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

JOSEPH THOMAS; VERNON AYERS; and MELVIN LAWSON — **PLAINTIFFS**

v. — **CIVIL ACTION NO. 3:18-cv-441-CWR-FKB**

PHIL BRYANT, Governor of the State of Mississippi; DELBERT HOSEMANN, Secretary of State of the State of Mississippi; and JIM HOOD, Attorney General of the State of Mississippi, all in their official capacities of their own offices and in their official capacities as members of the State Board of Election Commissioners — **DEFENDANTS**

RESPONSE IN OPPOSITION TO
MOTION FOR EXPEDITED SCHEDULE

Defendants Governor Phil Bryant, Secretary of State Delbert Hosemann and Attorney General Jim Hood, in their official capacities of their respective offices and in their official capacities as members of the State Board of Election Commissioners ("Defendants"), oppose the Plaintiffs' Motion for Expedited Schedule [doc. #17] and would show the Court the following:

1. On September 14, 2012, the United States Department of Justice precleared the redistricting plans for the Mississippi Senate (the "2012 Senate Plan") and Mississippi House of Representatives pursuant to Section 5 of the Voting Rights Act of 1965, then in effect.[1] The 2012 Senate Plan included State Senate District 22, which is the subject of the underlying action. Yet, nearly six years later, after one election cycle utilizing the 2012 Senate Plan and on the eve of

[1] The 2012 Senate Plan was enacted by Joint Resolution No. 201 of the Mississippi Legislature on May 4, 2012. *See* J.R. No. 201, 2012 Reg. Sess., pp. 17-18 (Miss. 2012) ("This resolution shall take effect and be in force from and after the date it is finally effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.").

another before the decennial statewide redistricting in 2020, Plaintiffs only now file their suit and the corresponding motion to expedite.

2. Defendants should not be forced into a compact and expedited trial schedule on an expert-intensive and complex legal issue solely because Plaintiffs waited six years to bring their suit. The relief Plaintiffs seek is a creature of their own making. Their voluntary and inexcusable delay and inaction should not be to the detriment of Defendants and affected voters, candidates, political parties and election officials—especially when this action should be dismissed. As provided in Defendants' pending Motion for Summary Judgment [doc. #19] and corresponding Memorandum [doc. #20], each of which is fully incorporated by reference herein, Plaintiffs' claim and requested injunctive relief should be dismissed as barred by the applicable statute of limitations, the doctrine of laches and for suing the wrong parties. *See Wilson v. Garcia*, 471 U.S. 261, 266-67 (1985) (courts must "fill in the gap" by utilizing applicable state statute of limitations when no express federal limitations period exists); *Tucker v. Hosemann*, 2010 WL 4384223, at *4 (N.D. Miss. Oct. 28, 2010) (doctrine of laches applies "when plaintiffs (1) delay in asserting a right or claim; (2) the delay was not excusable; and (3) there was undue prejudice to the party against whom the claim was asserted."); *see also Common Cause v. Rucho*, No. 1:16-CV-1026, No. 1:16-CV-1164, 2018 WL 4214331, *1 (M.D. N.C. Sept. 4, 2018) (finding "insufficient time for this Court to approve a new districting plan" and that imposing a new schedule for North Carolina's congressional elections "would, at this late juncture, unduly interfere with the State's electoral machinery and likely confuse voters and depress turnout.").

3. Furthermore, Plaintiffs' contention that an expedited schedule would afford this Court the opportunity to move the candidate qualifying period, if necessary, is belied by the

reasoning of the court in *Smith v. Clark*, 189 F. Supp. 2d 529 (S.D. Miss. 2002), cited by the Plaintiffs in their motion. In that case, the Court held:

> [W]e are convinced that a postponement of that [qualifying] deadline would likely create confusion, misapprehension and burdens for the voters, for the political parties, and for the candidates. As we said in our order, many voters want to participate in the election process to a greater extent than mere voting. They want to know the candidates personally, to select their choice, to give money to their selection, and to organize the people in their precincts or counties in the campaign for their choice. Given that all previous districts are being cross-mixed by the loss of one congressional representative, resolving these new problems will take all the pre-primary time that the present statute allows. If we delay the establishment of election districts and advance qualifying dates, such voters who want to become fully involved in the process will not timely know in which district they are going to be placed, and thus will not timely know where and with whom to become involved. The same situation will exist for the candidates. Postponing the election schedule means that the candidates and political parties would encounter campaign and election burdens—that is, significant time constraints on getting acquainted with new voters, establishing organizations in new election districts and the multiple new precincts and counties therein, raising campaign funds within the new districts, developing strategies for particular geographic areas, etc. …
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> *In sum, we find that postponement of the qualifying deadline would be damaging to the rights of the voters, the candidates and the political parties, and would contravene established state policy that should be respected.* We therefore decline to order postponement of the deadline in order to await a preclearance decision, especially when we have no way of determining if and when preclearance will occur.

Smith v. Clark, 189 F. Supp. 2d 529, 535–36 (S.D. Miss. 2002) (emphasis added); *see also Martin v. Mabus*, 700 F. Supp. 327, 343- 344 (S. D. Miss. 1988) (declining to set compressed schedule for judicial elections after finding Section 2 violation). As recognized by the *Smith* Court, moving the qualifying deadline would result in voter confusion and place an unnecessary burden on political parties, candidates and election officials. This further solidifies the basis for dismissal under the doctrine of laches as set forth in Defendants' summary judgment motion and accompanying memorandum and, therefore, supports denial of the instant motion to expedite.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that this Court deny Plaintiffs' motion to expedite as this case should be dismissed as set forth in Defendants' pending motion for summary judgment, and that this Court grant such other or further relief as may be necessary.

RESPECTFULLY SUBMITTED, this the 7th day of September, 2018.

Governor Phil Bryant, Secretary of State Delbert Hosemann, and Attorney General Jim Hood in their official capacities of their respective offices and in their official capacities as members of the State Board of Election Commissioners

BY: */s/ Tommie S. Cardin*

TOMMIE S. CARDIN (MB # 5863)
CHARLES E. GRIFFIN (MB #5015)
BENJAMIN M. WATSON (MB # 100078)
B. PARKER BERRY (MB # 104251)

ITS ATTORNEYS

OF COUNSEL:

BUTLER SNOW LLP
Suite 1400
1020 Highland Colony Park
Ridgeland, MS 39157
Post Office Box 6010
Ridgeland, MS 39158-6010
Tel: (601) 985-4570
Fax: (601) 985-4500
E-mail: tommie.cardin@butlersnow.com
E-mail: charles.griffin@butlersnow.com
E-mail: ben.watson@butlersnow.com
E-mail: parker.berry@butlersnow.com

CERTIFICATE OF SERVICE

I, Tommie S. Cardin, hereby certify that on this day I caused the foregoing to be electronically filed with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

SO CERTIFIED this, the 7th day of September, 2018.

/s/ Tommie S. Cardin
TOMMIE S. CARDIN