No. 12-1019

In the Supreme Court of the United States

MISSISSIPPI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE et al.,
Appellants,

v.

PHIL BRYANT, in his official capacity as Governor of the State of Mississippi, et al.,
Appellees.

On Appeal from the Judgment of a Three-Judge Court of the United States District Court for the Southern District of Mississippi

MOTION TO AFFIRM OF GOVERNOR PHIL BRYANT AND THE MISSISSIPPI REPUBLICAN PARTY EXECUTIVE COMMITTEE

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QUESTION PRESENTED

1. Whether, as this Court held in *Reynolds v. Sims*, 377 U.S. 533 (1964), "decennial reapportionment"—*i.e.*, the "[r]eallocation of legislative seats every 10 years"—"clearly meet[s] the minimal requirements for maintaining a reasonably current scheme of legislative representation." *Id.* at 583–84.

2. Whether a federal court should invoke the drastic remedy of voiding state legislative elections and ordering new elections when the state complied with the letter of *Reynolds v. Sims* and used an apportionment plan that has been pre-cleared by the Department of Justice pursuant to the Voting Rights Act.

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Pursuant to Rule 18.6, Appellees Governor Phil Bryant and the Mississippi Republican Party Executive Committee move to affirm the decision of the three-judge district court below.

STATEMENT OF THE CASE

The primary issue in this appeal is whether, as the three-judge district court held, Section 254 of the Mississippi Constitution is a rational and constitutionally permissible approach to legislative reapportionment. Section 254 provides in relevant part:

> The legislature shall at its regular session in the second year following the 1980 decennial census and every ten (10) years thereafter, and may, at any other time, by joint resolution, by majority vote of all members of each house, apportion the state in accordance with the constitution of the state and of the United States into consecutively numbered senatorial and representative districts of contiguous territory.... Each apportionment shall be effective for the next regularly scheduled elections of members of the legislature.

MISS. CONST. art. 13, § 254.

Data from the 2010 census became available to the Mississippi Legislature in February 2011, one month into its 90-day 2011 legislative session. J.S. App. 15; *see* MISS. CONST. art. 4, § 36. The Legislature considered legislative apportionment plans during the remainder of the 2011 session but ultimately adjourned *sine die* in April 2011 without adopting a plan by joint resolution, the procedure required by Section 254. J.S. App. 15–17.

Mississippi holds state legislative elections every fourth year in the year prior to the election for President. *See* MISS. CONST. art. 4, §§ 34–35 & art. 12, § 252. In 2011, the primaries and the general election were scheduled for August 2 and November 8, respectively. J.S. App. 17. The deadline for candidates to qualify for the elections was June 1. *Ibid.* Because the Legislature did not adopt a new apportionment plan at its 2011 session, Mississippi's 2011 elections were to be held under the State's then-existing apportionment plan, which was adopted by the Legislature and pre-cleared by the United States Department of Justice in 2002. *See* Miss. Code Ann. § 5-1-1, Historical and Statutory Notes.

Notwithstanding that Section 254 of the State Constitution specifically permitted the Legislature to reapportion itself during the 2012 legislative session, plaintiffs filed suit against the defendants[1] and asked the district court (1) to enjoin the State from holding its 2011 elections under its then-existing apportionment plan and (2) to order into effect a new, court-ordered plan. *See* J.S. App. 15–20. More specifically, plaintiffs asked the court to require the State to use plans that were proposed but *failed* to obtain legislative approval during the 2011 session. *See ibid.* The population deviations of these unenacted plans were 9.96% for the House of Representatives and 9.60% for the Senate, *see* D. Ct. Dkt. Nos. 91, 91-2, & 91-3, far exceeding the "de minimis"

[1] The defendants are the Governor, the Secretary of State, and the Attorney General, in their official capacities as members of the State Board of Election Commissioners; the Mississippi Republican Party Executive Committee and the Mississippi Democratic Party Executive Committee; and the Chair of the Hinds County, Mississippi Board of Election Commissioners.

deviations this Court has permitted in court-ordered plans, *see, e.g.*, *Chapman v. Meier*, 420 U.S. 1, 26–27 (1975). Plaintiffs argued that this unusual relief was required by the one-person, one-vote principle of the Equal Protection Clause. *See* J.S. App. 19–20 & n.2.

