UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Case No. 19-60133

JOSEPH THOMAS; VERNON AYERS; and MELVIN LAWSON

Plaintiffs-Appellees,

– v. –

PHIL BRYANT, Governor of Mississippi and DELBERT HOSEMANN, Secretary of State of Mississippi, in Their Official Capacities of Their Own Offices and in Their Official Capacities as Members of the STATE BOARD OF ELECTIONS COMMISSIONERS,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

RESPONSE TO APPELLANTS' MOTION FOR EXPEDITED INITIAL APPEAL EN BANC

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Plaintiffs-Appellees,
v. No. 19-60133

PHIL BRYANT, *et al.*,
Defendants-Appellants.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons as described in the fourth sentence of 5th Cir. Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Honorable Court may evaluate possible disqualification or recusal.

1. Joseph Thomas, Appellee
2. Vernon Ayers, Appellee
3. Melvin Lawson, Appellee
4. Robert B. McDuff, Lead Counsel for Appellees
5. Beth L. Orlansky, Mississippi Center for Justice, Counsel for Appellees
6. Jon Greenbaum, Lawyers' Committee for Civil Rights Under Law, Counsel for Appellees
7. Ezra D. Rosenberg, Lawyers' Committee for Civil Rights Under Law, Counsel for Appellees
8. Arusha Gordon, Lawyers' Committee for Civil Rights Under Law, Counsel for Appellees
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for Appellees

10. Ellis Turnage, Turnage Law Office, Counsel for Appellees
11. Peter Kraus, Waters Kraus, Counsel for Appellees
12. Charles Siegel, Waters Kraus, Counsel for Appellees
13. Caitlyn Silhan, Waters Kraus, Counsel for Appellees
14. Phil Bryant, Governor of Mississippi, Appellant
15. Delbert Hosemann, Secretary of State of Mississippi, Appellant
16. Michael B. Wallace, Wise Carter Child & Caraway P.A., Counsel for Appellants
17. Charles E. Cowan, Wise Carter Child & Caraway P.A., Counsel for Appellants
18. T. Russell Nobile, Wise Carter Child & Caraway P.A., Counsel for Appellants
19. Tommie S. Cardin, Butler Snow LLP, Counsel for Appellants
20. B. Parker Berry, Butler Snow LLP, Counsel for Appellants
21. Jim Hood, Attorney General of Mississippi
22. Douglas T. Miracle, Counsel for the Office of the Mississippi Attorney General

Respectfully submitted,

s/Robert B. McDuff
April 12, 2019

TABLE OF AUTHORITIES

CASES

APPELLEES' EXHIBITS

A. Defendants' Memorandum in Support of Its Motion to Stay Order Pending Appeal (District Ct. Dkt. 64, cover page, pages 9 and 21)

B. Excerpts from Trial Court Transcript for Second Stay Hearing, March 4, 2019 (cover page, tables of contents, and pages 8–10 and 19–22)

The redrawing of two of Mississippi's fifty state senate districts for the 2019 election is not the sort of extraordinary circumstance that justifies abandoning the Court's usual practice by expediting the appeal so it could be heard by the en banc Court in the first instance. A stay panel has thoroughly reviewed the relevant factors and concluded, in a twenty-seven page opinion, that the request for a stay pending appeal by the Governor and the Secretary of State should be denied. Those officials are now asking this Court to jettison its traditional procedures so that a different set of judges can decide, pursuant to a dramatically truncated schedule, what the stay panel has already decided—whether the August 6, 2019 primaries and the November 5, 2019 general election should go forward in these two districts under the legislature's remedial plan or under the original plan that the district court found unlawful.[1] They have not identified a single case where this Court has granted the extraordinary relief of initial en banc review on an expedited basis. [2]

There is no reason to bypass and accelerate the regular appellate process. Neither the Federal Rules of Appellate Procedure nor this Court's rules provide an

[1] The three Defendants in the lower court are the Governor, the Attorney General, and the Secretary of State who are the sole members of the State Board of Election Commissioners. The Attorney General did not join in this appeal.

[2] Plaintiffs have not been able to find an instance where this Court granted relief such as that sought by Defendants. There is a case from another circuit that appeared to be the result of the grant of expedited en banc review— the emergent appeal to enjoin the manual recount in the Gore versus Bush election. *Siegel v. Lepore*, 234 F. 3d 1163 (11th Cir. 2000). Needless to say, the circumstances of this case are hardly comparable to those in *Siegel*.

avenue for en banc review of a stay panel's decision, and Appellants should not be allowed to achieve that result by another route simply because they disagree with the stay panel's decision. The case does not present appellate issues that bespeak of conflict among the courts or that are so pressing as to require not only en banc review, but en banc review on an urgent basis.

