

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

JOSEPH THOMAS, et al,

Plaintiffs

vs.

Civil Action No. 3:18cv441-CWR-FKB

**PHIL BRYANT, Governor of
Mississippi, et al.,**

Defendants.

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION
TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This brief supplement is submitted in order to apprise the Court of three relevant Fifth Circuit cases on the issue of laches. These are in addition to the authorities cited in our original response brief, doc. 24, and the citations mentioned in closing arguments.

In *Env'tl. Def. Fund v. Marsh*, 651 F.2d 983, 1005, n.32 (5th Cir. 1981), the Fifth Circuit explained that “[t]he concept of undue prejudice, an essential element in a defense of laches, is normally inapplicable when the relief is prospective.” Here, the relief is prospective only --- redrawing as few as two of the fifty-two senate districts for the 2019 elections in August and November. And even if there is an exception to this principle about prospective relief when a case is filed a few weeks before an election,¹ the exception does not apply here where the case was filed well over a year prior to the election.

Moreover, there is no undue prejudice to the Defendants. While two or three districts must be redrawn, the same relief would have been required if the suit had been filed at some

¹ These cases are discussed in our earlier memorandum, doc. 24 at 7.

earlier time. *See, Baylor Univ. Med. Ctr. v. Heckler*, 758 F.2d 1052, 1058 (5th Cir. 1985) (rejecting laches defense because defendant’s alleged “prejudice would arise essentially from a decision on the merits . . . rather than from the [plaintiff’s] delay in bringing suit”); *Matter of Bohart*, 743 F.2d 313, 327 (5th Cir. 1984) (“Nor is there prejudicial harm merely because one loses what otherwise he would have kept; there must be a delay which causes a disadvantage in asserting and establishing a claimed right or defense.”) At the pretrial oral argument on their motion for summary judgment, the Defendants acknowledged that their claim of delay relates only to the filing of this case on July 9, 2018. They are not claiming the Plaintiffs have caused any delay since that time. To reiterate, the July 9, 2018 filing occurred nearly thirteen months before the August 6, 2019 primary. The declaration of Madalan Lennep that was submitted by the Defendants in support of their summary judgment motion states that counties need to make any changes stemming from a redistricting plan in time for the new information to be downloaded to the SEMS system 55 days in advance of the election. Doc. 19 at 8-9. There is plenty of time for that to happen. No undue prejudice has been established.

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2019, I electronically filed a copy of the foregoing Plaintiffs' Supplemental Memorandum in Opposition to the Defendant's Motion for Summary Judgment using the ECF system which sent notification of such filing to all counsel of record.

s/Robert B. McDuff