Following a hearing on plaintiffs' motion, the district court held that the United States Constitution did not require the Legislature to reapportion itself during its 2011 session. *See* J.S. App. 26. The district court cited this Court's holding in *Reynolds v. Sims*, 377 U.S. 533, 583–84 (1964), that "decennial reapportionment"—*i.e.*, the "[r]eallocation of legislative seats every 10 years"—"would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation." *See* J.S. App. at 25. Applying *Reynolds*, the district court held that because the Mississippi Legislature was last reapportioned in 2002, the "Legislature ha[d] one more year before reapportionment and redistricting [were] required by the one-person, one-vote precedents." *Ibid.* The district court rejected suggestions that "the holding of *Reynolds* ... has become obsolete," recognizing that it was "compelled to follow *Reynolds* until it is overruled by the Supreme Court of the United States." *Id.* at 26, 29. Therefore, basing its decision squarely on this Court's holding in *Reynolds*, the district court denied plaintiffs' request for injunctive relief and allowed the State's 2011 legislative elections to proceed under the State's then-existing apportionment plan. *See id.* at 29–32. The district court retained jurisdiction to determine, "upon motion of any party," whether subsequent special elections would be required under "a legislative reapportionment plan ... adopted by the end of the 2012 session, in accordance with Section 254 of the Mississippi Constitution." *Id.* at 29–30. Plaintiffs

appealed the district court's ruling, but this Court summarily "affirmed." 132 S. Ct. 542 (2011).

Legislative elections proceeded as scheduled in 2011. Thereafter, consistent with Section 254, the Legislature adopted a new apportionment plan during its 2012 session. *See* J.S. App. 79–80. The Justice Department precleared the new plan pursuant to Section 5 of the Voting Rights Act, *ibid.*, thereby certifying that the plan "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group." 28 C.F.R. § 51.52. Pursuant to Section 254, the new "apportionment shall be effective for the *next regularly scheduled elections* of members of the legislature," MISS. CONST. art. 13, § 254 (emphasis added), which "shall be held" in 2015, *id.*, art. 12, § 252. The winners of those elections will take office the following January at the conclusion of current legislators' four-year terms of office, which are also set by the State Constitution. *Id.*, art. 4, §§ 34–35 & art. 12, § 252.

In October 2012, plaintiffs moved the district court to set aside the results of the 2011 legislative elections and order special elections. The Governor and the Republican Party—as well as the Secretary of State and the Attorney General—opposed plaintiffs' motion on the grounds that the district court had correctly ruled that the 2011 elections were consistent with *Reynolds v. Sims*, and that the drastic remedy that plaintiffs sought was unwarranted. No party supported plaintiffs' motion. The district court denied plaintiffs' motion and subsequently entered final judgment in favor of defendants, from which plaintiffs appealed. J.S. App. 1–4.

SUMMARY OF THE ARGUMENT

The judgment of the three-judge court should be affirmed summarily for two distinct reasons: First, this Court held in *Reynolds v. Sims* that although "decennial reapportionment"—*i.e.*, the "[r]eallocation of legislative seats every 10 years"—may not be a "constitutional requisite, *compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation.*" 377 U.S. at 583–84 (emphasis added). That is *exactly* the "approach" prescribed by Section 254 of the Mississippi Constitution. Therefore, Mississippi's "compliance with" Section 254 is dispositive of plaintiffs' one-person, one-vote claim.

Second, setting aside state elections and ordering the state to conduct special elections has been described a "[d]rastic, if not staggering" remedy that is not automatically granted but must "be guardedly exercised." *Bell v. Southwell*, 376 F.2d 659, 662 (5th Cir. 1967). This extraordinary relief is *not* appropriate when a state has conducted elections based on a "rational" interpretation of applicable law that was "not so clearly" wrong as to "constitute[] deliberate defiance" of the law. *Allen v. State Bd. of Elections*, 393 U.S. 544, 572 (1969). Nor is it appropriate when elections were held under color of federal court orders permitting them to proceed. *Georgia v. United States*, 411 U.S. 526, 541 (1972). Mississippi's 2011 legislative elections were conducted based on a reading of *Reynolds v. Sims* that was more than merely "rational"—it was a three-judge court's interpretation in a ruling that this Court affirmed. In these circumstances, the extraordinary equitable relief sought by plaintiffs is not warranted.