The legislature's plan was adopted on March 26, 2019 and has been the presumptive plan ever since. The extended qualifying period will close on April 12, 2019. In their original motion for a stay in the district court filed on February 19, these state officials complained about potential disruption from changing the plan less than six months from the primaries. Exhibit A at 31–32 (Dkt. 64). Now with less than four months to go and the election drawing closer, they ask this Court to take extraordinary steps so the plan can be changed back.

In so doing, they seem to be following the advice, at least in part, offered by the dissenting judge on the stay panel: "I am afraid the defendants have simply had the poor luck of drawing a majority-minority panel. I trust that, in light of this, the State will pursue a stay in the Supreme Court because of the injustice that results from the joint efforts of the district judge and the motions panel majority. I also encourage the State to move for an expedited appellate process, preferably seeking an April or May sitting – it might yet be possible for this court to undo its own

mistake." *Thomas v. Bryant*, 919 F.3d 298, 325 (5th Cir. 2019) (Clement, J., dissenting).

The reference to a "majority-minority panel" has drawn critical attention. Debra Cassens Weiss, *5th Circuit Judge Raises Eyebrows with 'Majority-Minority Panel' Reference in Racial Gerrymandering Case*, A.B.A. J. (Mar. 27, 2019), http://www.abajournal.com/news/article/huh-5th-circuit-dissenter-raises-eyebrows-with-reference-to-majority-minority-panel. One writer has noted that this dissent stands in direct contrast to the Chief Justice's public statement that "[w]e do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them." Mark Joseph Stern, *Fifth Circuit Judge Does Her Best Trump Impression in Opinion Attacking Liberal Colleagues*, Slate (Mar. 25, 2019, 5:15 PM), https://slate.com/news-and-politics/2019/03/clement-mississippi-reeves-senate-gerrymander.html.

The courts of appeal in our nation do not require that each panel reflect a particular composition in terms of the judges' individual views or the political parties of the presidents who appointed them. The decisions of each panel--including each stay panel—are treated as legitimate and not simply the product of politics. Granting this extraordinary request, however, will suggest that the decision of the "majority-minority" stay panel is entitled to so little deference that

the traditional process must be swept aside as quickly as possible in order for another set of judges to decide which plan should be used for these two state senate districts in the upcoming election.

In *Belk v. Charlotte-Mecklenburg Board of Education*, 211 F.3d 853, 859 (4th Cir. 2000), the Fourth Circuit rejected a similar, although not identical, motion for initial en banc consideration from an Appellant dissatisfied with the decision of the stay panel. Chief Judge Wilkinson issued a concurring opinion stating that "[r]egardless of one's view of the stay order," *id.* at 855, the order was not a reason to abandon the court's usual procedures. "I am pleased that the court has decided to handle this case procedurally in the manner that we customarily handle our other cases . . . ." *Id.* at 854 (Wilkinson, J., concurring). Similarly, in the present case, "one's view of the stay order" is not a reason to treat the case differently from "the manner that [the Court] customarily handle[s] [its] other cases." *Id.* at 855.

Appellant's motion claims that the filing of this lawsuit "demonstrates a studied disregard for the orderly processes of both the federal courts and the Mississippi legislature." Appellants' Mot. to Expedite at 4. But the district court correctly noted that Plaintiffs-Appellees filed this case "16 months before the 2019 general election, 13 months before the primaries, and eight months before the [March 1, 2019] qualification deadline." *Thomas v. Bryant*, 2019 WL 654314, at *12 (S.D. Miss. Feb. 16, 2019). The court added: "[t]his timeframe is more than

enough to litigate their single-district single-count claim." *Id.* Even after the district court made a finding of a Section 2 violation and adopted its own plan in the wake of being informed that the legislature would not take action unless and until the stay motions were denied, the district court made it clear that the legislature "still [has] every right to seek to implement a remedy" and "this Court . . . has put itself in the second position to the legislature. . . . I just don't think the legislature should be under the assumption that they cannot act." Exhibit B at 9, 21. The stay panel of this Court denied the stay on March 15 and the legislature easily redrew these two state senate districts with a plan that was adopted on March 26. Plaintiffs-Appellees did not challenge that legislative plan and the election for those two districts is scheduled to be conducted from it.

