IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

DYAMONE WHITE; DERRICK SIMMONS; TY PINKINS; CONSTANCE OLIVIA SLAUGHTER HARVEY-BURWELL,

Plaintiffs,

vs.

STATE BOARD OF ELECTION COMMISSIONERS; TATE REEVES, *in his official capacity as Governor of Mississippi*; LYNN FITCH, *in her official capacity as Attorney General of Mississippi*; MICHAEL WATSON, *in his official capacity as Secretary of State of Mississippi,*

Defendants,

CIVIL ACTION NO. 4:22-cv-62-SA-JMV

PLAINTIFFS' REPLY REGARDING REMEDIAL ISSUES

Plaintiffs submit this Reply pursuant to and consistent with the provisions of Local Rule 7(b)(4) and (5) to make three points regarding remedial issues responsive to Defendants' brief (ECF No. 273).

First, there is no need to delay a determination on whether to hold special elections until well into 2026, which would effectively foreclose relief for injured voters until 2027 at the very earliest; to the contrary, the Court should give the Legislature clarity upfront on whether special elections will be required, allowing it to craft a special elections schedule for itself, as in the state legislative case. *Second*, there is no basis to stay the Court's injunction in this case with respect to the 2026 Supreme Court elections. *Third*, Plaintiffs remain open to conferring with Defendants regarding the 2026 elections, special elections, and other remedial matters. Plaintiffs propose that

the parties report to the Court by October 31 regarding the results of any conferral so that the Court has ample time to decide any outstanding issues prior to the start of the 2026 legislative session.

ARGUMENT

I. APPEALS IN UNRELATED CASES DO NOT WARRANT DELAYING A COMPLETE REMEDY

This Court should not delay further consideration of special elections for the better part of the year in light of various pending appeals in other cases, as Defendants argue. *E.g.*, Defs.' Br. at 8-11, ECF No. 273. Redistricting cases are almost always working their way through the appellate courts following each decennial census—and indeed, one appeal or another has been before the Supreme Court or the Fifth Circuit for the last four years. But none of the pending appeals cited by Defendants justifies delaying relief for Plaintiffs and other Black voters in Mississippi, who face significant and irreparable harm from unlawful vote dilution.

First, Defendants point to various Supreme Court proceedings involving the question whether private litigants have a right of action to enforce Section 2, including the pending petition for certiorari in *Turtle Mountain Band of Chippewa Indians v. Howe*, S. Ct. No. 25-253, and the state's appeal from the three-judge panel decision in the Mississippi state legislative case, *SBEC v. Mississippi NAACP*, S. Ct. No. 25-234. *See* Defs.' Br. at 3-4, ECF No. 273. Of course, and as this Court noted, the Fifth Circuit has already held that private plaintiffs do have such a right. *White v. State Bd. of Election Comm'rs*, --- F.Supp.3d ----, No. 4:22-CV-62-SA-JMV, 2025 WL 2406437, at *2 (N.D. Miss. Aug. 19, 2025) (citing *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023)); *see also Mississippi NAACP v. State Bd. of Election Comm'rs* ("*MS NAACP I*"), 739 F. Supp. 3d 383, 412 (S.D. Miss. 2024). In *Turtle Mountain*, the Eighth Circuit split with all other courts and held that Section 2 is not privately enforceable. 137 F.4th 710, 713 (8th Cir. 2025). The Supreme Court then *stayed* the mandate in that case, which is solely about private enforcement

of Section 2, sending a strong signal that the Eighth Circuit panel erred. *See Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2663 (2025) (Gorsuch, J., concurring in part and dissenting in part) (cautioning against the adoption of a legal theory that the Court has repudiated via the granting of a stay); *cf. Nken v. Holder*, 556 U.S. 418, 434 (2009) (holding that stay applicant must make a "strong showing that he is likely to succeed on the merits" (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987))). There is no reason to think the Supreme Court will turn around and adopt the Eighth Circuit's extreme outlier position. If anything, the Court may grant the pending motion to affirm in the *SBEC* case and summarily reject that theory. *See* Pls.' Mot. to Summarily Affirm, *SBEC v. Mississippi NAACP*, No. 25-234 (U.S. filed Oct. 3, 2025).