ARGUMENT

I. THE JUDGMENT SHOULD BE SUMMARILY AFFIRMED BECAUSE THE COURT BELOW CORRECTLY APPLIED *REYNOLDS V. SIMS*.

1. The decision below should be affirmed summarily because the district court correctly held that the reapportionment process and timetable prescribed by Section 254 of the Mississippi Constitution are consistent with this Court's holding in *Reynolds v. Sims*. Section 254 requires the Mississippi Legislature to reapportion the State "every ten (10) years" by the end of the regular session "in the second year following the ... decennial census." MISS. CONST. art. 13, § 254. In *Reynolds*, this Court held: "While we do not intend to indicate that decennial reapportionment"—*i.e.*, the "[r]eallocation of legislative seats every 10 years"—"is a constitutional requisite, *compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation*." 377 U.S. at 583–84 (emphasis added). Section 254 clearly establishes "such an approach," and the State has complied with Section 254. Therefore, unless *Reynolds*'s nearly fifty-year-old holding is to be overruled, the decision below must be affirmed.

Furthermore, as this Court has frequently stated, "any departure from the doctrine of stare decisis demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). No such special justification exists for revisiting *Reynolds*'s express approval of decennial reapportionment. That rule has proven neither "unsound in principle" nor "unworkable in practice." *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768, 783 (1992) (quoting *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 546

(1985)). To the contrary, it provides a clear rule for states to follow in redistricting—a rule that plaintiffs apparently would replace with a vague standard that states not take "too long" to redistrict. Moreover, it is a rule on which states such as Mississippi have relied to establish redistricting processes.[2] *Ibid.* ("reliance interests are of particular relevance because adherence to precedent promotes stability, predictability, and respect for judicial authority" (quotation marks and alterations omitted)). Accordingly, fundamental principles of *stare decisis* require that the district court's judgment be affirmed.

2. Nor does the decision below conflict with any of the other decisions of this Court that plaintiffs cite. *See* J.S. 8–15. In *Whitcomb v. Chavis*, 403 U.S. 124 (1971), the Court did approve the portion of a district court's order that required statewide reapportionment in 1969 even though Indiana had enacted a reapportionment plan just four years earlier. Critically, however, the district court "did *not* order reapportionment as a result of population shifts since ... 1965 ..., but only because the disparities among districts which were thought to be permissible [in 1965] had been shown by intervening decisions of this Court to be excessive." *Id.* at 163 (emphasis added). As the Court noted, "the *Reynolds* test ... ha[d] been refined considerably" since the 1965 plan was adopted. *Ibid.* Moreover, the 1969

[2] A former version of Section 254 was held unconstitutional in *Connor v. Johnson*, 256 F. Supp. 962 (S.D. Miss. 1966). The current version was proposed by Laws, 1977, ch. 27, 2d Extraordinary Session 1978 (Senate Concurrent Resolution No. 507), ratified by the electorate and inserted into the Constitution in November 1979, and approved by the Department of Justice in February 1980.

order was *not* based on new census data, since the next census was still a year away. *Id.* at 136, 139, 141, 162. Thus, *Whitcomb* required reapportionment not because of population shifts or a new census but only because subsequent decisions of this Court had clarified that the 1965 plan was unconstitutional *when it was enacted.*

Plaintiffs' reliance on *Beens v. Sixty-Seventh Minnesota Senate*, 406 U.S. 187 (1972), is likewise misplaced. In *Beens*, this Court did not address the question whether reapportionment was required following a new census. Rather, as the Court explained: "The 1966 Minnesota apportionment legislation, the [district] court found, in light of the 1970 census figures no longer provided a constitutionally acceptable apportionment of either house. *No one challenges that basic finding here, and we have no reason to rule otherwise.*" *Id.* at 195 (emphasis added). Thus, the district court's ruling requiring reapportionment was neither challenged nor addressed on appeal. The *only* issue before this Court was whether the district court had overstepped its authority by ordering reductions in the membership of both houses of the state legislature. *Id.* at 188, 195.[3] *Beens* is also distinguishable in that the Minnesota

