

No. 19-60133

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

JOSEPH THOMAS; VERNON AYERS; MELVIN LAWSON,

Plaintiffs – Appellees

v.

PHIL BRYANT, GOVERNOR OF THE STATE OF MISSISSIPPI; DELBERT HOSEMANN, 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

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

**REPLY TO APPELLEES' RESPONSE TO APPELLANTS'
MOTION FOR EXPEDITED INITIAL APPEAL EN BANC**

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TABLE OF AUTHORITIES

Statutes

Miss. Code Ann. § 23-15-297	1
Miss. Code Ann. § 23-15-299	1
Miss. Code Ann. § 23-15-331	2

1. Plaintiffs cite the district court's recitation of the timing of the filing of this lawsuit, noting the court's view that the timeframe was sufficient to litigate plaintiffs' claim. Response at 4. Subsequent events have proven the district court wrong.

2. Both the plaintiffs and the district court miss the mark on critical deadlines. The critical deadline in this case was the *beginning* of the qualifying period and not the *ending*. The qualifying period started on January 2, 2019 and when it started there had been no trial. Candidates started qualifying by paying the requisite filing fee based on district lines in effect on January 2, which had been in place since September 2012. *See* Miss. Code Ann. §§ 23-15-297; -299 (Rev. 2018). The trial was not even scheduled until the middle of the qualifying period, making it impossible to fully litigate plaintiffs' claim in time for there to be an orderly process for candidate qualifying and preparation for the first primary.

3. The fact that we are now past the extended qualifying deadline set by this Court in its stay order and we have another district in place pending resolution of this appeal demonstrates the necessity for expedited consideration of this appeal. Candidates are still unsure as to what district they will ultimately be running in. Expedited resolution of this appeal is necessary to afford the defendants sufficient time to get the names properly placed on the primary ballots to ensure as orderly of an election process as possible in the midst of the confusion

created by plaintiffs' unexcusable delay in filing this lawsuit only six months before the beginning of the qualifying period. Expedited resolution also avoids the specter of having to call a special election if the districts change as a result of the appeal.

4. Even using the same timeframe as cited by the district court, this case still is not resolved. If there is to be resolution of this claim before statutory deadlines kick in, then this appeal needs to be expedited and heard before June 17, 2019, which is the deadline for publishing the sample primary ballot. Miss. Code Ann. § 23-15-331 (Rev. 2018).

5. Appellants intend to file their principal brief by Thursday, April 18, and ask that the Court establish an expedited briefing schedule that provides for the Plaintiffs-Appellees to file their response within 14 days with an additional 7 days for reply.

For these reasons, Governor Phil Bryant and Secretary of State Delbert Hosemann respectfully request that this Court expedite their appeal as requested in their initial motion.

This the 15th day of April, 2019.

Respectfully submitted,

s/ Tommie S. Cardin

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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 15th day of April, 2019.

s/ Tommie S. Cardin

TOMMIE S. CARDIN

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(C) because it contains **435** words, as determined by the word-count function of Microsoft Word 2010, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times Roman font.

s/ Tommie S. Cardin

TOMMIE S. CARDIN

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