Second, Defendants point to *Louisiana v. Callais*, which involves constitutional arguments that have not been raised in this case. Defs.' Br. at 4–5, ECF No. 273. In *Callais*, a group of non-Black plaintiffs invoked what is known as a racial gerrymandering claim—an argument that an electoral district has been drawn predominantly on the basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment—in challenging congressional districts drawn by the Louisiana Legislature. *Callais v. Landry*, 732 F. Supp. 3d 574, 598 (W.D. La. 2024). A three-judge panel found that the challenged majority-Black congressional district had a "bizarre" shape designed to carve out areas with highly concentrated Black populations, prioritizing considerations of race over compactness, respect for county and other political subdivision boundaries, and other redistricting criteria. *Id.* at 598, 602–03. No party has raised such a claim in this case, and to the extent these issues bear upon the proper remedy for the violation found here, this Court cannot and should not assume that the Mississippi Legislature will enact an improper and unconstitutional districting plan. *See Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 10 (2024) (discussing the need to presume "good faith" action by legislatures in the districting process). Moreover, as

shown by Plaintiffs' illustrative plans introduced at the liability phase of this case, here the Legislature (or if necessary this Court) can easily draw compact Supreme Court districts—based on county lines, and without dividing a single county—that provide equal opportunity to all voters, without subordinating any of the traditional districting criteria to race. *White*, 2025 WL 2406437, at *15 (crediting testimony that illustrative plan was drawn without "cross[ing] the line between racial consciousness and impermissible racial predominance"). Indeed, this case is especially distinct from *Callais* because it involves district lines that have not changed in nearly 40 years and are now highly imbalanced in terms of equal population, a key neutral districting principle. *Id.* at *9, *14, *16, *50.

Third, Defendants point to *Nairne v. Landry*, noting that the *Nairne* panel withheld the mandate *sua sponte* after issuing its decision, presumably in order to allow time for a vote on the state defendants' forthcoming *en banc* petition. Defs.' Br. at 5, ECF No. 273. This Court has already held that *Nairne*, where a unanimous Fifth Circuit panel recently affirmed a vote dilution liability determination with respect to the Louisiana state legislative district lines, 151 F.4th 666 (5th Cir. 2025), provides no basis to slow down the proceedings here. Indeed, this Court specifically noted in its own liability ruling that, although the "[i]ssuance of the mandate was withheld" in *Nairne*, there is nonetheless "no need to further delay the issuance of a ruling in this case." *See White*, 2025 WL 2406437, at *6 n.5. This Court's ruling is correct—the withholding by the Fifth Circuit of its own mandate has no bearing on the precedential value of the *Nairne* panel's published opinion, which is "binding law of the circuit." *O'Donnell v. Salgado*, 913 F.3d 479, 481–82 (5th Cir. 2019); *Gibson v. Kilpatrick*, 838 F.3d 476, 488 n.23 (5th Cir. 2016) (characterizing publication, not issuance of a mandate, as the touchstone of precedential value, and stating published opinion at issue "is binding precedent under 5th Cir. R. 47.5 because it was

published").

More broadly, Defendants' argument that remedial proceedings in any given redistricting case should be delayed whenever there is a pending appeal in any other redistricting case is unworkable. Redistricting cases are of great public interest and importance, usually do not settle, and frequently involve appeals, including (at least where a three-judge district court is convened) under the U.S. Supreme Court's "mandatory appellate jurisdiction," Defs.' Br. at 4, ECF No. 273. Indeed, for nearly the entirety of the past four years since redistricting plans were enacted across the country in 2021 or 2022 following the 2020 Census, a significant redistricting case has been pending before either the Supreme Court or the Fifth Circuit. *See, e.g.*, *Louisiana v. Callais*, 145 S. Ct. 2608 (2025) (Supreme Court's October Terms 2024 and 2025); *Alexander*, 602 U.S. 1 (October Term 2023); *Allen v. Milligan*, 599 U.S. 1 (2023) (October Term 2022); *Robinson v. Ardoin*, 37 F.4th 208, 232 (5th Cir. 2022). Where a defendant believes that the demanding standard for a stay pending appeal from either the Fifth Circuit or the Supreme Court is met in a particular case, they can seek one. But the mere pendency of one or more redistricting-related appeals is not grounds to delay proceedings, especially remedial proceedings following a final liability determination after trial.

