

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

**MISSISSIPPI STATE CONFERENCE OF THE  
NATIONAL ASSOCIATION FOR THE ADVANCEMENT  
OF COLORED PEOPLE, THOMAS PLUNKETT, ROD  
WOULLARD, and HOLLIS WATKINS, on behalf of themselves  
and all others similarly situated**

**PLAINTIFFS**

**vs.**

**CIVIL ACTION NO. 3:11-cv-159TSL-EGJ-LG-MTP**

**PHIL BRYANT, in his official capacity as  
Governor of the State of Mississippi, JIM HOOD,  
in his official capacity as Attorney General of the  
State of Mississippi, and DELBERT HOSEMANN,  
in his official capacity as Secretary of State of the  
State of Mississippi, as members of the State Board  
of Election Commissioners; THE MISSISSIPPI  
REPUBLICAN PARTY EXECUTIVE COMMITTEE;  
THE MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE  
COMMITTEE; and JERMEL CLARK, in his official  
capacity as Chairman of the Hinds County, Mississippi  
Board of Election Commissioners, on behalf of himself  
and all others similarly situated**

**DEFENDANTS**

**and**

**APPORTIONMENT AND ELECTIONS  
COMMITTEE OF THE MISSISSIPPI HOUSE OF  
REPRESENTATIVES; MISSISSIPPI STATE  
SENATE DEMOCRATIC CAUCUS AND STATE  
DEMOCRATIC SENATORS, in their individual  
capacities; and TERRY C. BURTON, SIDNEY  
BONDURANT, BECKY CURRIE, and MARY  
ANN STENVES**

**INTERVENORS**

**SECRETARY OF STATE DELBERT HOSEMANN'S RESPONSE TO PLAINTIFFS'  
MOTION TO SET ASIDE THE 2011 LEGISLATIVE ELECTION RESULTS AND  
ORDER SPECIAL LEGISLATIVE ELECTIONS FOR ALL LEGISLATIVE DISTRICTS  
IN 2013**

The Secretary of State of the State of Mississippi, Delbert Hosemann ("the Secretary"), a member of the State Board of Election Commissioners, respectfully requests the Court deny

Plaintiffs' motion [Doc. No. 140] to set aside the 2011 legislative election results and order special legislative elections in 2013. The 2011 elections were conducted in conformity with the Mississippi and United States Constitutions; therefore, the legislators must serve their full four-year terms as required by the Mississippi Constitution.<sup>1</sup> In support of this Response, the Secretary states the following:

1. The Secretary adopts and incorporates Governor Phil Bryant's Response [Doc. No. 146] to the Plaintiffs' Motion as if fully stated here.

2. The Mississippi Constitution requires the Legislature to reapportion itself "every ten (10) years" at the regular session "in the second year following the . . . decennial census." Miss. Const. art. 13, § 253. As this court previously recognized, legislative reapportionment every ten years meets the minimal requirements under the Equal Protection Clause. [Doc. No. 124 at 3, citing *Reynolds v. Sims*, 377 U.S. 533 (1964)].

3. On May 16, 2011, this Court held that Mississippi's 2011 legislative elections should proceed under the existing apportionment plan. [Doc. No. 124 at 2, 12]. The United States Supreme Court affirmed on October 31, 2011. *Mississippi State Conference of NAACP v. Barbour*, 132 S.Ct. 542 (Oct. 31, 2011). As such, the elections were then conducted in compliance with the requirements of the United States Constitution and Section 254 of the Mississippi Constitution.

4. The Mississippi Constitution requires these elected legislators to serve a four-year term of office. *See* Miss. Const. art. 4, §§ 34 & 35 and art. 12, § 252. Due to the Court's finding that the 2011 elections were permitted by the United States Constitution, it cannot now be unconstitutional for those elected officials to complete their required terms.

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<sup>1</sup> See Miss. Const. art. 4, §§ 34 & 35 (requiring elections to be held every four years for members of the house and senate, respectively); and art. 12, § 252 (creating a four-year term of office for all elected officials).

