

FILED

DEC 08 2014

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

CARTER CARROLL and  
KIM BRADLEY

*Forrest Adams*  
FORREST COUNTY CIRCUIT CLERK

PLAINTIFFS

VS.

CAUSE NO. CI 14-0212

JOHNNY L. DUPREE, *in his official  
capacity as Mayor of the City of Hattiesburg*

DEFENDANT

**PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS**

COME NOW the Plaintiffs and file this their Statement of Undisputed Facts pursuant to U.R.C.C.P 4.03(2), as follows:

1. The City of Hattiesburg, Mississippi is a municipal corporation which has adopted as its governing form the "mayor/council" form of government as provided for and governed by Miss. Code Ann. § 21-8-1, *et seq.*
2. The mayor of the City of Hattiesburg is a member of the executive branch of government.
3. The members of the Hattiesburg City Council are members of the legislative branch of government.
4. The defendant, Johnny L. DuPree, is the currently serving mayor of the City of Hattiesburg, and is being sued herein in his official capacity as mayor.
5. The Hattiesburg City Council is divided into five wards with each ward being represented by one councilperson.
6. On November 6, 2014, the date of filing the complaint in this action, plaintiffs Carter Carroll and Kim Bradley were the duly elected and serving councilpersons of Wards 3 and 1, respectively. They continue to serve in that capacity.

7. Defendant is serving his fourth term as mayor, having first taken office in July, 2001. Most recently, defendant was re-elected in 2013 and was sworn into office July 1, 2013.<sup>1</sup>

8. There are a total of seventeen (17) department directors that are appointed by the mayor, subject to approval by the City Council. Of these positions, defendant has only submitted six nominees to the City Council for approval. The Council has approved five of the nominees, and declined to approve defendant's nominee for city clerk.

9. Since his re-election for a fourth term, defendant has failed to bring nominees before the Council for any of the following positions: Municipal Prosecutor; Municipal Prosecutor Post 2; Public Defender; City Attorney; Municipal Court Clerk; Municipal Court Judge; two Municipal Court Judges *Pro Tem*; Director of Urban Development; Director of Parks and Recreation; and, Police Chief.

10. While defendant did place a nominee before the Council for the position of City Clerk on March 18, 2014, that nominee was rejected by the Council. Defendant has failed to bring any further nominees for that position before the Council since that time.

11. Despite being furnished a copy of this lawsuit, and a demand letter asking the defendant to comply with state law, defendant has refused to submit any nominees to the Council for approval since March 18, 2014.

12. More than 8 months have passed since defendant last placed any nominees before the Council for approval.

13. More than 15 months have passed since defendant was sworn in for his fourth term of office on July 1, 2013.

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<sup>1</sup> There was a special election ordered as a part of an election contest, which election took place in September 2013. Defendant prevailed in that special election.

14. On February 24, 2006, the Attorney General of the State of Mississippi submitted an official opinion in response to request from Carter Carroll, who was at that time president of the Hattiesburg City Council. In that official opinion, the Attorney General (acting through Assistant Attorney General Heather P. Wagner) stated, in part, as follows: “[I]t is the opinion of this office that the intent of this provision of law [Miss. Code Ann. § 21-8-23(2)] is that a mayor shall make such appointments within a reasonable time after taking office, so as to afford the city council the opportunity to review the qualifications of the appointees and determine whether such appointees should be confirmed.”

15. On February 24, 2006, the Attorney General of the State of Mississippi submitted an official opinion in response to request from defendant, in his capacity as mayor. In that official opinion, the Attorney General (acting through Assistant Attorney General Heather P. Wagner) stated, in part, as follows: “Therefore, it is and remains the opinion of this office that Section 21-8-23 establishes a term for department directors, and upon the expiration of that term, a vacancy exists in the position, which must be filled as provided by law. In a mayor/council form of municipal government, a mayor, including one who is re-elected to a new four (4) year term of office, must submit his appointees to director positions to the city council for confirmation, even if the appointees are the same individuals who served as department directors during the prior term.”

16. Between February 24, 2006 and May 30, 2006, defendant did not submit appointees to the director positions to the City Council for confirmation.

17. On May 30, 2006, plaintiffs (and another councilperson, who later resigned) filed suit in this Court seeking, among other things, that “an order be entered pursuant to Section 11-41-1 of the Mississippi Code of 1972, as amended, requiring the Mayor to submit the names of all

proposed directors of departments of the City of Hattiesburg, Mississippi, to the City Council for its consideration.”

18. On September 29, 2006, this Court entered an Order providing that “the Petition for Writ of Mandamus ... be granted in that the Defendant, Johnny L. Dupree [sic], in his official capacity as Mayor of the City of Hattiesburg, Mississippi, is ordered to appoint and submit his directors to the council for confirmation.”

19. Instead of complying with the Court’s September 29, 2006 Order, defendant chose to appeal said Order to the Mississippi Supreme Court.

20. On October 25, 2007, the Mississippi Supreme Court issued an opinion, finding in pertinent part that “[t]he council members have standing to seek a writ of mandamus against the mayor by virtue of the fact that their position creates in them a separate interest or an interest in excess of the general public. Additionally, Mississippi Code Section 21-8-23(2) requires that a mayor must resubmit directors for approval by the council at the beginning of the new term of office, even if the director is a holdover from the previous term and has been previously approved by the council ... The mayor shall forthwith submit department heads for approval by the council.”

21. Miss. Code Ann. § 21-8-23(2) has not been amended or repealed since November 20, 2007.

22. The Supreme Court’s opinion in *DuPree v. Carroll*, 967 So.2d 27 (Miss. 2007) has not been modified or overruled.

23. Plaintiffs have standing to bring this lawsuit.

24. The City Council, speaking through its minutes, has not taken any action since July 1, 2013 to prevent or preclude the defendant from submitting one or more nominees for these positions to the Council for approval.

Respectfully submitted, this the 8<sup>th</sup> day of December 2014.

**CARTER CARROLL and  
KIM BRADLEY**

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I, Robert D. Gholson, hereby certify that a copy of the above and foregoing document has been served on the following, by directing same to their office addresses through first-class, United States mail, postage prepaid, on this the 8<sup>th</sup> day of December, 2014:

Mayor Johnny L. Dupree  
200 Forrest Street  
Hattiesburg, MS 39401

Charles Lawrence, Esq.  
1105 Edwards Street  
Hattiesburg, MS 39401

\_\_\_\_\_  
**ROBERT D. GHOLSON**

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<sup>1</sup>ALSO ADMITTED IN TENNESSEE

<sup>2</sup>ALSO ADMITTED IN LOUISIANA

December 8, 2014

*Via Hand-Delivery*  
Honorable Lou Ellen Adams  
Forrest County Circuit Clerk  
P.O. Box 992  
Hattiesburg, MS 39403-0992

**Re: *Carroll & Bradley v. Dupree*  
*Cause No. CI14-0212***

Dear Ms. Adams:

Enclosed herein for filing in the above referenced matter are the following documents:

1. Plaintiffs' Motion for Summary Judgment and
2. Plaintiffs' Statement of Undisputed Facts.

I have also enclosed an extra copy of these documents to be stamped filed.

If you have any questions, please feel free to give me a call.

Sincerely yours,



Robert D. Gholson

RDG/mm  
Enclosures

cc: Mayor Johnny L. DuPree  
Charles Lawrence, Esq.  
(via hand-delivery, email, fax & mail)

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