

**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.

MOTION FOR EXPEDITED SCHEDULE

Introduction

COME NOW the Plaintiffs and move for an expedited schedule in this redistricting case so that, if they prevail, a new redistricting plan that cures the racial vote dilution present in Mississippi State Senate District 22 can be implemented in time for the 2019 party primary on August 6, 2019 and the general election on November 5, 2019.¹

As explained in the amended complaint (doc. 9 at 1-2), this is a challenge under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 (“Section 2”), to the boundary lines of District 22, which dilute African-American voting strength and deprive African-American voters of an equal opportunity to elect candidates of their choice. That district was first utilized in the 2015 legislative elections and will be used again in the 2019 legislative elections unless enjoined by this Court. Absent such an injunction, the violation of Section 2 of the Voting Rights Act will be perpetuated until the subsequent election in 2023. The district can easily be redrawn to cure the

¹ This case was filed on July 9, 2018, well over a year prior to the primary election. The complaint was amended and Defendants answered on August 8, 2018. Counsel for the parties then discussed the possibility of jointly proposing a schedule to the Court but were unable to reach agreement.

Section 2 violation by modifying it and one or two adjacent districts. No full-scale redistricting plan will be required. The Plaintiffs seek declaratory and injunctive relief so that the 2019 election from State Senate District 22 can be held from a plan that complies with the Voting Rights Act.

Scheduling Factors and Plaintiffs' Proposed Expedited Schedule

The relevant dates are as follows:

Qualifying deadline for 2019 legislative elections: March 1, 2019

First Primary for 2019 legislative elections: August 6, 2019

Second Primary for 2019 legislative elections: August 27, 2019

General Election for 2019 legislative elections: November 5, 2019

2019 legislative session: January 8 - April 7, 2019

When a redistricting plan is found to be in violation of the Voting Rights Act or the Constitution, the general principle is that the jurisdiction is given the first opportunity to adopt a remedial plan that cures the violation. Only if the jurisdiction fails to do so should the court impose a court-ordered plan. *See, Mississippi State Chapter, Operation Push v. Mabus*, 932 F.2d 400, 406 (5th Cir. 1991) (“In the reapportionment cases, courts clearly defer to the legislature in the first instance to undertake remedies for violations of § 2. . . . Judicial authority to fashion a plan of reapportionment arises only after the state legislature is given an opportunity to enact a constitutionally acceptable plan and does not do so.”) (citations omitted).

Assuming the State of Mississippi wants the opportunity to develop and adopt its own remedial plan in the event of a finding of liability, the Court could set a schedule which would allow for a decision on liability prior to or early in the upcoming legislative session, which lasts from January 8 to April 7, 2019. The legislature would then have the opportunity to adopt a

new plan prior to the March 1, 2019 qualifying deadline. It also would have the option of adopting a new plan and enacting legislation to postpone the qualifying deadline for this year's election. If the legislature fails to adopt a lawful redistricting plan in a timely manner, this Court will then have the authority to adopt a new redistricting plan that cures any violation with respect to District 22. As mentioned previously, the violation that exists in District 22 can easily be cured by redrawing it and either one or two adjacent districts. The remedial process will not be complicated or time-consuming.²

Accordingly, the Plaintiffs propose and move for the following expedited schedule:

September 15, 2018 --- initial disclosures due

September 20, 2018 --- Plaintiffs provide list of elections to be analyzed for purposes of racial bloc voting expert report

September 30, 2018 --- Plaintiffs' expert disclosures due

October 20, 2018 --- Defendants' expert disclosures due

October 21-31, 2018 --- expert depositions

October 31, 2018 --- discovery deadline

Contingent upon the Court's schedule, the Plaintiffs suggest a trial date in November or December of 2018 in order to give the Court an opportunity to issue a decision on liability early in the legislative session. They estimate the trial will last three days.

² If necessary, this Court can postpone the qualifying deadline. Although the qualifying deadline should be maintained if possible, *see Smith v. Clark*, 189 F.Supp.2d 529, 535 (S.D. Miss. 2002) (three-judge court), this Court has the discretion to postpone if necessary to implement a lawful remedy. In *Seamon v. Upham*, 536 F. Supp. 931, 936-938 (E.D. Tex. 1982) (three-judge court), the district court postponed the qualifying deadline twice in order to implement a remedial election plan. The Supreme Court subsequently vacated the remedial plan on the merits, but nevertheless gave the district court the option on remand of moving forward under that remedial plan and schedule (including the postponed qualifying deadlines) in light of the exigencies posed by the upcoming election. 456 U.S. 37, 44 (1982).

