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

DYAMONE WHITE, et al., **PLAINTIFFS**

VS. **Civil Action No. 4:22-cv-00062-SA-JMV**

STATE BOARD OF ELECTION COMMISSIONERS, et al., **DEFENDANTS**

PLAINTIFFS' MOTION TO OVERRULE DEFENDANTS' OBJECTIONS AND COMPEL DISCOVERY

COME NOW the Plaintiffs, Dyamone White, Derrick Simmons, Ty Pinkins, and Constance Olivia Slaughter Harvey-Burwell (ñ**Plaintiffs**ò), by and through counsel, and hereby move the Court to overrule Defendantsô objections and compel discovery to the extent set forth herein, and would show the Court the following:

1. The Court should overrule Defendantsô objection to discovery of matters concerning gubernatorial nominations and appointments of justices to the Mississippi Supreme Court (the ñ**Judicial Appointments Objection**ò).

2. The Court should overrule Defendantsô objection to discovery of matters occurring during, and documents created or received during, prior gubernatorial administrations, i.e., predating the accession to office of the named official capacity Defendantsð Governor Tate Reeves, Attorney General Lynn Fitch, and Secretary of State Michael Watsonð to their current offices as of January 14, 2020 (hereinafter, the ñ**Prior Administrations Objection**ò).

3. Plaintiffs served their First Set of Interrogatories on September 2, 2022. See Ex. 1.

4. Defendants served their respective Responses and Objections to Plaintiffsô First Set of Interrogatories on October 3, 2022. See Exs. 2-5.

Jackson, Mississippi 39205-0651
Tel.: (601) 968-5500
Fax: (601) 944-7738
mbw@wisecarter.com

ATTORNEYS FOR DEFENDANTS 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, AND MICHAEL WATSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF MISSISSIPPI

DECLARATION

Pursuant to 28 U.S.C. § 1746, I, Kyle Kirkpatrick, Assistant Secretary of State, Elections Division, Mississippi Secretary of State's Office, as duly authorized on behalf of Michael Watson, in his official capacity as Secretary of State of Mississippi, hereby certify under penalty of perjury under the laws of the United States of America that the foregoing responses to interrogatories are true and correct to the best of my knowledge and information at the time of this declaration.

Executed this the 30th day of September, 2022.

KYLE KIRKPATRICK,
ASSISTANT SECRETARY OF STATE,
ELECTIONS DIVISION, MISSISSIPPI
SECRETARY OF STATE'S OFFICE

CERTIFICATE OF SERVICE

I, Rex M. Shannon III, Special Assistant Attorney General and attorney for the above-named State Defendants, do hereby certify that I have this date caused to be served, via e-mail, a true and correct copy of the above and foregoing to the following:

Ari J. Savitzky, Esq.
asavitzky@aclu.org

Bradley E. Heard, Esq.
bradley.heard@splcenter.org

Isaac M. Rethy, Esq.
irethy@stblaw.com

Jade O. Morgan, Esq.
jade.morgan@splcenter.org

Jonathan K. Youngwood, Esq.
jyoungwood@stblaw.com

Joshua Fiyenn Tom, Esq.
jtom@aclu-ms.org

Lakyn Celeste Collier, Esq.
lcollier@aclu-ms.org

Leslie Faith Jones, Esq.
leslie.jones@splcenter.org

Patricia Jia Yan, Esq.
pyan@aclu.org

Sophia Lin Lakin, Esq.
slakin@aclu.org

Vara Lyons, Esq.
vlyons@aclu-ms.org

ATTORNEYS FOR PLAINTIFFS

I do further hereby certify that I have this date caused to be served, via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

Joshua Fiyenn Tom, Esq.
ACLU of Mississippi
Post Office Box 2242
Jackson, Mississippi 39225

ATTORNEY FOR PLAINTIFFS

THIS the 3rd day of OCTOBER, 2022.