Conversely, making a complete determination about the proper scope of the remedy now is the course that best respects the Legislature's prerogatives in the redistricting process. *See In re Landry*, 83 F.4th 300, 308 (5th Cir. 2023) (courts should "accommodate[e] to the greatest extent the legislatures' ability to confect their own remedial plans"); *United States v. Brown*, 561 F.3d 420, 435 (5th Cir. 2009) ("in redistricting cases, district courts must offer governing bodies the first pass at devising a remedy"). As in the state legislative case, determining at the outset that special elections will be needed will allow the Legislature to schedule all relevant dates for any

2026 special elections deadlines (and possibly to craft a process for further tranches of special elections in the coming years) in the first instance, rather than requiring the Court to do so in the first instance. *See Mississippi State Conf. of NAACP v. State Bd. of Election Comm'rs*, 741 F. Supp. 3d 509, 515 (S.D. Miss. 2024).

II. A PARTIAL STAY OF THIS COURT'S INJUNCTION IS UNWARRANTED

Defendants suggest this Court "should consider" a stay of its injunction against further use of the 1987 Supreme Court districts that were proven unlawful at trial but do not actually move for one under the well-established legal standard for a stay. *See* Defs.' Br. at 11–13, ECF No. 273; *Nken*, 556 U.S. at 426; *Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 373 (5th Cir. 2023). And Defendants cannot get around the requirement to move under and meet the demanding stay standard by contending that Plaintiffs have not challenged the district lines for Districts 2 and 3.

Contrary to Defendants' suggestion, Defs.' Br. at 12, ECF No. 273, Plaintiffs challenged Mississippi's "Supreme Court districting scheme," not just District 1. That is reflected throughout Plaintiffs' Amended Complaint, *e.g.*, Am. Compl. (ECF No. 133) ¶ 1, 3, 63, 123, and in this Court's ruling. *White*, 2025 WL 2406437, at *53 ("The Court returns to the relief the Plaintiffs sought in their Amended Complaint [133]. They specifically requested a declaration that the map violates Section 2, an injunction prohibiting further utilization of the map . . . ."). Indeed, Plaintiffs' prayer for relief specifically requested that this Court "[d]eclare the district boundaries and/or districting scheme used by the State of Mississippi in electing the justices of the Mississippi Supreme Court to be in violation of Section 2 of the Voting Rights Act." Am. Compl. at 47, ECF No. 133. Furthermore, Plaintiffs asked that the Court "permanently enjoin the Defendants and their agents from holding elections for the Mississippi Supreme Court under the existing districts."

Id. And this all makes intuitive sense, because with only three districts in the state, the lines of one district literally cannot be changed without changing the lines of one or both of the others.

It also makes sense as a doctrinal matter, because a Section 2 challenge (unlike a racial gerrymandering claim) is not specific to a particular *district* but instead concerns the geographic *area* where vote dilution has occurred. *Shaw v. Hunt*, 517 U.S. 899, 917 (1996) ("If a § 2 violation is proved for a particular area, it flows from the fact that individuals in this area 'have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.'" (quoting 52 U.S.C. § 10301)). Here, Plaintiffs have alleged—and this Court found—vote dilution in the area where Plaintiffs have identified reasonably configured illustrative districts that would be majority-Black in voting age population, including in the Mississippi Delta. Am. Compl. ¶ 4, ECF No. 13; *White*, 2025 WL 2406437, at *14–15. Both versions of Plaintiffs' illustrative Black-majority District 1 included voters from all three current Supreme Court districts, and the Delta in particular is split between current Supreme Court Districts 1 and 3. *See, e.g.*, PX-1 at 27, 30, ECF No. 234. And again, even if Plaintiffs' challenge were somehow limited to District 1, redrawing District 1 necessarily impacts Districts 2 and 3—the only districts that border District 1.