The Nature of the Case Lends Itself to an Expedited Schedule

As explained in the amended complaint (doc. 9 at 4-7), the State of Mississippi is at least 35% African-American in voting age population. However, only 25% of the members of the Mississippi Senate --- 13 of 52 --- are African-American. In one of the State Senate districts, District 22, African-American voters have been unable to elect candidates of their choice because of white bloc voting. African-Americans make up a very slim majority of the voting age population (50.8 percent) of District 22, but it is what the Supreme Court has called a “majority [that] lack[s] real electoral opportunity.” *LULAC v. Perry*, 548 U.S. 399, 428 (2006). The lack of opportunity is the result of white bloc voting and lower African-American turnout that are vestiges of the historical discrimination and extreme socio-economic disparities that have been inflicted upon African-Americans over a long period of time.

Senate District 22 is located in the western part of the state and stretches across parts of six counties: Bolivar, Humphreys, Madison, Sharkey, Washington, and Yazoo. Only Sharkey County is entirely in District 22. The district is one of largest in the state: it stretches over 100 miles from northwest to southeast, from the heart of the Mississippi Delta to Madison County’s northern suburbs of Jackson. Only one other Senate district is longer (the 38th district).

District 22 both contains some very poor African-American areas, but also some very wealthy white areas in the southern portion of Madison County. The addition of those predominantly white areas from Madison County helps to limit the district’s black voting age population to the present level of 50.8%, which combines with white bloc voting and lower African-American turnout to dilute African-American voting strength in the district.

A white Republican, Eugene Clark, has represented the district for the past 15 years, having been elected four times. He has been elected each time as the result of white bloc voting while the vast majority of African-American voters has always supported his opponent. In these elections, African-American residents of District 22 consistently have lower participation rates than the District's white residents.

In 2003, Clark defeated the next top vote getter, Mala Brooks, a black Democrat, by 9,004 votes (55.7%) to 5,288 (32.7%), while a black independent, Mark Crawford, received 1870 votes (11.6%). In 2007, Clark defeated Sandra Jaribu Hill, a black Democrat, by 7,266 votes (58.7%) to 5,116 (41.3%). In 2011, Clark beat George Hollowell, a white Democrat, by 7,033 votes (53.9%) to 6,021 (46.1%). In 2015, Clark beat Joseph Thomas, a black Democrat, by 8,149 votes (53.8%) to 6,985 (46.2%). African-American voters in District 22 are politically cohesive, having voted overwhelmingly for a single candidate of choice over other candidates in recent elections.

Past elections in Mississippi, particularly in District 22 and its surrounding area, have been marked by a clear pattern of racially polarized voting. As demonstrated by the election results, the consistent patterns of bloc voting, and the turnout differentials, District 22 as currently configured does not give African-American voters an equal opportunity to elect candidates of their choice. Although African-American voters are politically cohesive, bloc voting by white citizens in District 22 consistently defeats the candidates preferred by African-Americans in these elections.

If District 22 had a significantly increased black voting age population, African-American voters would have an equal opportunity to elect candidates of their choice. The African-American population in District 22 and adjacent areas is such that District 22 could be

redrawn with a black voting age population of approximately 60% rather than the existing 50.8%. Such a district could be redrawn with changes only to one or two adjacent districts so that the vast majority of Mississippi's senate redistricting plan would remain unaltered. The resulting districts would be more compact than the current redistricting plan. This alteration would cure the Section 2 violation in District 22 and would not create Voting Rights Act violations in any other districts.

As indicated by this discussion of the relevant allegations, the primary evidence in redistricting cases such as this comes from experts who present statistical evidence on voting patterns and who provide alternative redistricting plans in order to address the key factors under *Thornburg v. Gingles*, 478 U.S. 30 (1986). Those are 1) whether the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district, 2) whether the minority group is politically cohesive, and 3) whether the white majority votes sufficiently as a bloc to cause it usually to defeat the minority's preferred candidate. *Id.* at 48-51. While there are additional factors that are relevant under a Section 2 analysis, "it will be only the very unusual case in which the plaintiffs can establish the existence of the three Gingles factors but still have failed to establish a violation of § 2 under the totality of circumstances." *Clark v. Calhoun Cty., Miss.*, 21 F.3d 92, 97 (5th Cir. 1994).

Most of the underlying facts relevant to this case are matters of record that are undisputed, including the lines of the districts and the election results. Any disputes will center on what those facts mean for purposes of Section 2 of the Voting Rights Act. Counsel for both the Plaintiffs and the Defendants are very experienced in redistricting matters and will be able to prepare for trial and present the case to the Court in an efficient manner. An expedited schedule will not pose a hardship.

Conclusion

For the foregoing reasons, the Plaintiffs move for an expedited schedule in this case that will allow for a remedy to be implemented in time for the 2019 State Senate elections.

August 30, 2018

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 30th, 2018 I electronically filed a copy of the Motion for Expedited Schedule using the ECF system which sent notification of such filing to all counsel of record.

s/Robert B. McDuff