Neither the posture of this case nor the particular issues Appellants seek to appeal demand that this Court grant their remarkable request. *See* Fed. R. App. P. 35. None of the issues involves a conflict with precedent from the Supreme Court or this Court.[3] Nor is any issue of such "exceptional importance" as to require expedited en banc review. Defendants' motion for a three-judge panel—made for the first time a week before trial—is unsupported by precedent. As the stay panel

[3] Although the Court has not requested Plaintiffs-Appellees to respond to Defendants-Appellants' Petition, because Appellants fashioned their motion as conjoining their request for "expedited" appeal with their request for "initial appeal *en banc*," Appellees summarize here why there is no meritorious basis for "expedited initial appeal *en banc*." *See* Pet. En Banc Hr'g.

observed, "no reported case has ever used a three-judge panel for a case challenging district lines only under Section 2 of the Voting Rights Act." *Thomas v. Bryant,* 919 F.3d 298, 304 (5th Cir. 2019). Regarding laches, the stay panel noted: "The stay motion makes no argument for why laches should bar the lawsuit as to Plaintiffs Ayers and Lawson." *Id.* at 312. Moreover, the district court made a finding of fact that "[t]he evidence in our case weighs against a finding of undue prejudice," *Thomas*, 2019 WL 654314, at *12 which is an essential element of a laches defense. Defendants-Appellants' argument that a majority-minority district may never be the subject of a Section 2 vote dilution suit is precluded by the Supreme Court's recognition that "it may be possible for a citizen voting-age majority to lack real electoral opportunity," *LULAC v. Perry*, 548 U.S. 399, 428 (2006), as well as by *Moore v. Leflore Cty. Bd. of Election Comm'rs*, 502 F.2d 621, 624 (5th Cir. 1974) ("mere existence of a black population majority does not preclude a finding of dilution"), deemed "unimpeachable" precedent in *Monroe v. City of Woodville,* 881 F.2d 1327, 1333 (5th Cir. 1989). Appellants' claim regarding remedy is nonsensical given that both the district court and the stay panel recognized the legislature's authority to adopt a plan even after the district court implemented a tentative remedy, and the legislature exercised that authority to implement the plan presently in place.

As with almost all other cases, review of this appeal should occur before a three-judge panel in the first instance. In *Belk,* in supporting the court's denial of the petition, Chief Judge Wilkinson explained that "the basic unit for hearing an appeal" was a three-judge panel, and for good reasons: "Panel decisions refine, narrow, and focus issues before the court," and "hold out the prospect of finality and repose every bit as much as en banc decisions do." 211 F.3d at 854 (Wilkinson, J., concurring).

To reiterate, the question of whether the legislature's new plan or the original plan should be used in the upcoming election for two of Mississippi's fifty-two state senate districts is not the sort of extraordinary issue that justifies the abandonment of this Court's customary procedures. The stay panel has already reviewed and resolved that question pursuant to those procedures. Appellants' effort to put it before a different set of judges at this juncture should be denied. As Chief Judge Wilkinson wrote: "We have long urged that the public resist a predetermined view of the judicial function – the notion that certain judges invariably resolve certain cases in certain ways. If we wish the public to resist this view of us, we must surely first resist this view of ourselves." *Id.* at 855.

For the foregoing reasons, Appellants' Motion for Expedited Initial Appeal En Banc should be denied.

April 12, 2019 Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and that I have served the District Court by email as follows:

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April 12, 2019

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because, excluding parts of the document exempted by Fed. R. App. P. 32(f) and 5th Cir. R. 32.2, this document contains 1,812 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 2013, in 14-point Times New Roman font and 12-point Times New Roman font for footnotes.

This, the 12th day of April, 2019.

s/ Robert B. McDuff

EXHIBIT A

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**

DEFENDANTS' MEMORANDUM IN SUPPORT OF ITS MOTION TO STAY ORDER PENDING APPEAL

Pursuant to Fed. R. Civ. P. 62(c)(1), 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 ("Defendants"), move for a stay of this Court's order of February 16, 2019, pending their appeal. [Dkt. # 61]. For the reasons discussed below and consistent with the law of the Fifth Circuit and the United States Supreme Court, this Court should stay the judgment until the Fifth Circuit rules on the merits of Defendants' appeal.