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[3] *Watkins v. Mabus*, 771 F. Supp. 789, 804 (S.D. Miss.), *aff'd in part, vacated in part*, 502 U.S. 954 (1991), is similar. As the court below explained, "the court in *Watkins* was not presented with the question whether Article 13, Section 254 of the Mississippi Constitution required the court to stay its hand." J.S. App. 28 n.5. That is, *Watkins* proceeded on the *unchallenged assumption* that the State's 1991 legislative elections were unconstitutional and had to be set aside. In this case, in contrast, the district court directly addressed the question whether the process prescribed by Section 254 satisfies *Reynolds v. Sims* and correctly held that it does.

Constitution required reapportionment in the first year after the census, but the legislature failed to do so. *See id.* at 195. Therefore, unlike this case, *Beens* did not present the question whether "*compliance with*" a policy of "decennial reapportionment" satisfies *Reynolds*, 377 U.S. at 583–84 (emphasis added). Rather, at most, it indicates that a federal court may intervene if a state *fails* to adhere to its own redistricting timetable.

Plaintiffs also rely on language from a footnote in *Georgia v. Ashcroft*, a Voting Rights Act case:

> When the decennial census numbers are released, States must redistrict to account for any changes or shifts in population. But before the new census, States operate under the legal fiction that even 10 years later, the plans are constitutionally apportioned. After the new enumeration, no districting plan is likely to be legally enforceable if challenged, given the shifts and changes in a population over 10 years. And if the State has not redistricted in response to the new census figures, a federal court will ensure that the districts comply with the one-person, one-vote mandate before the next election.

539 U.S. 461, 488 n.2 (2003).

However, given that *Georgia v. Ashcroft* was a § 5 case, not a one-person, one-vote case, the language on which plaintiffs rely was dicta. This dicta cannot be read to overrule, *sub silentio*, *Reynolds*'s clear holding that "reapportionment every 10 years" "clearly meet[s] the minimal requirements" of the

Equal Protection Clause. 377 U.S. at 583–84. "This Court does not normally overturn, or so dramatically limit, earlier authority *sub silentio*." *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000). Here especially, "[t]he notion that [this Court] created a new rule *sub silentio*—and in a case where certiorari had been granted on an entirely different question, and the parties had neither briefed nor argued the ... issue—is implausible." *Mickens v. Taylor*, 535 U.S. 162, 172 (2002).

Moreover, the footnoted dicta from *Georgia v. Ashcroft* is easily reconciled with *Reynolds*'s holding. A state fails to "redistrict[] in response to new census figures" (*Georgia v. Ashcroft*, 539 U.S. at 488 n.2) only if it is not in "compliance with" a "reasonable plan for periodic revision of [its] apportionment schemes," *i.e.*, a plan for reapportionment "every 10 years" (*Reynolds*, 377 U.S. at 583–84). Because Section 254 of the Mississippi Constitution establishes such a plan, and because the State is in compliance with that plan, the district court properly rejected plaintiffs' pre- and post-election requests for relief.

Finally, plaintiffs selectively quote this Court's opinion in *Perry v. Perez*, 132 S. Ct. 934 (2012), for the proposition that if a new census "renders the current plan unusable, a court must undertake the unwelcome obligation of creating an interim plan." *Id.* at 940 (quotation marks omitted); *see* J.S. 8. However, *Perry* held that this "unwelcome obligation" is triggered when a state *has* enacted a new plan for impending elections but the new plan is still awaiting preclearance under the Voting Rights Act. *Id.* at 940. In this unique situation, the Court held that although a federal court must adopt an "interim plan," the court's plan should track the state's *new*

plan except to the extent that the new plan appears to violate § 2 or § 5 of the Voting Rights Act. *See id.* at 941–44. Nothing in *Perry* overrules *Reynolds*'s holding that decennial reapportionment is a constitutionally permissible approach to redistricting; rather, *Perry* simply holds that when a state legislature *has* adopted a new plan, that plan should not be ignored simply because of delays inherent in the preclearance process.

