

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 MISSISSIPPI  
SECRETARY OF STATE DELBERT HOSEMANN**

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## QUESTIONS PRESENTED

1. Whether the three-judge district court correctly refused to enjoin Mississippi's 2011 state legislative elections because Section 254 of the Mississippi Constitution properly permitted the Mississippi Legislature until 2012 to complete redistricting – a question which has already been presented to and decided on the merits by this Court in this case.
  2. Whether the drastic remedy of special state legislative elections should be denied when Mississippi's 2011 legislative elections were held by this Court to be constitutionally valid and to order special elections would be directly inconsistent with the Mississippi Constitution.
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Pursuant to Rule 18.6, Mississippi Secretary of State Delbert Hosemann respectfully moves the Court to affirm the decision of the three-judge district court below.

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### STATEMENT OF THE CASE

The three-judge district court held, and this Court previously affirmed, Section 254 of the Mississippi Constitution properly permitted the Mississippi Legislature until 2012 to redistrict under a valid and rational approach to redistricting. *See* J.S. App. 29-32; 132 S. Ct. 542 (2011). Mississippi's 2011 legislative elections were held under the State's then-existing apportionment plan from 2002 that was approved by the Department of Justice. *See* Miss. Code Ann. § 5-1-1, Historical and Statutory Notes. Consistent with Section 254, the Legislature adopted a new apportionment plan during its 2012 session. *See* J.S. App. 79-80. In October 2012, Appellants moved the three-judge district court to set aside the 2011 legislative elections and order special elections because the 2011 elections allegedly violated the one-person, one-vote principle of the Equal Protection Clause in light of the 2010 Census. *See* J.S. App. 52-58. No other party supported Appellants' motion. The district court denied Appellants' motion and subsequently entered final judgment in favor of Appellees, from which Appellants appealed. *See* J.S. App. 1-4.

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### SUMMARY OF THE ARGUMENT

The three-judge district court held, and this Court previously affirmed on the merits, Section 254 does not violate the United States Constitution because it complies with the decennial reapportionment scheme set forth in *Reynolds v. Sims*, 377 U.S. 533 (1964). Therefore, it is already the law of the case that the three-judge district court properly followed Section 254 and refused to enjoin the 2011 elections. See *Christianson, et al. v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988).

Second, the extraordinary relief of setting aside state elections and ordering special elections was appropriately denied because, among other reasons, Mississippi's 2011 legislative elections were conducted based on a "rational" interpretation of applicable law, *Allen v. State Bd. of Elections*, 393 U.S. 544, 572 (1969), were held under color of federal court orders permitting them to proceed, see *Georgia v. United States*, 411 U.S. 526, 541 (1972), and special elections would deprive the officeholders of their full four-year terms of office as guaranteed by Sections 34 and 35 of the Mississippi Constitution. Due to this Court's prior finding that the 2011 elections were fully consistent with the United States Constitution, it cannot now be unconstitutional for those elected officials to complete their terms.





**ARGUMENT****I. THE JUDGMENT SHOULD BE SUMMARILY AFFIRMED BECAUSE THE COURT BELOW CORRECTLY APPLIED *REYNOLDS V. SIMS*, AND THAT DECISION WAS PREVIOUSLY AFFIRMED BY THIS COURT.**

The decision below should be summarily affirmed because the three-judge district court correctly held, and this Court previously affirmed on the merits, that the reapportionment process prescribed by Section 254 of the Mississippi Constitution does not violate the United States Constitution and is consistent with this Court's holding in *Reynolds v. Sims*. See J.S. App. 29-32; 132 S. Ct. 542 (2011). 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). Therefore, it is already the law of the case that the three-judge district court properly followed Section 254 and refused to enjoin the 2011 elections. See *Christianson, et al. v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988) (when a court

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decides an issue, that decision governs the same issues in subsequent stages of the case).

The Secretary adopts and incorporates the arguments of the Mississippi Governor and the Mississippi Republican Party Executive Committee in their Motion to Affirm (pp. 6-14) as if fully stated here. Accordingly, the judgment of the three-judge district court should be summarily affirmed.

**II. THE JUDGMENT SHOULD BE SUMMARILY AFFIRMED BECAUSE THE DRASTIC REMEDY OF SPECIAL ELECTIONS IS UNWARRANTED.**

The district court correctly held, and this Court previously affirmed on the merits, that Section 254 is constitutional. *See* J.S. App. 29-32; 132 S. Ct. 542 (2011). Section 254 permitted the Legislature until its 2012 legislative session to complete redistricting, at which time it did so. Elections were conducted in 2011 using the district lines drawn and approved by the Department of Justice in 2002. *See* Miss. Code Ann. § 5-1-1, Historical and Statutory Notes. Because there is no underlying constitutional violation, the drastic remedy of special elections is unwarranted.

The flawed premise of Appellants' argument to set aside the 2011 elections and order special 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. This assertion is untenable in light of this Court's prior order, which

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affirmed the three-judge district court's denial of pre-election relief. 132 S. Ct. 542 (2011).

Sections 34 and 35 of the Mississippi Constitution expressly provide that members of the Legislature are elected to four-year terms. Appellants have made no showing – or supported any argument – that those provisions of the Mississippi Constitution as applied to these facts violate the United States Constitution. The members of the Mississippi Legislature should be permitted to serve their full four-year terms as provided in the Mississippi Constitution. *See Political Action Conf. v. Daley*, 976 F.2d 335, 337-40 (7th Cir. 1992); *French v. Boner*, 963 F.2d 890, 892 (6th Cir. 1992).

Moreover, the undue financial burden, administrative complexity, and disruption of the legislative cycle further counsel against the drastic remedy of 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.

In summary, the legislators elected in 2011 should be permitted to serve their full four-year terms, with the reapportionment plans passed in 2012 to take effect in the 2015 elections. Accordingly, the decision of the three-judge district court should be summarily affirmed.

In addition, the Secretary adopts and incorporates the arguments of the Mississippi Governor and Mississippi Republican Party Executive Committee in

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their Motion to Affirm (pp. 14-16) as if fully stated here.



**CONCLUSION**

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

Respectfully submitted,

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