5. Judicial relief in redistricting cases is only appropriate where “a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.” [Doc. No. 124 at 3, 12 (quoting *Reynolds*, 377 U.S. at 586; and *Upham v. Seamon*, 456 U.S. 37, 41 (1981))]. In this case, the Legislature acted appropriately and timely under both *Reynolds* and the Mississippi Constitution.

6. Plaintiffs’ motion must be denied. To hold otherwise would require this Court to find that Article 4 sections 34 and 35, and Article 12 section 252 of the Mississippi Constitution—those sections of the Mississippi Constitution requiring a four-year term of office—violate the United States Constitution. Plaintiffs have not, and cannot, demonstrate any basis for such a finding.

7. Ordering new elections is “an extraordinary remedy” reserved for “exceptional circumstances.” *Lopez v. City of Houston*, 617 F.3d 336, 340 (5th Cir. 2010). Plaintiffs can cite no circumstances or authority to support their request for the “extraordinary remedy” of setting aside Mississippi’s 2011 constitutionally sound legislative elections.

8. The undue financial burden, administrative complexity, and disruption of the legislative cycle further counsel against special elections. Special elections would cost Mississippi taxpayers approximately \$750,000 and would also saddle state and county election officials with the task of administering 174 new elections.

9. In addition to the monetary cost of holding special elections, such action will disrupt the normal legislative cycle. Given the constitutional requirement of a four-year term, legislators typically utilize their second, third and fourth years in office to research and refine complex legislation. Holding a special election mid-term will needlessly disrupt this process bringing damage to this state by forcing legislators to divert attention to their campaigns.

Members of the Legislature would contend three legislative elections in four years, diverting valuable time from their legislative duties.

10. If Plaintiffs were to prevail, not only would the Constitutional four-year term of office be nullified, the legislative balance provided by the Constitution would be jeopardized. Part-time legislators would be required to devote full-time attention to campaigning for re-election twice in a two-year period without sufficient time between elections to focus on difficult citizen issues. This permanent campaign weakens the power of the legislature as a coequal branch of state government and effectively negates an election held one year ago. Voters deserve the time and opportunity to evaluate the legislators they elected less than a year ago.

11. The reasoning of this Court's prior opinion and the decisions of other courts demonstrate that the extraordinary remedy of special elections is inappropriate. *See* Governor Phil Bryant's Response to Plaintiffs' Motion [Doc. No. 146, pages 3–9 (citing *Lopez v. City of Houston*, 617 F.3d 336, 340 (5th Cir. 2010) (holding that ordering new elections would be “an extraordinary remedy that can only be employed in exceptional circumstances, usually when there has been egregious defiance of the Voting Rights Act); *Saxon v. Fielding*, 614 F.2d 78, 79 (5th Cir. 1980) (holding that ordering new elections would require “egregious conduct striking at the very heart of the fairness of an election; . . . an improper refusal by a district court to enjoin an election prior to its occurrence; or . . . constitutionally suspect racially discriminatory practices and a strong showing that the results of the election had possibly been affected”))]. The Plaintiffs have cited no authority, and there is no basis for this Court to hold that the four-year term of office requirement in the Mississippi Constitution violates the United States Constitution. Accordingly, these constitutionally elected legislators must be allowed to serve the full four-year

terms required by Article 4, sections 34 and 35, and Article 12, section 252 of the Mississippi Constitution.

12. Due to the brevity of this Response, the Secretary respectfully requests the Court waive the requirement of filing a supporting memorandum. L.U.Civ.R. 7(b)(4).

ACCORDINGLY, the Secretary of State of the State of Mississippi, Delbert Hosemann, a member of the State Board of Election Commissioners, respectfully requests the Court deny Plaintiffs' Motion.

DATED: October 30, 2012.

Respectfully submitted,

DELBERT HOSEMANN, Mississippi  
Secretary of State

By: /s/ William Trey Jones, III  
William Trey Jones, III

OF COUNSEL:

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**CERTIFICATE OF SERVICE**

I, William Trey Jones, III, do hereby certify that I have this day electronically filed the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record.

DATED: October 30, 2012

/s/ William Trey Jones, III  
William Trey Jones, III