REX M. SHANNON III

Exhibit 5

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. — **CIVIL ACTION NO. 4:22-cv-00062-SA-JMV**

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**

RESPONSES OF DEFENDANT STATE BOARD OF ELECTION COMMISSIONERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES

COMES NOW Defendant State Board of Election Commissioners ("Defendant"), by and through counsel, and pursuant to FED. R. CIV. P. 33 hereby serves these its responses to Plaintiffs' first set of interrogatories, as follows:

OBJECTION

Defendant objects to Plaintiffs' "DEFINITIONS" and "INSTRUCTIONS AND RULES OF CONSTRUCTION" to the extent they seek to impose any obligation on Defendant beyond that imposed by the *Federal Rules of Civil Procedure*. Subject to and without waiving its objection, Defendant hereby responds to Plaintiffs' first set of interrogatories.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Describe your office's involvement, if any, in the 1987 Districting Plan, including but not limited to the formulation of the 1987 Districting Plan and the consideration of any alternative proposals for new Supreme Court districts.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as it fails to explain what is meant by "involvement." Defendant further objects to this interrogatory to the extent it is not reasonably limited in time, and further to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant would refer Plaintiffs to the Mississippi Attorney General USDOJ Preclearance File, Chapter 491, H.B. 552 (1987), a copy of which the defendants produced previously as Bates # DEF000001 – DEF000204, to the extent it may contain information responsive to this interrogatory. Defendant reserves the right to use and rely upon any and all information contained in any and all preclearance file materials produced in the course of discovery in this litigation, including but not limited to the testimony of any and all individuals identified in such records. No additional responsive information is available to Defendant.

INTERROGATORY NO. 2: Describe your office's involvement, if any, in any subsequent analysis of the Supreme Court Districts, including but not limited to any proposals to redraw or otherwise modify the Supreme Court Districts.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as it fails to explain what is meant by "involvement," "analysis" and/or "proposals." Defendant further objects to this interrogatory to the extent it is not reasonably limited in time, and

further to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant reserves the right to use and rely upon any and all information contained in any and all preclearance file materials produced in the course of discovery in this litigation, including but not limited to the testimony of any and all individuals identified in such records. No additional responsive information is available to Defendant.

INTERROGATORY NO. 3: Identify each person involved in any matter described in your responses to Interrogatories Nos. 1 and 2.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as it fails to explain what is meant by "involved in any matter." Defendant further objects to this interrogatory on the grounds that it is overly broad and not reasonably limited in time. Defendant further objects to this interrogatory to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant would refer Plaintiffs to the Mississippi Attorney General USDOJ Preclearance File, Chapter 491, H.B. 552 (1987), a copy of which the defendants produced previously as Bates # DEF000001 – DEF000204, to the extent it may contain the names of individuals who are or may be responsive to this interrogatory. Defendant reserves the right to use and rely upon any and all information contained in any and all preclearance file materials produced in the course of discovery in this litigation, including but not limited to the testimony of any and all individuals identified in such records. No additional responsive information is available to Defendant.

INTERROGATORY NO. 4: Describe your role in administering elections for the Mississippi Supreme Court and identify other government bodies, if any, that perform administrative functions in connection with Mississippi Supreme Court elections.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as it fails to explain what is meant by "administering elections," "government bodies," and/or "administrative functions." Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant would refer Plaintiffs to applicable sections of the Mississippi Code and/or the Mississippi Administrative Code, and specifically those sections pertaining to the State Board of Election Commissioners, for information that is or may be responsive to this interrogatory. Further responding, Defendant identifies the Mississippi Secretary of State's Office and the Circuit Clerks and county election commissioners of Mississippi's 82 counties as responsive to this interrogatory.

INTERROGATORY NO. 5: Identify and describe any State or public interest served by the use of three at-large voting districts for the election of Mississippi Supreme Court justices.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and not reasonably limited in scope, as it seeks to require Defendant to articulate, in an interrogatory response, any and all State or public interests served by the use of three at-large voting districts for the election of Mississippi Supreme Court justices. Defendant further objects to this interrogatory to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Defendant further objects that Mississippi does not elect Justices from the state at large, but rather from three separate three-Justice districts; because the complaint does not challenge that practice, the reasons supporting it

are irrelevant. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant states that three-Justice voting districts for the election of Mississippi Supreme Court justices foster independence on the Mississippi Supreme Court, in that they ensure that individual justices are not beholden to the interests of a small geographic area. By ensuring that justices run for election from relatively large geographic swaths of the state, a Mississippi Supreme Court justice can, in theory, render a decision that is unpopular in a given area in his or her three-Justice district without fear of retributive defeat in the next Supreme Court election. A given Mississippi Supreme Court justice might otherwise be averse to rendering unpopular decisions if elected using a single-member district consisting of a relatively small geographic area. The use of three three-Justice voting districts helps ensure that the Mississippi's elected Supreme Court is insulated as much as possible from political interference in its decision-making process. The use of the same three districts for the Mississippi Transportation Commission and the Mississippi Public Service Commission helps to minimize voter confusion. Defendant may also rely on any State or public interest identified in *Magnolia Bar Ass'n, Inc. v. Lee*, 793 F. Supp. 1386 (S.D. Miss. 1992). Defendant reserves the right to supplement this response as discovery continues.