3. The decision below is also consistent with decisions of other lower courts. Like the court below, two federal courts of appeals have held that there is no constitutional obligation to redistrict in the same year that census data is released provided that a process for decennial reapportionment is followed. *Political Action Conf. v. Daley*, 976 F.2d 335 (7th Cir. 1992); *French v. Boner*, 963 F.2d 890 (6th Cir. 1992).

In *Daley*, the Seventh Circuit held that Chicago city council members could serve full four-year terms, starting in 1991 and ending in 1995, even though census data released prior to the 1991 elections showed constitutionally excessive population deviations among their wards. *Id.* at 337–40. The court emphasized that *Reynolds* requires only the enactment a new apportionment plan decennially. Immediate special elections are not required simply because the new plan is adopted soon after four-year terms have begun. Rather, the Constitution permits implementation of the new plan at the next regularly scheduled elections. *See id.*; *accord Graves v. City of Montgomery*, 807 F. Supp. 2d 1096, 1110–1111 (M.D. Ala. 2011) (holding that a four-year delay in implementing a new apportionment caused by four-year terms "is of no constitutional consequence").

In *French*, the Sixth Circuit addressed the same issue in the City of Nashville: council members were elected to four-year terms in August 1991 after census data, released in the spring of 1991, revealed that "the largest ... council districts ha[d] almost three times as many people as the smallest district." *Id.* at 891. Despite this sizable deviation, the Sixth Circuit rejected a demand for special elections, holding that, under *Reynolds*, "principles of mathematical equality and majority rule" do not "outweigh all other factors in reviewing the timing of elections." *Id.* at 892. As the court explained, the net effect of the council members' four-year terms was that "the 1980 census figures w[ould] govern for twelve years rather than ten years." *Ibid.* Under these circumstances, the court held that neither the goal "of mathematical equality" nor "the presumption in favor of redistricting every ten years outweigh ... considerations ... concerning the validity of four-year terms, the settled expectations of voters and elected officials, the costs of elections, and the need for stability and continuity of office." *Ibid.*

The same considerations apply in this case. The fact that 2000 census data will govern Mississippi's legislative districts for twelve years rather than ten does not invalidate the four-year terms mandated by the State Constitution. Nor does it justify the significant costs and disruptions that 174 special legislative elections would entail.

Ignoring these two decisions entirely, plaintiffs rely heavily on *Farnum v. Burns*, 548 F. Supp. 769 (D.R.I. 1982), a thirty-year-old district court ruling cited for the first time at any stage of these lengthy proceedings. *See* J.S. 10–11. *Farnum* addressed an unusual situation in which, between April and July

1982, the state enacted a new apportionment plan that the state supreme court promptly invalidated; the legislature passed a second plan that the governor vetoed because he did not believe that legal challenges to it could be resolved prior to the elections scheduled for September 1982; and, finally, the legislature passed the second plan again but provided that the state's old plan would remain in effect for the 1982 elections and that the new plan would go into effect at the next regularly scheduled elections. *See* 548 F. Supp. at 771. Yet, at an August 1982 hearing, the district court determined that state election officials were unprepared to hold elections on time under *either* the old plan *or* the new plan. *See id.* at 771–72. On these facts, the court held that the 1982 elections could not proceed under the old plan. *See id.* at 772–75. However, the court "emphasize[d] that its holding [was] limited to the specific facts of this case," *i.e.*, the state had received census data sixteen months before scheduled elections and, thus, "had a more than reasonable opportunity to enact a constitutionally valid reapportionment plan prior to the 1982 elections." *Id.* at 774 n.6. The court pointedly "expresse[d] no opinion as to whether it would be unconstitutional not to reapportion prior to the first elections after a census where, for example, the elections are scheduled to occur two months after census data becomes available." *Ibid.*[4]

Thus, whereas plaintiffs identify a single decision that limited its holding to its "specific"—and dis-

[4] As noted above, Mississippi received census data approximately six months prior to scheduled elections but only four months prior to the qualifying deadline and only two months before the end of that year's 90-day legislative session.

tinguishable—"facts" and expressly avoided deciding whether redistricting is required in the same year that census data is released, the decision below is consistent with the opinions of the two federal courts of appeals that have decided that issue. Those cases affirm that "decennial reapportionment" remains constitutionally permissible even if it occasionally results in some delay in the implementation of a new apportionment plan.

