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' RESPONSE IN OPPOSITION TO MOTION OF DEFENDANTS BRYANT AND HOSEMANN FOR STAY OF FINAL JUDGMENT PENDING APPEAL

The Governor and Secretary of State move "for a stay of this Court's final judgment [Dkt. # 76], entered February 26, 2019, and all injunctive relief merged therein." [Dkt. # 80 at 1]. In other words, they seek a stay of everything the Court has ordered, including its order that the State stop conducting elections pursuant to the racially discriminatory configuration of Senate District 22. For the reasons already stated in Plaintiffs' opposition to the prior motion for stay [dkt. 65], and in this Court's order denying that stay [dkt. 75], this latest motion for a stay should also be denied. There is no likelihood that the appeal by these Defendants will be successful, there is no irreparable harm, and the equities continue to weigh against a stay.

Defendants have not requested any alternative relief. For example, while they complain that the Court "refus[ed] to give the Senate a reasonable time to act," [dkt. # 80 at 2], they do not move in the alternative for the Court to stay or modify its order on remedy so that the Senate will have even more time than it already has had to adopt a remedial plan.

As indicated by the Court's order issued last night [dkt. 85], the legislature has had ample time to adopt a remedial plan yet has done nothing. Despite this Court's announcement February 13 of its finding of a Section 2 violation, the legislative leadership said nothing until February 26 when, in response to a further inquiry from this Court, it stated that it wished to undertake its duty *if* the motions for stay were denied. This is somewhat ironic. The Governor and the Secretary of State have proclaimed there is no time to implement a remedy. But the legislative leadership obviously believes there is enough time to await a decision on the stay motions and then adopt and implement a plan.

Nothing has prevented the legislature from adopting a remedy. (It could have done so contingent upon the denial of a stay). Indeed, it still could do so and depending on the timing, Federal Rule of Civil Procedure 59 authorizes the filing of a motion to alter or amend the judgment in light of the adoption of a plan and the Court could then consider all of the relevant factors.

Of course, time is important, as the Defendants have frequently emphasized. With the qualifying deadline approaching, the Court was justified in moving promptly when the legislature took no action until 13 days had passed and then said simply that it would not do anything until there was a ruling on the stay motions.

Regardless of whether the legislature would consider the residence of the Republican candidates in any plan that it chooses to draw, this Court is not required to do so. Neither Plaintiffs' counsel nor the expert who drew Plaintiffs' plans were aware of the residences of the people who ended up qualifying in the Republican primary and that had nothing to do with the configuration of the plans submitted by Plaintiffs.

The Governor and Secretary of State say that "[n]othing in the record remotely suggests that any resident of redrawn District 22 not already planning to run against Plaintiff Joseph Thomas will have time to organize and finance a campaign between now and the new deadline of March 15, 2019." [Dkt. 80 at 2]. Apart from the fact that many candidates organize and finance their campaigns after they qualify, anyone interested in the potential lines of this district could easily have obtained copies of the potential plans put forward by Plaintiffs so that they could be in a position to decide what to do once a plan was adopted. Indeed, the plan adopted by the Court was disclosed to Defendants in early December. Of course, the legislature could have adopted a different remedial plan immediately after the Court's February 13 announcement and set the qualifying deadline whenever it believed appropriate (with the new plan contingent upon the denial of a stay).

With respect to the Court's question about its authority after a notice of appeal is filed, Plaintiffs believe the Court has jurisdiction to issue a stay pending appeal even after the filing of a notice of appeal. *See* Fed. R. App. Proc. 8; Fed. R. Civ. Proc. 62. Plaintiffs also believe the Court has jurisdiction to consider a motion to alter or amend the judgment under Fed. R. Civ. Proc. 59 even after the filing of a notice of appeal. *See* Fed. R. App. Proc. 4(a)(4)(B)(i).

March 1, 2019,

Respectfully submitted,

s/ Robert B. McDuff

ROBERT B. MCDUFF, MSB 2532
767 North Congress Street
Jackson, MS 39202
(601) 969-0802
rbm@mcdufflaw.com

ELLIS TURNAGE, MSB 8131
TURNAGE LAW OFFICE
108 N. Pearman Ave
Cleveland, MS 38732
(662) 843-2811
eturnage@etlawms.com

PETER KRAUS
CHARLES SIEGEL
CAITLYN SILHAN
WATERS KRAUS
3141 Hood Street, Suite 700
Dallas, TX 75219
(214) 357-6244
pkraus@waterskraus.com
csiegel@waterskraus.com
csilhan@waterskraus.com
Admitted Pro Hac Vice

BETH L. ORLANSKY, MSB 3938
MISSISSIPPI CENTER FOR JUSTICE
P.O. Box 1023
Jackson, MS 39205-1023
(601) 352-2269
borlansky@mscenterforjustice.org

KRISTEN CLARKE
JON GREENBAUM
EZRA D. ROSENBERG
ARUSHA GORDON
POOJA CHAUDHURI
LAWYERS'COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Ave., NW, Suite 400
Washington, D.C. 20005
(202) 662-8600
erosenberg@lawyerscommittee.org
agordon@lawyerscommittee.org
Admitted Pro Hac Vice

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 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