INTERROGATORY NO. 6: Identify and describe any State or public interest served by the use of the three at-large voting districts, as currently drawn, for the election of Mississippi Supreme Court justices.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and not reasonably limited in scope, as it seeks to require Defendant to articulate, in an interrogatory response, any and all State or public interests served by the use of the three at-large voting districts, as currently drawn, for the election of Mississippi Supreme Court

justices. Defendant further objects to this interrogatory to the extent it is duplicative of Interrogatory No. 5, *supra*, and further to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant would refer Plaintiff to Defendant's response to Interrogatory No. 5, *supra*.

INTERROGATORY NO. 7: Identify any dates or deadlines occurring after the date of service of these interrogatories in calendar years 2022, 2023, and 2024 that are relevant to any Mississippi Supreme Court election that may occur in such calendar years, and describe the event or deadline corresponding to each such date.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as it fails to explain what "dates or deadlines" Plaintiffs deem to be "relevant to any Mississippi Supreme Court election" that may occur in the years specified. Defendant further objects to this interrogatory to the extent it calls for speculation regarding "any Mississippi Supreme Court election that may occur" in the three-year period about which inquiry is made. Defendant further objects to this interrogatory to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant states there will be no regularly-scheduled Mississippi Supreme Court elections in 2022 or 2023. The next regularly-scheduled elections for the Mississippi Supreme Court will occur in November 2024. A calendar of dates pertaining to that election is produced herewith consistent with Rule 33(d), *Federal Rules of Civil Procedure*.

INTERROGATORY NO. 8: Identify and describe any policies, procedures, and practices, whether formal or informal, followed in connection with gubernatorial appointments of justices to the Mississippi Supreme Court, including but not limited to any formal or informal criteria considered in connection with such appointments.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as it fails to explain what is meant by "policies, procedures, and practices, whether formal or informal." Defendant further objects to this interrogatory on the grounds that it is overly broad and not reasonably limited in scope or time. Defendant further objects to this interrogatory to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant states that it has no information responsive to this interrogatory.

INTERROGATORY NO. 9: Identify and describe any policies, procedures, and practices, whether formal or informal, followed in connection with the appointments of Justice Reuben Anderson in 1985, Justice Fred Banks Jr. in 1991, Justice James Graves Jr. in 2001, and Justice Leslie King in 2011.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as it fails to explain what is meant by "policies, procedures, and practices, whether formal or informal." Defendant further objects to this interrogatory on the grounds that it is overly broad and not reasonably limited in scope or time. Defendant further objects to this interrogatory to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal*

Rules of Civil Procedure. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant states that it has no information responsive to this interrogatory.

INTERROGATORY NO. 10: Identify each person who worked on, advised on, or otherwise been a part of [*sic*] the process for gubernatorial appointments of justices to the Mississippi Supreme Court.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as it fails to explain what is meant by "worked on, advised on, or otherwise been a part of." Defendant further objects to this interrogatory on the grounds that it is overly broad and not reasonably limited in scope or time. Defendant further objects to this interrogatory to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant states that it has no information responsive to this interrogatory.

INTERROGATORY NO. 11: Identify all persons involved in any evaluation, analysis, or study conducted on your behalf or at your discretion concerning voting patterns, habits, behaviors, or practices by race or ethnicity between 2000 and present.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as it fails to explain what is meant by "evaluation, analysis, or study conducted." Defendant further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and not reasonably limited in scope or time. Defendant further objects to this interrogatory to the extent it seeks discovery of information that is not relevant or proportional to

the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Because Defendant's members are sued in their respective official capacities, Defendant understands this interrogatory to refer only to an evaluation, analysis, or study conducted on Defendant's behalf in the official capacity of its members; to the extent Plaintiffs intend this interrogatory to have a broader scope, Defendant objects that such broader scope lacks relevance or proportionality. Subject to and without waiving its objections, and to the extent responsive to this interrogatory, Defendant expects to designate expert witnesses in the instant litigation, but no evaluation, analysis, or study has yet been conducted. No additional responsive information is available to Defendant.