Defendants also wrongly suggest that special elections are unnecessary because Plaintiffs allegedly delayed litigating this case. Defs.' Br. at 10, ECF No. 273. The three-judge panel in *MS NAACP* rejected a similar argument. 739 F. Supp. 3d at 465 ("We find that any initial delays are insufficient to make a special election inequitable . . . ."). In August 2021, the Census Bureau released the 2020 population data needed for redistricting.[1] The Mississippi Legislature concluded

[1] U.S. Census Bureau, *U.S. Census Bureau Delivers Data for States to Begin Redistricting Efforts* (Aug. 12, 2021), https://perma.cc/SE5P-JNLL.

its next regular session in April 2022—after having redistricted congressional and state legislative districts—without updating the supreme court districts.[2] Plaintiffs filed this action approximately two weeks later, on April 25, 2022. Compl. (ECF No. 1). Indeed, Plaintiffs filed this case several months *earlier* than the plaintiffs in the state legislative case, which was filed on Dec. 20, 2022. 739 F. Supp. 3d at 465. While the three-judge panel there did note that the plaintiffs there sought expedition of trial, that was in the context of offsetting the plaintiffs' "initial delay in challenging the Enacted Plans." 739 F. Supp. 3d at 465. Here, Plaintiffs filed suit immediately after the close of the 2022 legislative session, and sought to bring this case to trial at the earliest possible date.

Allowing future elections to be held under unlawful district lines is inequitable and perpetuates severe vote dilution. If this Court stays its injunction, Black voters in parts of Districts 2 and 3 will be forced to continue electing justices to the Supreme Court using districts that unfairly deprive them of political opportunity on account of race. Defendants seek to relitigate their argument that judges are not representatives in arguing that voters will not be harmed, Defs.' Br. at 9, ECF No. 273, but as this Court has held, the reality is that "Section 2 applies to judicial elections." *White*, 2025 WL 2406437, at *50 (citing *Chisom v. Roemer*, 501 U.S. 380, 400–01 (1991)). Where Section 2 is violated by a dilutive judicial districting map that abridges the right to vote of Black voters, the harms remain severe notwithstanding the distinct nature of the state judicial role.

If more justices are elected to new eight-year terms under the unlawful map, it will further delay the date by which all justices on the Mississippi Supreme Court will have been elected using a lawful map. For instance, if a justice is elected to a new term in 2026 in the District 2, Place 1

[2] Miss. House of Representatives, *Weekly Summaries: Week of April 4, 2022*, https://perma.cc/2ZLG-BST5 (last visited Oct. 16, 2025).

seat currently occupied by Justice Ishee, that term would last until *December 2036*. *See* Addendum to Pls.' Br. (ECF No. 272) at I–II (Justice Ishee's seat has a 14-month delay between the election and the term). The number of seats that may ultimately require a special election could increase, potentially creating even more disruption whenever a complete remedy is eventually imposed. This Court should minimize the harm caused by the unlawful district lines and decline to modify its permanent injunction.

III. THE COURT SHOULD ORDER THE PARTIES TO CONFER ON ALL REMEDIAL ISSUES

The parties already agree on a timeline for the Legislature to enact new Supreme Court lines, and Plaintiffs are open to conferring regarding additional remedial issues. Defendants suggest that the parties should confer regarding their proposal for a stay of the Court's injunction for purposes of the November 2026 elections in District 2 and potentially in District 3. Defs.' Br. at 12, ECF No. 273. Plaintiffs humbly suggest that all of the issues regarding Supreme Court elections going forward should be the subject of the parties' conferral—and that a broader remit, which includes both the handling of regular elections set for 2026 as well as the question of special elections would make a compromise agreement between the parties on how to proceed more likely.

The parties agreeing on a framework for conducting Supreme Court elections going forward and jointly proposing such a framework to this Court would certainly be the best possible course. Plaintiffs propose that the parties report back to the Court by October 31, 2025 (or any earlier date set by the Court) in order to ensure that there is time to decide any outstanding issues prior to the start of the 2026 legislative session.

CONCLUSION

The Court should order the parties to confer regarding special elections, to report back on the results of their conferral by no later than October 31, 2025, and, if the parties do not produce a

proposal to comprehensively address the special elections question, order that special elections be held in the new opportunity district for Black voters for any seats where more than half the term is remaining, as set forth in Plaintiffs' opening brief.

This the 17th day of October, 2025.

/s/ *Ari J. Savitzky*

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CERTIFICATE OF SERVICE

I, Ari Savitzky, hereby certify that on October 17, 2025, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all parties on file with the Court.

This the 17th day of October, 2025.

/s/ Ari Savitzky
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