Introduction

This Court's order effectively enjoins State officials from using the statutory boundaries of Senate District 22 in the election of 2019, the qualifying period for which ends next Friday, March 1, 2019. *Abbott v. Perez*, 138 S. Ct. 2305, 2321-24 (2018). Injunctive relief is not automatically stayed. *See* Fed. R. Civ. P. 62(c)(1). However, this Court can and should exercise its discretion to order a stay in this instance.

statutory construction must begin with the statutory language, *Duncan v. Walker*, 533 U.S. 167, 172 (2001), it cannot end there where, as here, the language is ambiguous.

The Court's order purported to resolve the grammatical ambiguity by applying "the series qualifier canon of construction" [Dkt. # 51 at 3], described in Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 147 (2012). The Court said that "[t]he term 'the constitutionality of' modifies all of the phrases which follow it." [Dkt. # 51 at 3]. The defect in the Court's analysis is that "constitutionality" is not a modifier, but a noun, a direct object of the gerund "challenging." As the authors explain the canon, "a prepositive or postpositive modifier normally applies to the entire series." Scalia & Garner at 147. Every example given by the authors involves a modifier, not a noun. *Id*., at 147-51. The canon simply does not apply to § 2284(a).

Indeed, the Court's order properly acknowledges that its reading of the sentence renders the second use of "apportionment" superfluous. [Dkt. # 51 at 4]. The Court quotes the authors' warning that "a clever interpreter could create unforeseen meanings or legal effects from this stylistic mannerism." *Id*., at 177. Here, however, it is the Court's disregard of the surplusage canon that creates an unforeseen meaning. Neither plaintiffs nor the Court disputes that Congress in 1976 expected all challenges to "the apportionment of any statewide legislative body" to be adjudicated by a three-Judge Court. Here, the Court should have heeded the authors' warning that disregard of the second use of "apportionment" "should be regarded as the exception rather than the rule." *Id*., at 178. Applying the surplusage canon to give effect to the second use of "apportionment" compels the reading that a three-Judge Court should be convened to adjudicate any action "challenging . . . the apportionment of any statewide legislative body."

2. The legislative history shows that Congress intended three-Judge Courts to hear all challenges to the apportionment of state legislative

estimated white participation throughout District 22 would necessarily have fallen.

The Court described the 2003, 2007, and 2015 Senate elections as "the 'endogenous' elections most relevant to this case" [Dkt. # 61 at 2], but the 2003 and 2007 elections were held under different District 22 boundaries, and it is undisputed that the 2015 election featured a "significant election administration error" in Bolivar County. Tr. 80:11-12. Endogenous elections "refers to elections for the particular office and district that is at issue." *Cano v. Davis*, 211 F. Supp. 2d 1208, 1235 (C.D. Cal. 2002), *aff'd*, 537 U.S. 1100 (2003). Here, the vote totals from the only endogenous election involving the challenged districting boundaries *excluded* votes from two District 22 precincts and *included* votes from two non-District 22 precincts. Tr. at 75:22-78:11. This four-precinct error, which simultaneously resulted in an overvote and undervote in Bolivar County, caused Dr. Palmer to exclude 10% of the actual vote totals from his analysis. Tr. 79:9-14. The Fifth Circuit has reversed earlier cases granting relief on a stronger record. *Rangel v. Morales*, 8 F.3d 242, 246 (5th Cir. 1993) ("evidence of one or two elections may not give a complete picture as to voting patterns within the district generally.") There, the Fifth Circuit reversed the District Court's decision finding legally significant white bloc voting based on a single contest.[15]

Dr. Palmer's analysis hinges on his ability to estimate racial turnout on the precinct level, but he admittedly was unable to "estimate turnout as a share of registered voters by race."

[15] *Rangel* was followed in *Hall v. Louisiana*, 108 F. Supp. 3d 419 (M.D. La. 2015). "[P]laintiffs here expected the Court to rely on the results of only a single election cycle to support a finding of vote dilution while ignoring other relevant election data, whereas controlling legal authority, binding on this Court, restricts this Court from doing so." *Id.*, at 422. Plaintiffs here attempt to rely on 2015 returns for statewide elections within the borders of District 22, but *Hall* rejected a similar effort. "Although neither the parties nor this Court have identified an instance in which a majority of the U.S. Supreme Court has held that a district court's reliance on multiple contests from a single election is per se insufficient to show a pattern of vote dilution, this Court is bound by the general principle set forth in *Gingles* that the 'loss of political power through vote dilution is distinct from the mere inability to win a particular election.' *Gingles*, 478 U.S. at 57." 108 F. Supp. 3d at 135.