INTERROGATORY NO. 12: Identify and describe any communications between you or any person in your office and any member of the state legislature concerning the Supreme Court Districts between 2015 and present.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as it fails to explain what is meant by "concerning the Supreme Court Districts." Defendant further objects to this interrogatory on the grounds that it is overly broad, sweeping, unduly burdensome, and not reasonably limited in scope or time. Defendant further objects to this interrogatory to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Defendant further objects to this interrogatory to the extent it seeks discovery of information that is protected by any privilege, including but not limited to the attorney-client privilege, the work product doctrine, and, to the extent applicable, legislative privilege. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant states that it is not aware of any such communications.

INTERROGATORY NO. 13: Describe your record retention policies.

RESPONSE: Defendant objects to this interrogatory to the extent it seeks discovery of information that is not relevant or proportional to the needs of the case, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Subject to and without waiving its objections, and as Defendant appreciates the intent of this interrogatory, Defendant refers Plaintiffs to the written record retention policy of the Mississippi Secretary of State's Office, a copy of which is produced herewith consistent with Rule 33(d), *Federal Rules of Civil Procedure*. The Mississippi Secretary of State's Office serves as the custodian of Defendant's records. Defendant has no separate record retention policy.

INTERROGATORY NO. 14: Identify each person involved in preparing responses to these Interrogatories, other than legal counsel.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, as is fails to explain what is meant by "person involved in preparing" responses. Defendant further objects to this interrogatory to the extent it seeks discovery of information that is not relevant, and therefore exceeds the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*. Subject to and without waiving its objection, and as Defendant appreciates the intent of this interrogatory, Defendant states that these interrogatory responses were prepared by defense counsel in consultation with the Mississippi Governor's Office, the Mississippi Attorney General's Office, and the Mississippi Secretary of State's Office.

THIS the 30th day of SEPTEMBER, 2022.

Respectfully submitted,

STATE BOARD OF ELECTION
COMMISSIONERS, DEFENDANT

AS TO INTERROGATORY RESPONSES:

By:

KYLE KIRKPATRICK,
ASSISTANT SECRETARY OF STATE,
ELECTIONS DIVISION, MISSISSIPPI
SECRETARY OF STATE'S OFFICE

AS TO OBJECTIONS:

By: LYNN FITCH, ATTORNEY GENERAL
STATE OF MISSISSIPPI

By:

REX M. SHANNON III (MSB #102974)
Special Assistant Attorney General

REX M. SHANNON III (MSB #102974)
GERALD L. KUCIA (MSB #8716)
LINDSAY THOMAS DOWDLE (MSB #102873)
STATE OF MISSISSIPPI
OFFICE OF THE ATTORNEY GENERAL
CIVIL LITIGATION DIVISION
Post Office Box 220
Jackson, Mississippi 39205-0220
Tel.: (601) 359-4184
Fax: (601) 359-2003
rex.shannon@ago.ms.gov
gerald.kucia@ago.ms.gov
lindsay.dowdle@ago.ms.gov

MICHAEL B. WALLACE (MSB #6904)
WISE CARTER CHILD & CARAWAY, P.A.
Post Office Box 651
Jackson, Mississippi 39205-0651
Tel.: (601) 968-5500
Fax: (601) 944-7738
mbw@wisecarter.com

ATTORNEYS FOR DEFENDANTS 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, AND MICHAEL WATSON, IN HIS OFFICIAL

CAPACITY AS SECRETARY OF STATE OF MISSISSIPPI

DECLARATION

Pursuant to 28 U.S.C. § 1746, I, Kyle Kirkpatrick, Assistant Secretary of State, Elections Division, Mississippi Secretary of State's Office, as duly authorized on behalf of the State Board of Election Commissioners, hereby certify under penalty of perjury under the laws of the United States of America that the foregoing responses to interrogatories are true and correct to the best of my knowledge and information at the time of this declaration.

Executed this the 30th day of September, 2022.

KYLE KIRKPATRICK,
ASSISTANT SECRETARY OF STATE,
ELECTIONS DIVISION, MISSISSIPPI
SECRETARY OF STATE'S OFFICE

CERTIFICATE OF SERVICE

I, Rex M. Shannon III, Special Assistant Attorney General and attorney for the above-named State Defendants, do hereby certify that I have this date caused to be served, via e-mail, a true and correct copy of the above and foregoing to the following:

Ari J. Savitzky, Esq.
asavitzky@aclu.org

Bradley E. Heard, Esq.
bradley.heard@splcenter.org

Isaac M. Rethy, Esq.
irethy@stblaw.com

Jade O. Morgan, Esq.
jade.morgan@splcenter.org

Jonathan K. Youngwood, Esq.
jyoungwood@stblaw.com

Joshua Fiyenn Tom, Esq.
jtom@aclu-ms.org

Lakyn Celeste Collier, Esq.
lcollier@aclu-ms.org

Leslie Faith Jones, Esq.
leslie.jones@splcenter.org

Patricia Jia Yan, Esq.
pyan@aclu.org

Sophia Lin Lakin, Esq.
slakin@aclu.org

Vara Lyons, Esq.
vlyons@aclu-ms.org

ATTORNEYS FOR PLAINTIFFS

I do further hereby certify that I have this date caused to be served, via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

Joshua Fiyenn Tom, Esq.
ACLU of Mississippi
Post Office Box 2242
Jackson, Mississippi 39225

ATTORNEY FOR PLAINTIFFS

THIS the 3rd day of OCTOBER, 2022.

REX M. SHANNON III

Exhibit 6

Simpson Thacher & Bartlett LLP

425 LEXINGTON AVENUE
NEW YORK, NY 10017-3954

TELEPHONE: +1-212-455-2000
FACSIMILE: +1-212-455-2502

Direct Dial Number
+1-212-455-3869

E-mail Address
irethy@stblaw.com

BY E-MAIL

October 7, 2022

Re: White v. SBEC, 4:22-cv-0062-SA-JPV

Rex M. Shannon, Esq.
Special Assistant Attorney General
Deputy Director, Civil Litigation Division
Mississippi Attorney General's Office
550 High Street, Suite 1100
Post Office Box 220
Jackson, Mississippi 39205-0220
Telephone: (601) 359-4184
rex.shannon@ago.ms.gov

Counsel:

We are writing regarding apparent deficiencies in Defendants' discovery responses, and to ask certain clarifying questions regarding those responses. We believe it would be most productive for Defendants to provide a written response early this coming week, so that we can then schedule a telephonic meet and confer for later in the week if needed.

Discovery of Prior Administrations

As a general matter, it appears that Defendants' responses to Plaintiffs' discovery requests are limited to the time in which the specific named defendant has served in his or her current official capacity. That limitation is not consistent with our requests, which seek information regarding Defendants, their agents and employees, and their predecessors. While Defendants may or may not have personal knowledge about events occurring in prior administrations, that does not mean Defendants do not have the obligation to make reasonable inquiries with respect to matters that predate their administrations. Please explain the basis for this position, or clarify your position if you believe we have misunderstood it.

Defendants' Interrogatory Responses

In your responses to **Interrogatories 2 and 3**, you state that Defendants have "not been involved" in any analysis of the Supreme Court districts after the current district lines were enacted in 1987. But the *McCray* and *Magnolia Bar* lawsuits, in which, as here, the Board, the Governor, the AG, and the SOS were defendants, were litigated in the years after 1987, and those cases almost necessarily involved analysis of the Supreme Court districts. And more recently (including in 2005 and 2016) there were legislative proposals to change the districts. Is your position that defendants' predecessors were not involved in any manner in any of those matters and/or that you can identify by name no persons (other than former Gov. Bill Allain) who were involved in those activities?

Interrogatory 4 asked you to "describe" Defendants' roles in administering Supreme Court elections. Your response generally seeks to refer us to "applicable sections of the Mississippi Code and/or the Mississippi Administrative Code." This response is insufficient. Please supplement to include a narrative description of the role of each Defendant with respect to the administration of Supreme Court elections.

