

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

JOSEPH THOMAS, et al,

Plaintiffs

vs.

Civil Action No. 3:18cv441-CWR-FKB

**PHIL BRYANT, Governor of
Mississippi, et al.,**

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION
TO EXTEND QUALIFYING DEADLINE IN TWO SENATE DISTRICTS**

Because nearly two weeks have passed without the Mississippi Legislature taking action to remedy the violation announced by this Court in its order of February 13, and reiterated in its order of February 16, 2019, this Court will be required to impose a remedial plan for Senate District 22 which will affect the adjacent Senate District 23. In order to afford potential candidates an opportunity to make any decisions about qualifying in light of the district lines ordered by the Court, the Plaintiffs have moved to postpone from March 1, 2019 to March 15, 2019 the candidate qualifying deadline for Senate Districts 22 and 23. If the Court intends to strongly consider imposing a remedy that encompasses District 13 as well, or if the Defendants request that District 13 be included, the Court could also postpone the deadline in that district. No other districts need be affected.

The grounds for the motion are set forth more fully in the motion itself. This short memorandum is submitted to recite some of the case law recognizing the Court's authority to postpone qualifying deadlines where appropriate.

Although the qualifying deadline should be maintained if possible, *see Smith v. Clark*, 189 F.Supp.2d 529, 535 (S.D. Miss. 2002) (three-judge court), this Court has the discretion to postpone a qualifying deadline in order to implement a lawful remedy. In *Seamon v. Upham*, 536 F. Supp. 931, 936-938 (E.D. Tex. 1982) (three-judge court), the district court postponed the qualifying deadline twice in order to implement a remedial election plan. The Supreme Court subsequently vacated the remedial plan on the merits, but nevertheless gave the district court the option on remand of moving forward under that's same remedial plan and that same schedule (including the postponed qualifying deadlines) in light of the exigencies posed by the upcoming election. 456 U.S. 37, 44 (1982).

In an earlier Mississippi legislative redistricting case with Constitutional and Voting Rights Act claims, the three-judge court postponed the qualifying deadline *statewide* in both houses of the legislature for a significant period of time so that the deadline fell only 36 days before the primary election rather than the nearly two months then provided by state law. Specifically, on July 15, 2019, the Court suspended the July 19 qualifying deadline. On August 2, the Court reset the qualifying deadline for August 12 for the September 17 primary and the November 5 general elections. *Watkins v. Mabus*, 771 F.Supp. 789, 793, 797 (S.D. Miss. 1991) (three-judge court). The Court's action there demonstrates that federal courts have the authority and flexibility to postpone qualifying deadlines where appropriate, and that state election officials can manage to hold elections even where the qualifying deadlines are five weeks from the primary.

By contrast to the *Watkins* case, the Plaintiffs here suggest postponement of the qualifying deadline for a short period of time in only two districts in one house rather than

statewide in two houses such that several months will still remain between the qualifying deadline in those two districts and the primary election.

February 25, 2019,

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2019, I electronically filed a copy of the foregoing using the ECF system which sent notification of such filing to all counsel of record.

s/Robert B. McDuff