* * * * *

In summary, the district court correctly—and straightforwardly—applied *Reynolds*'s holding that "compliance with" "decennial reapportionment" "clearly meet[s] the minimal requirements for maintaining a reasonably current scheme of legislative representation." 377 U.S. at 583–84. No subsequent decision of this Court or any other court calls into question that clear holding. Accordingly, the judgment should be affirmed summarily.

II. THE JUDGMENT SHOULD BE SUMMARILY AFFIRMED BECAUSE THE DRASTIC REMEDY SOUGHT BY PLAINTIFFS IS UNWARRANTED.

For the reasons discussed above, the district court correctly concluded that Section 254 is constitutional. There being no underlying constitutional violation, the question of an appropriate "remedy" is moot. But even if *Reynolds* could be interpreted to command a shorter timetable than Section 254, and to require statewide reapportionment in the same year that census data is released, the drastic remedy sought by plaintiffs was properly denied.

To begin with, a key premise of plaintiffs' argument to set aside the 2011 elections is their claim

that the district court "committed reversible error by denying ... pre-election relief." J.S. 14–15; *see also id.* at 9, 13, 15. Yet this assertion is untenable in light of this Court's prior order, which clearly "affirmed" the district court's *denial* of pre-election relief. 132 S. Ct. 542 (2011). To be sure, "the precedential effect of a summary affirmance can extend no farther than the precise issues presented and necessarily decided by [the affirmance]," *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 182 (1979), but it does—definitively—"settle[] [those] issues for the parties," *Mandel v. Bradley*, 432 U.S. 173, 176 (1977) (quoting *Fusari v. Steinberg*, 419 U.S. 379, 391–392 (1975) (Burger, C. J., concurring)). If nothing else, this Court's prior affirmance necessarily decided that plaintiffs were *not* entitled to pre-election relief in this case.

Beyond this basic point, this Court has never held that the extraordinary remedy of setting aside state elections and ordering new elections should be imposed automatically or without regard to other equitable considerations. To the contrary, in a case under § 5 of the Voting Rights Act, the Court "decline[d] to take corrective action of such consequence" because the case turned on "complex issues of first impression—issues subject to rational disagreement." *Allen v. State Bd. of Elections*, 393 U.S. 544, 571–72 (1969). The Court reasoned that such relief was inappropriate because the state's interpretation of the law was "not so clearly" wrong as to "constitute[] deliberate defiance of the Act." *Id.* at 572. In another § 5 case, the Court refused to set aside the results of state legislative elections held in violation of the Act because a prior order of the Court had permitted the elections to proceed as scheduled. *Georgia v. United States*, 411 U.S. 526, 541 (1972).

The Court held that "it would be inequitable to require new elections" in these circumstances, and so its ruling would apply to "future elections" only. *Ibid.*; *see also Connor v. Williams*, 404 U.S. 549, 550 (1972) (stating that even if a "plan does not precisely square with [one-person, one-vote] requirements," "it does not necessarily follow that ... elections must be invalidated and new elections ordered").

In this case, the district court's ruling refusing to enjoin the 2011 state legislative elections was correct and, indeed, was required by binding precedent and basic principles of federalism. *See* Part I, *supra*. At the absolute minimum, the district court's ruling was neither an irrational interpretation of *Reynolds* nor "so clearly" wrong as to "constitute[] deliberate defiance" of the Constitution. *Allen*, 393 U.S. at 571–72. Further, "it would be inequitable to require" the State to hold "new elections" given that the 2011 elections were held under the State's then-existing apportionment plan *precisely because* the district court held, in a ruling that this Court affirmed, that that was a constitutionally permissible course of action. And, finally, while not even "every unconstitutional racial discrimination necessarily permits or requires a retrospective voiding of the election," *Bell v. Southwell*, 376 F.2d 659, 662 (5th Cir. 1967), this appeal does not even involve a claim of such discrimination; in fact, as noted above, the apportionment plan under which the 2011 elections were held was the *only* available plan that the Justice Department had actually precleared. Under all these circumstances, the drastic interference with the state electoral and political processes that would be caused by retrospectively voiding state legislative elections is wholly unwarranted.

CONCLUSION

The decision of the three-judge district court should be affirmed summarily.

Respectfully submitted,

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