

No. 19-60133

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**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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JOSEPH THOMAS; VERNON AYERS; MELVIN LAWSON,

*Plaintiffs – Appellees*

v.

PHIL BRYANT, GOVERNOR OF THE STATE OF MISSISSIPPI; DELBERT HOSEMAN, SECRETARY OF STATE OF THE STATE OF MISSISSIPPI; 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 ELECTIONS COMMISSIONERS,

*Defendants – Appellants*

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On Appeal from the United States District Court for the Southern District of Mississippi; USDC No. 3:18-cv-00441-CWR-FKB

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**MOTION FOR EXPEDITED INITIAL APPEAL *EN BANC***

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*Counsel for Appellants*

## **CERTIFICATE OF INTERESTED PARTIES**

The undersigned counsel of record for Appellants Governor Phil Bryant and Secretary of State Delbert Hosemann certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

### **Plaintiffs-Appellees:**

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3. Melvin Lawson

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**Defendants-Appellants**

1. Phil Bryant, Governor of the State Of Mississippi.
2. Delbert Hosemann, Secretary of State of the State Of Mississippi.
3. Jim Hood, Attorney General of the State of Mississippi.

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I hereby certify that to the best of my knowledge and belief, these are the only persons having an interest in the outcome of this appeal.

*s/ Tommie S. Cardin*  
\_\_\_\_\_  
TOMMIE S. CARDIN

Governor Phil Bryant and Secretary of State Delbert Hosemann, in their official capacities of their own offices and as members of the State Board of Election Commissioners (“Appellants”) move this Court, pursuant to Fed. R. App. P. 27, 35(c), and 5th Cir. R. 27.2.8, to expedite their appeal and to grant an initial hearing *en banc* on or before the Court’s scheduled *en banc* session on May 14, 2019.<sup>1</sup> In support of their motion, they would show the following:

1. This is an appeal from an Order and Final Judgment issued by the district court dated February 26, 2019, which redrew two Mississippi State Senate districts. A divided panel of this Court on March 22, 2019 denied a stay pending appeal but granted a stay until April 3, 2019 in order to allow the Mississippi Legislature an opportunity to redraw the districts in light of the district court’s findings. *Thomas v. Bryant*, 2019 WL 1306304 (5th Cir. March 22, 2019). On March 27, 2019, the legislature adopted a new plan redrawing the challenged district and one other. The legislation adopting the new plan states that it shall stand repealed and the original plan adopted by the legislature in 2012 shall be effective if Appellants are successful in their appeal.

2. Through this appeal, Appellants seek reinstatement of the plan previously in place, which was cleared by the United States Department of Justice

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<sup>1</sup> Pursuant to 5th Cir. R. 27.4, Appellants have contacted counsel for Plaintiffs-Appellees and opposition to this motion is expected.

in 2012, used for an election in 2015, and remained unchallenged until this belated action was brought in July 2018.

3. Appellants seek the extraordinary relief of an expedited appeal and initial hearing *en banc* in order that this matter may be finally concluded before June 17, 2019, which is the statutory deadline for publication of a sample of the official Primary Election Ballot in the Statewide Election Management System. Miss. Code Ann. § 23-15-331 (2019). A resolution by that date will avoid the need to conduct a special election if Appellants are successful in this appeal. Moreover, a panel of this Court, in resolving Appellants' Motion to Stay the District Court's Final Judgment, already has divided on the issues of exceptional importance presented by this appeal. *See Thomas*, 2019 WL 1306304.

4. The extraordinary relief sought is but a marker of the extraordinary and unjustified delay of plaintiffs in bringing this suit. That delay demonstrates a studied disregard for the orderly processes of both the federal courts and the Mississippi legislature. Because of plaintiffs' delay, the trial of their suit did not even take place until February 6, 2019. At that time, candidates had already qualified for the Senate seat in question and the legislature was halfway through its annual session.

5. This Court has the power under Fed. R. App. P. 27 and 5th Cir. R. 27.2.8 to expedite appeals. In the event that the Court grants this request for

expedited appeal, Appellants are prepared to file their merits brief in the next week to ten days.

6. This Court also has the power under Fed. R. App. P. 35 to grant a request that an appeal be heard initially *en banc*. Appellants are filing their Petition for Hearing En Banc separately and contemporaneously with this motion.

FOR THESE REASONS, Governor Phil Bryant and Secretary of State Delbert Hosemann respectfully request that this Court expedite their appeal and hear it *en banc*, with or without oral argument, on or before May 14, 2019, or grant such other relief as the Court may deem appropriate.

This the 8th day of April, 2019.

Respectfully submitted,

*s/ Tommie S. Cardin*

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MISSISSIPPI, AND DELBERT  
HOSEMANN, SECRETARY OF STATE  
OF THE STATE OF MISSISSIPPI



**CERTIFICATE OF SERVICE**

I, Tommie S. Cardin, 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 8th day of April, 2019.

*s/ Tommie S. Cardin* \_\_\_\_\_

Tommie S. Cardin

## CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 5th Cir. R. 32.2, this document contains **606** words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 5th Cir. R. 32.1 and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word, Version 2010, in 14-point Times New Roman font, except for footnotes which are in 12-point Times New Roman font.

This, the 8th day of April, 2019.

*s/Tommie S. Cardin*  
Attorney for Appellants

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