EXHIBIT B

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

JOSEPH THOMAS, ET AL — PLAINTIFFS

VERSUS — CIVIL ACTION NO. 3:18CV441-CWR-FKB

PHIL BRYANT, ET AL — DEFENDANTS

MOTION HEARING
BEFORE THE HONORABLE CARLTON W. REEVES
UNITED STATES DISTRICT JUDGE
MARCH 4, 2019,
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE PLAINTIFFS: ROBERT B. MCDUFF, ESQUIRE
JON GREENBAUM, ESQUIRE (TELEPHONICALLY)
POOJA CHAUDHURI, ESQUIRE (TELEPHONICALLY)

FOR THE DEFENDANTS: TOMMIE S. CARDIN, ESQUIRE
MICHAEL WALLACE, ESQUIRE
DOUGLAS T. MIRACLE, ESQUIRE

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I N D E X

procedures they went through, but why they drew these particular lines the way they did, we don't know. The fact that there is no incumbent really shouldn't change the legality of a plan.

Incumbents come and go throughout the decade, and a plan shouldn't become more invalid or less invalid when an incumbent decides whether to come and go. And a remedy -- I mean, if it's really true that the law compels the remedy that the Court has imposed, then I don't -- it may not be relevant in the long term as to who lives where, and indeed it might be improper in the short term for the Court to take consideration of who lives where in imposing a final judgment that's going to last for a long time.

But for the limited purpose of determining whether the final judgment the Court has determined to be necessary should be imposed now or later, then I think it is relevant to look at what is actually happening on the ground, what sort of commitments have been made, what sort of people have been inconvenienced. And it is only for that purpose that we ask you to consider the fact that at least two people have made a major effort in this case, and that effort is about to be wiped away by the remedy that this Court has found to be legally necessary.

THE COURT: Speaking of acting on the ground, what if the legislature this morning decided that they would forego what I understood their wish to be, that is wait until rulings come from this Court or the Fifth Circuit on the motions to stay. What if the legislature, in its infinite wisdom today, decided to adopt a

plan in response to what the Court's -- what the Court heard and what the Court's rulings were?

Could this Court -- I know that -- could this Court modify its judgment, or is it the defendant's view the Court cannot do anything because the judgment that it entered the other day is on appeal?

MR. WALLACE: I think the only thing this Court could do is -- is vacate its judgment and dismiss it moot. When the legislature passes a law, it's a law. And at -- when that law is passed, everybody in the state is obligated to enforce it until such time as that law is declared illegal or unconstitutional.

There was a long time in Mississippi, as everyone in this courtroom knows, when Mississippi did not have the authority to enact electoral laws without permission, but that time is over. I believe -- and, you know, I will confess to Your Honor there isn't much law on it lately, because the legislature hasn't had the authority to pass its own laws without permission lately.

But I think the answer is if they pass a law today, it's the law today, and this case is moot.

THE COURT: Okay. And they still have every right to -- they still have every right to seek to implement a remedy in response to what the Court -- what this Court has submitted at this point, right?

MR. WALLACE: I would not characterize it as a remedy, Your Honor. I would characterize it as a law. Once the illegal

law is gone, it is gone. The legislature can adopt a new law, and that is the law until somebody tries a case and says there's something wrong with it.

Again, that is what I believe the law to be, but I confess to Your Honor that after 50 years of Section 5 it may not be terribly clear. But I think that's the law.

THE COURT: Okay. Do you -- and has the legislature informed you at all that any differing opinion from your February the 26th letter that said -- I think that letter specifically says the legislature wishes to adopt -- wishes to do something, adopt a plan, or -- or wishes to do something only after this Court and the Fifth Circuit rules on the motions to stay.

MR. WALLACE: I haven't heard anything different from that, Your Honor. What we said in the letter is that if the stay motions are denied, the Senate desires the opportunity to perform its constitutional duty and enact a redistricting plan redrawing Senate District 22. We told you that in a letter on February 26th, and we said the same thing in the short brief we filed that afternoon. And as far as I know, that is still the Senate's -- the message the Senate has for us to give to this Court.

THE COURT: All right. And any plan that might ultimately be passed by the Senate, it would be -- I guess go to the House as well and then they would -- I think that's how they've done it in the past.

staring down that deadline. There was an opposition after that file -- after that telephone conference where the Court talked to the parties I believe about a possible date that we might ought to set aside to have a hearing or something specifically on remedy.