Interrogatories 5 and 6 asked Defendants to identify state or public interests served by the use for the election of Supreme Court justices of (i) three at-large voting districts and (ii) the three at-large voting districts as currently drawn. As to any interest served by the districts as currently drawn, you state: "The use of the same three districts for the Mississippi Transportation Commission and the Mississippi Public Service Commission helps to minimize voter confusion." This appears to mean that voters would somehow be confused if these Commissions' election districts were not identical to the Supreme Court's election districts. We ask that you explain the basis for this assertion, given that, among other things, (i) the elections for positions on the referenced Commissions are held on odd-numbered years whereas Supreme Court elections are held on even-numbered years and (ii) there is no apparent connection between these offices or other factor that could reasonably cause "voter confusion." Please also let us know if any documents or other information exists that support this position.

Interrogatories 8, 9, and 10 concern formal or informal policies, procedures, or practices regarding appointment of Supreme Court justices. All defendants state they have no information except for the Governor, who states:

> [The Governor's] office does not have any written or unwritten policies or procedures addressing Supreme Court appointments. To date, Defendant has not made any such appointments, as no Supreme Court vacancies have occurred during Defendant's term in office. With regard to judicial appointments generally, Defendant states that a public announcement posted by The Mississippi Bar is typically utilized to solicit resumes from candidates interested in being considered for judicial vacancies. Resumes received are reviewed, and ultimately a decision is made regarding a given

appointment in a manner consistent with Miss. Code Ann. §§ 9-1-103, 23-15-849.

Please see the below questions regarding this response:

1. We understand that Mississippi used to have a Judicial Nominating Committee; that Gov. Fordice discontinued the Committee; and that Gov. Barbour reinstated it as the Judicial Appointments Advisory Committee (by Executive Order 914, which is here at pp. 196-97), which Gov. Bryant continued (by Executive Order 1384, here). Is Gov. Reeves continuing this Committee?

2. Does the Governor have any "practices" regarding Supreme Court appointments? In other words, was the omission of the term "practices" from your response intentional?

3. We are surprised by the Governor's assertion that he has no formal or informal policies or procedures regarding Supreme Court appointments because no appointment have yet been made. This suggests that in the event of a vacancy, the Governor has no contingency plan and would be starting from a blank slate in determining how a replacement Justice should be appointed, without any sense of how such a determination would be made or which criteria would be used. Is that in fact the Governor's position?

4. You cite the lack of appointments during the Governor's administration as the basis for your response that the Governor has no relevant formal or informal policies or procedures. This suggests a lack of continuity between the current administration and its predecessor, notwithstanding Gov. Reeves having served in that administration as Lt. Gov. between 2012-2020, and having taken public positions on Supreme Court candidacies during that time. Is it your position that (i) the Bryant administration's policies, procedures, and/or practices regarding Supreme Court appointments have no relevance in the current administration; (ii) the Bryant administration had no such policies, procedures, or practices; (iii) you are unable to locate any information regarding such matters; and/or (iv) we are not entitled to information regarding such matters?

5. Please explain whether the following statement applies to Supreme Court appointments, or is it specific to appointments other than to the Supreme Court: "With regard to judicial appointments generally, Defendant states that a public announcement posted by The Mississippi Bar is typically utilized to solicit resumes from candidates interested in being considered for judicial vacancies. Resumes received are reviewed, and ultimately a decision is made…" In addition, please supplement this response to address the following issues:

    a) Does the Mississippi Bar have discretion in whether to post such announcement, or is there a formal or informal requirement or arrangement pursuant to which the announcement is posted?

b) Who drafts and approves the public announcement?

c) How are resumes solicited, and by whom?

d) Who reviews the resumes?

e) Who makes the decision, and based on which criteria?

Also regarding **Interrogatory 10**, you have provided no names of any individuals, as we requested, but instead refer us to unspecified documents you have produced that "may" identify relevant individuals. Please supplement to identify such individuals by name, as this reference to unspecified documents does not provide a meaningful response. If you contend that providing the names of personnel involved in such matters in previous administrations is irrelevant or unduly burdensome, please substantiate those objections. In addition, please supplement your response to identify individuals who would be part of the process for gubernatorial appointments to the Supreme Court in the event of a vacancy during the current administration.

Regarding **Interrogatory 11**, we understand Defendants' position to be that no evaluation, analysis, or study on the referenced topic has been conducted by or on behalf of any of the Defendants' offices since 2000. Please advise as to whether this understanding is correct. To the extent Defendants are objecting to investigating whether such analyses, etc., have been conducted by their predecessors and are limiting their response to analyses, etc., that have been conducted during their specific administrations, please explain the basis for this objection.

