

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

JOSEPH THOMAS, et al.

PLAINTIFFS

V.

CAUSE NO. 3:18-CV-441-CWR-FKB

PHIL BRYANT, et al.

DEFENDANTS

ORDER

This afternoon, two of the three defendants filed a second motion to stay pending appeal.¹ They contend that the remedy ordered by the Court, Plan 1, will prejudice them because the two Republicans who filed to run for Senate District 22 now find themselves in District 23.² The movants have attached a February 27, 2019 affidavit from the Chairman of the Mississippi Republican Party.

It is not clear why this information is being presented for the first time on February 28. The affidavit says that Hayes Dent, the better-known of the two Republicans to qualify, filed his candidacy papers more than a month ago, on January 22. The defendants could have raised any concerns with his residency during the trial on February 6 and 7, during the parties' telephone conference with the Court on February 21, or in any of their numerous letters and filings since then. Why they did not is baffling.³

It also is surprising that the movants now claim an interest in remedies. The February 21 teleconference—which Secretary Hosemann personally joined—explicitly covered whether the parties sought additional hearings and whether the defendants would be submitting their own

¹ The other defendant, the State's chief legal officer, remains on the sidelines.

² The movants assert that these individuals will have to file their qualification papers again.

³ Incumbent District 23 Senator Briggs Hopson arrived at the trial just after it concluded. Mr. Dent never appeared.

Plan. The parties convinced the Court that no further hearings were necessary.⁴ The defendants said they would confer to be sure, then made no request at all. The lack of urgency was apparent.

The resulting impression is that the movants sought to raise these new issues only when their first motion for stay pending appeal was denied. Indeed, movants' counsel advised the Court that the Legislature would take up the Court's suggestion to redraw District 22 *only if* the motions for stay were denied here and in the Fifth Circuit. With the impending qualification deadline, and because the Legislature had not redrawn the district or announced that it would take up the matter, the Court felt compelled to move forward with a remedy. Docket No. 74.

There are additional issues that warrant discussion at a hearing. Most importantly, it is not clear that this Court has jurisdiction given the two Notices of Appeal that have already been filed. If jurisdiction is proper, the parties should address whether the additional evidence can be considered, since it is not "newly discovered" and, for that matter, comes from a non-party that has not intervened in this litigation.

A final observation may be worth mentioning. In reviewing the evidence in this case, the Court saw no significant difference between illustrative Plans 1 and 2.⁵ If Plan 2 would better protect the movants' partisan interests, assuming that is something they can assert in this litigation, then by all means the parties should see if some sort of compromise can be reached. As in every case over which this Court presides, the parties are encouraged to seek an amicable resolution.

⁴ That teleconference followed the Court's ruling that it would "decline to order any specific relief while the Mississippi Legislature considers whether to redraw the District and extend the candidate qualification deadline." Docket No. 61.

⁵ Plan 3 was the least desirable option, in the Court's view, because it would have affected an additional Senate District and impacted more counties, precincts, and voters.

The plaintiffs shall respond to the pending motion by close of business tomorrow, March 1, 2019. A hearing will be held on Monday, March 4, 2019 at 9:00 A.M.

SO ORDERED, this the 28th day of February, 2019.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE