



McDaniel Lawsuit Dismissed in Mississippi U.S. Senate Runoff Election

The Mississippi State Supreme Court ruled in favor of Thad Cochran in Chris McDaniel's (shown) lawsuit contesting the election results in the Republican primary runoff election June 24 for the U.S. Senate.



The *McDaniel v. Cochran* lawsuit was filed August 14 by the McDaniel campaign and was dismissed August 29 based on a motion by Cochran's attorneys that a 20-day limit from the runoff election date be imposed on McDaniel's court filing date. The motion was based on a 1959 precedent in *Kellum v. Johnson*. The Mississippi Supreme Court concurred and the *McDaniel v. Cochran* lawsuit was dismissed. The decision had nothing to do with the merits or lack thereof in McDaniel's allegations. It was based solely on the timeliness of filing the lawsuit.

McDaniel's attorneys argued that Mississippi election laws have been changed numerous times in the last 55 years, and if the Mississippi state legislature wanted to impose a 20-day limit on larger elections, it has had numerous opportunities to change that portion of the law and hasn't done so.

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Mississippi election law stipulates a 20-day limit for contesting primary elections that are confined to a single county, but the law is silent on time limits for districts where contesting an election requires gathering evidence from elections departments of multiple counties.

From Mississippi Election Code Title 23, Chapter 15, Section 921:

A person desiring to contest the election of another person returned as the nominee of a legislative district composed of one (1) county or less, may, within twenty (20) days after the primary election, file a petition.

Section 923 applies to larger districts:

A person desiring to contest the election of another returned as the nominee in state, congressional and judicial districts, and in legislative districts comprised of more than one (1) county or parts of more than one (1) county, upon complaint filed with the Chairman of the State Executive Committee, by petition, reciting the grounds upon which the election is contested.

Such a difference in procedure is clearly reasonable in a state with 82 counties. In a recent news release, True the Vote reported that some of their electoral integrity volunteers in Mississippi had problems accessing critical election information in this same election and runoff. Some counties, the group said, were "not allowing poll books and absentee ballot applications to be thoroughly inspected."



Written by [Kurt Hyde](#) on October 29, 2014

The McDaniel campaign had hoped to present evidence via the lawsuit that ineligible voters cast ballots in the runoff. It is illegal under Mississippi law to vote in one party's primary election and then vote in another political party's runoff for that same primary. The McDaniel campaign claimed evidence of over 3,500 such incidences, and felt certain that once a trial began, that number would grow substantially as they could compel evidence and witnesses.

The McDaniel campaign issued a press release following the Mississippi Supreme Court ruling, saying:

Republicans in Mississippi are still left wanting for justice after June's Republican primary was decided by more than 40,000 Democrats.... Worse yet, the courts refused even to hear our challenge.

It is unclear at this time if McDaniel plans to challenge whether or not Cochran will be seated when the 114th Congress convenes in January. Article I, Section 5 of the U.S. Constitution says, "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members."

There is precedent for such challenges, such as the 1974 U.S. Senate contest in New Hampshire, when Louis Wyman won by only two votes. The election was certified by the state, and conservative Governor Meldrim Thompson appointed Wyman to the seat vacated by Norris Cotton, who retired three days before his term expired. That ensured that Wyman would arrive in Washington, D.C. as a U.S. senator. Still, the Senate refused to seat Wyman.

Of course, the real reason Wyman wasn't seated in 1975 wasn't how close the vote was. A coalition of Democrats and liberal Republicans wanted to see the Democrat Durkin seated. Chris McDaniel would likely face a similar coalition regardless of which political party holds the majority in the 114th Congress.

Still, the option is available. If the McDaniel campaign submits the evidence they have to the U.S. Senate as part of a request that McDaniel be seated instead of Cochran, it would become a matter of public record.

The role of precedent versus the exact wording of laws has long been a contentious issue among constitutional conservatives, and this case will likely fuel that fire.



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