Regarding **Interrogatory 12**, please confirm that (i) you have investigated whether relevant communications with legislators since 2015 exist and have not found any and (ii) notwithstanding your privilege objection, you are not withholding any responsive information based on any asserted privilege or other protection from disclosure. If you are withholding such information, please promptly provide a log substantiating those privilege assertions.

Regarding **Interrogatory 14**, Defendants do not identify any individuals involved in preparing their interrogatory responses. Please explain the basis for your contention that the identities of individuals (other than counsel) who provided information used by Defendants in their interrogatory responses is "not relevant." Indeed, across discovery in this action, Defendants have only identified a single individual by name—Kyle Kirkpatrick, who Defendants contend in their initial disclosures "may have discoverable information pertaining to election returns and related records maintained by the Mississippi Secretary of State's Office." Is it in fact Defendants' position that they know of no individuals other than Mr. Kirkpatrick who have knowledge relevant to the various positions taken by Defendants this matter (e.g., there is no individual, other than counsel, with knowledge relevant to Defendants' position that the current Supreme Court districts foster judicial independence and prevent voter confusion)?

Defendants' Referrals to MDAH

Many of Defendants' responses to Plaintiffs' discovery requests refer Plaintiffs to the MDAH. For instance, you stated in prior correspondence dated September 21:

> With the exception of documents already produced (Bates # DEF002881-DEF002903), the defendants do not have possession, custody, or control of documents or communications from prior gubernatorial administrations concerning Supreme Court appointments. Records from prior gubernatorial administrations, to the extent they were officially preserved, would be in the custody of the Mississippi Department of Archives and History ("MDAH").
>
> By way of example, when the Reeves Administration took office, records from the Bryant Administration had been transferred to the custody of MDAH. Consequently, the Reeves Administration does not have access to physical or electronic records from the Bryant Administration. You would need to contact MDAH to determine what materials exist and how they are stored.

First, can you clarify which records are transferred to MDAH at the conclusion of an administration? While we understand that certain records from personnel who leave office at the conclusion of an administration would be transferred to state archives, it seems unlikely that all materials created or received during a previous administration would be transferred to MDAH, such that the new administration would arrive at an empty office with no files. For instance, it would seem that emails and other materials created or received by career civil servants within Defendants' respective offices would remain in their files. Can you explain whether this is the case, and whether Defendants conducted a reasonable search of such files before concluding that no responsive information existed?

Second, in various interrogatory responses, Defendants state they "would refer Plaintiffs to the Mississippi Department of Archives and History for additional information that may be responsive to this interrogatory." *See* Responses to Interrogatories 8-10. In so stating, are Defendants asserting that they believe responsive documents exist at MDAH? If so, please describe such documents.

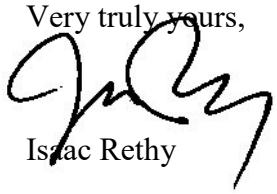
Third, while we do not concede that referral to MDAH appropriately discharges Defendants' discovery obligations, we understand that records from the Barbour and Bryant administrations are "restricted" due to possible confidentiality and/or privilege issues and require review, including potentially by attorneys from the Attorney General's office, before any disclosures may be made. Given the need to proceed expeditiously with discovery and the Attorney General's role in whatever process may need to occur prior to disclosure, we request your assistance in facilitating disclosure of nonprivileged information held as "restricted" by MDAH. Please advise as to whether Defendants will participate in joint

outreach to the MDAH Director in order to expedite whatever review is required in order to make these materials available to us.

* * *

Thank you for your attention to these matters. Our review is ongoing; the issues raised in this letter are not necessarily the only issues we may raise with respect to Defendants' discovery responses, and that a particular response or matter is not addressed in this letter does not reflect a concession that Defendants' responses are sufficient. Plaintiffs reserve all rights.

