners are the sole heirs at law of Thelma M. McCullough and/or of Daniel L. Morant, Sr., but are still barred from recovering the estate herein pursuant to § 91-1-15(3)(d)(ii)(Para. 2), then Petitioners ask the Court to find § 91-1-15

unconstitutional for the reasons cited above, and to still award the net proceeds of this Estate to the Petitioners herein based on the unconstitutionally of that statute.

Respectfully submitted,

ARLEAN MORANT LEACH and DANIEL LAWRENCE MORANT, JR., on their own behalf, and on behalf of the other named Petitioners

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CERTIFICATE OF SERVICE

I, the undersigned hereby certify that I this day delivered by U.S. Mail and/or by FedEx, postage prepaid the original and three (3) true copies of the foregoing Petitioners'/Appellant's Appeal Brief with a disk of same in Word format to the Hon. Betty W. Sephton, Clerk of the Mississippi Supreme Court, at her regular mailing address, P. O. Box 249, Jackson, MS 39205-0249; and also one (1) true copy to the following at their regular mailing address:

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This, the 5th day of May 2009.

Arin Clark Adkins

ARIN CLARK ADKINS