

**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 RESPONSE
IN OPPOSITION TO MOTION OF DEFENDANTS BRYANT
AND HOSEMANN FOR STAYING OF FINAL JUDGMENT PENDING APPEAL

In their supplemental memorandum [doc. 88], the Governor and Secretary of State correctly quote the case law indicating that any modification of an injunction pursuant to Fed R. Civ. Proc. 62(c) must be limited to maintaining the status quo. Thus, under Rule 62(c), the Court has only the option of maintaining the pre-injunction status quo by granting their motion for stay, which would mean the 2019 election would be conducted under the pre-existing plan that the Court has held violates the Voting Rights Act, or the option of denying the motion for a stay. The Court should deny the stay for all of the reasons previously given by the Plaintiffs and by the Court.

If this Court denies the stay, these Defendants once again will seek a stay from the Fifth Circuit Court of Appeals. In so doing, they likely will argue --- as they have in their stay motion now pending in this Court [doc. 80 at 3] --- that this Court failed to follow the principle of legislative deference expressed in the case law by declining to give the legislature more time after the legislative leadership responded to this Court's February 25 order by saying (in the

words of defense counsel) that “in the event that the stay motions . . . are denied, the Senate desires the opportunity to . . . enact a redistricting plan redrawing District 22.” [February 26, 2019 letter of defense counsel Michael Wallace to Judge Reeves, attached as an exhibit to supplemental response].

However, the Court has the option of further emphasizing its adherence to the principle of legislative deference by stating, as part of its order denying the stay, that the legislature still has an opportunity to draw a plan and set a new qualifying deadline if it does so quickly. (As mentioned previously, the legislature could adopt the plan with contingency language that nullifies it if a stay pending appeal ultimately is granted). If the legislature were to do so, the State Defendants could file a motion to alter or amend the judgment under Fed. R. Civ. Proc. 59 and the Court could then consider the appropriate factors including whether the plan remedies the violation. Given the need to move quickly, the Plaintiffs suggest that if the Court chooses this course of action, the legislature be informed that any new plan should be adopted and transmitted to the Court and the parties no later than the end of this week, March 8. Obviously, if the legislature fails to adopt an adequate remedial plan by any deadline set by this Court, the Court’s judgment would remain in place and Illustrative Plan 1 would be used in the upcoming election.

Of course, the Court had already provided the legislature with notice of its option to draw a plan and the legislature did nothing for the next 13 days. But given that the legislature did express some interest on February 26 on drawing a plan if the stay was denied, and given that the Court had not previously set a deadline for the legislature to act, providing the legislature with another brief opportunity would further confirm the Court’s adherence to the principle of legislative deference.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2019, I electronically filed a copy of the foregoing using the ECF system which sent notification of such filing to all counsel of record.

s/Robert B. McDuff