Very truly yours,



Isaac Rethy

Exhibit 7

Lynn Fitch
ATTORNEY GENERAL

CIVIL LITIGATION DIVISION

October 11, 2022

VIA E-MAIL ONLY
Isaac Rethy, Esq.
Simpson Thacher & Bartlett LLP
irethy@stblaw.com

RE: ***Dyamone White, et al. v. State Board of Election Commissioners, et al.*; in the United States District Court for the Northern District of Mississippi (Greenville Division); Civil Action No. 4:22-cv-00062-SA-JMV**

Dear Isaac:

We received your letter of October 7, 2022, regarding the above-referenced matter. Although your letter purports to request clarification regarding Defendants' interrogatory responses, it in fact seeks a great deal of information beyond the scope of the queries posited in Plaintiffs' interrogatories. In an effort to respond to your letter in good faith within the time frame you have requested, we would state the following:

1. Defendants have no obligation to assume the unreasonable burden of investigating the actions of prior administrations of state-wide elected officials on Plaintiffs' behalf. If you are aware of any controlling authority that you contend imposes such an obligation, please provide it.

2. This will confirm that we have not withheld any information in response to Defendants' respective responses to Interrogatory No. 12 on the basis of any privilege or otherwise.

3. Much of the additional information you have requested concerns the matter of gubernatorial appointments, generally, of Mississippi Supreme Court justices. Such information has no relevance to the adoption or maintenance of Mississippi's current Supreme Court districts and is beyond the scope of permissible discovery pursuant to Rule 26, *Federal Rules of Civil Procedure*.

4. We have confirmed with the Governor's Office that at the conclusion of Governor Bryant's term in office, all of the records of the Bryant Administration were boxed and transferred to the Mississippi Department of Archives and History ("MDAH"), such that the incoming Reeves Administration assumed occupancy of empty office suites devoid of any records or files from the outgoing Bryant Administration. While Defendants deny that such information is relevant or discoverable, on information and belief, one or more binders from the Bryant Administration containing information regarding judicial appointments were transferred to MDAH during the aforementioned transition.

5. You have generally requested the assistance of the Attorney General's Office in facilitating the disclosure of unspecified "restricted" records of the Bryant and Barbour Administrations that you contend are in the custody of MDAH. The Attorney General's Office is not in a position to commit its limited resources to assisting in a fishing expedition. If there are specific, relevant documents to which you seek access for purposes proportional to the needs of this litigation, please let us know, and the Attorney General's Office will consider your request.

6. Defendants otherwise stand on their respective objections and responses to Plaintiffs' interrogatories.

Very truly yours,

MISSISSIPPI ATTORNEY GENERAL'S OFFICE

Rex M. Shannon III
Special Assistant Attorney General
Deputy Director, Civil Litigation Division
Office: 601-359-4184
E-mail: rex.shannon@ago.ms.gov

cc: Ari J. Savitzky, Esq. (via e-mail only)
Bradley E. Heard, Esq. (via e-mail only)
Joshua F. Tom, Esq. (via e-mail only)
Jade O. Morgan, Esq. (via e-mail only)
Jonathan K. Youngwood, Esq. (via e-mail only)
Lakyn Celeste Collier, Esq. (via e-mail only)

Leslie Faith Jones, Esq. (via e-mail only)
Patricia Jia Yan, Esq. (via e-mail only)
Sophia Lin Lakin, Esq. (via e-mail only)
Vara Lyons, Esq. (via e-mail only)

Exhibit 8

FORM 4 (ND/SD MISS. DEC. 2011)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

DYAMONE WHITE et al.,

Plaintiff

v.

CIVIL ACTION
NO. 4:22-cv-00062-SA-JMV

STATE BOARD OF ELECTION COMMISSIONERS, et al.

Defendant

GOOD FAITH CERTIFICATE

All counsel certify that they have conferred in good faith to resolve the issues in question and that it is necessary to file the following motion:

Motion to Overrule Defendants' Objections and to Compel Discovery.

Counsel further certify that:

✔ as appropriate:

☐ 1. The motion is unopposed by all parties.

☐ 2. The motion is unopposed by:

☑ 3. The motion is opposed by: All Defendants

☑ 4. The parties agree that replies and rebuttals to the motion will be submitted to the magistrate judge in accordance with the time limitations stated in L.U.Civ.P. 7(b)(4).

FORM 4 (ND/SD MISS. DEC. 2011)

This the 25 day of October 2022

Signature of Plaintiff's Attorney

Joshua Tom, Miss Bar No.105392

Typed Name and Bar Number

Signature of Defendant's Attorney

Rex M. Shannon III, MSB #102974

Typed Name and Bar Number