I think the plaintiffs' position was, well, Judge, maybe you don't need to take anymore testimony at this time. And I think the parties sort of agreed to that fact and -- and the plaintiff had already offered their three plans, and I think the plan you suggested during that call and otherwise that one of the plans can be adopted if -- if it becomes necessary.

So after that call on February 22nd, the plaintiffs filed their opposition to the motion to stay. On -- on February 25th, the plaintiffs filed a motion to extend the qualification deadline. The attorney general responded to the motion to extend the qualifying deadline by saying it's a non -- a no opposition or no response I think. We don't really have -- he doesn't really have a dog in the fight is how I sort of couched his response.

The Court entered its order denying the motion to stay, but granted the motion to extend the qualification deadline. The appeal was filed on February 27th from that order, and now we're dealing with the motions to stay that were filed on February 28th and that the Court then issued an order deferring a ruling on its motion.

But, again, the Court noted that it felt compelled to issue remedy, because the legislature would only take it up if the

motion to stay was denied by this Court and the Fifth Circuit, so that brings us to where we are today.

The legislature, I think, still has every opportunity and is -- and is encouraged to act on the orders that have been entered by this Court up until this moment. And -- but until then something, I believe, needs to be in place, so that persons will be able to participate in the democratic process through electing candidates of their choice.

I'm not -- this is no ruling. I'm just saying what the Court, I believe, has said throughout its many orders and throughout -- and even what I've heard from the parties and otherwise throughout the testimony and the briefings and the filings in this case.

So, again, I would encourage the parties to seek a solution through the legislature, but at some point in time, there is going to have to be something in place permanently for the people of District 22, and I know that impacts District 23. According to what the Court has already said, the plan that -- that it prefers or the -- but of course the legislature, I think as Mr. McDuff said, I mean, they can decide that they can take up those residencies of the people who sought to qualify, if those candidates have the juice to convince the legislature that that's something that they ought to consider. The legislature can consider a lot of things, some of which none of us may agree with as far as the redistricting process, but certainly it's their

prerogative.

And, again, I would encourage the parties to -- to -- I mean, because I guess my big question is if the -- if I deny the stay and the Fifth Circuit agrees with me that the stay ought to be denied but doesn't come with that ruling immediately -- I mean, they've seen the -- I think they've seen the deadlines in the stuff that was going forward. But if they do not do it immediately and the legislature simply waits upon their ruling to even rev up the engines -- I don't know what they're doing over there. You know, then where does that put us?

And, of course, the Fifth Circuit could disagree with me. But, again, if they disagree with me and that decision does not come as immediate to when the legislature thinks it ought to have come for them to engineer some changes, then what does that do with the voters in District 22 and/or District 23 or -- or some other district?

So that -- I mean, I think the legislature and I think the parties -- I think everybody understands that we're operating on a -- on a schedule that's passing us by. And I also think that it's pretty clear through the earlier orders that this Court is going -- you know, has played -- has put itself in the second position to the legislature. I don't think anybody could argue otherwise. I mean, I just don't think that the legislature ought to be under the assumption that they cannot act. That's all I'll say now. I mean, I'll try to get you an order, a firm order on

this.

MR. MCDUFF: May I add one thing, Your Honor?

THE COURT: Yes, sir.

MR. MCDUFF: Listening to you just then, I do believe it is appropriate as we suggested in our filing last night for the Court to set a deadline for the legislature to act. Because right now, we have the Court's judgment. The legislature could supersede that if it adopts a plan that remedies the violation, but as you have just said, there has to be some finality at some point as to what the plan is going to be.

The legislature has had since February 13th to be considering what kind of plan it would adopt, if it adopts a plan. They've had plenty of time to rev up the engines. Plans can be drawn very quickly with modern technology, and I think it's important for the Court to set a deadline of this coming Friday for the legislature to adopt a plan. And then if it doesn't, if it doesn't adopt a plan, or it doesn't adopt a plan that remedies the violation, then the Court's judgment will remain in place, and we'll go forward with the plan the Court has adopted.

If they do submit a plan by Friday, we can certainly review it quickly and let the Court know if we're going to have any claim that the plan doesn't remedy the violation. And that could be -- you know, we could present that very easily next week to the Court, but I do think it is appropriate for the Court to set a deadline.