

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

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

PLAINTIFFS

v.

NO. 3:18-cv-00441-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 the official capacities
of their own offices and in their official
capacities as members of the State Board
of Election Commissioners**

DEFENDANTS

**MOTION OF DEFENDANTS PHIL BRYANT AND DELBERT HOSEMANN
FOR STAY OF FINAL JUDGMENT PENDING APPEAL**

COME NOW Governor Phil Bryant and Secretary of State Delbert Hosemann, two of the defendants herein, and respectfully move this Court, pursuant to Fed. R. Civ. P. 62(c)(1), for a stay of this Court's final judgment [Dkt. # 76], entered February 26, 2019, and all injunctive relief merged therein, pending resolution of their appeal, and would show unto the Court in support thereof the following:

1. Governor Bryant and Secretary of State Hosemann timely filed their notice of appeal on February 27, 2019. [Dkt. # 78].

2. In their memorandum in opposition to plaintiffs' motion to extend qualifying deadline in two Senate districts, filed on February 26, 2019, appellants advised this Court of their desire to exercise their "right to be heard on any remedy this Court may order." [Dkt. # 72 at 2]. However, because this Court entered its injunctive order [Dkt. # 74] and final judgment [Dkt. # 76] without a hearing, appellants had no opportunity to present evidence relevant to this Court's

exercise of its equitable powers.

3. As plaintiffs acknowledge, this Court had been advised that plaintiff Joseph Thomas has qualified to run as a Democrat in District 22 and that at least one person has qualified to run in District 22 as a Republican. [Dkt. # 66 at 2]. Attached hereto as Exhibit 1 is an affidavit of the Chairman of the Executive Committee of the Mississippi Republican Party. Two persons have qualified as candidates in District 22: John Hayes Dent, Jr., of the Valley Precinct in Yazoo County, and Gary Dwayne Self of the Mount Hope Missionary Baptist Church Precinct in Madison County. William Briggs Hopson of the Beechwood Precinct in Warren County has filed to run in District 23.

4. This Court's injunctive order transfers all Madison County precincts into District 23 and also moves the Valley Precinct of Yazoo County into District 23, with the result that no person has qualified to run as a Republican in District 22 as redrawn by this Court. Notwithstanding this Court's prediction that "the District 23 incumbent is favored to win under any redrawn map and may even run unopposed" [Dkt. # 75 at 4], this Court has now moved into District 23 two persons who have already registered their desire to run for the Senate, although they will have to qualify again should they wish to run in the redrawn District 23.

5. The effect of the remedy granted to plaintiff Joseph Thomas by this Court at his request is, at least for the time being, to eliminate all of his Republican opposition in District 22 as redrawn by this Court. While the Court "sees a small-bore remedy and months of time in which to implement it" [Dkt. # 75 at 7], nothing 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. To uphold such a narrowly-targeted "one-count suit identifying one problem" [Dkt. # 75 at 4] in the

absence of injured and unrepresented parties violates basic principles of equity.

6. The order and final judgment of February 26, 2019, also disregarded appellants' report that "the Senate desires the opportunity to enact a new redistricting plan redrawing Senate District 22." [Dkt. # 72 at 3]. The Court gave no explanation of its unwillingness to grant the Senate that opportunity. This Court's refusal to give the Senate a reasonable time to act violates principles of legislative deference established in *Upham v. Seamon*, 465 U.S. 37 (1982), and *League of United Latin American Citizens v. Clements*, 986 F.2d 728, 814-15 (5th Cir. 1993).

7. Because the basis for this motion has been succinctly stated herein, appellants ask leave not to file a separate memorandum in its support.

WHEREFORE, PREMISES CONSIDERED, appellants respectfully move this Court for a stay of its final judgment and all injunctive relief merged therein, pending resolution of their appeal.

This the 28th day of February, 2019.

Respectfully submitted,

s/ Michael B. Wallace

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ATTORNEYS FOR ALL DEFENDANTS

CERTIFICATE OF SERVICE

I, Michael B. Wallace, hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification to all counsel of record.

This the 28th day of February, 2019.

s/ Michael B. Wallace _____
Michael B. Wallace