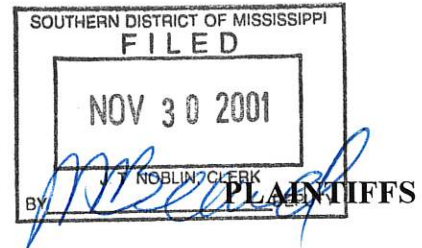


**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**JOHN ROBERT SMITH,  
SHIRLEY HALL, and  
GENE WALKER**



**VS.**

**CIVIL ACTION NO. 3:01CV855 WS**

**ERIC CLARK, Secretary of State of Mississippi;  
MIKE MOORE, Attorney General for the State of  
Mississippi; RONNIE MUSGROVE, Governor of  
Mississippi; MISSISSIPPI REPUBLICAN  
EXECUTIVE COMMITTEE; and MISSISSIPPI  
DEMOCRATIC EXECUTIVE COMMITTEE**

**DEFENDANTS**

**STATE DEFENDANTS' REBUTTAL IN RESPONSE  
TO PLAINTIFFS' REPLY TO MOTION TO DISMISS**

State Defendants, by and through the Attorney General, hereby respond to Plaintiffs' Response to State Defendants Motion to Dismiss.

**1. RIPENESS**

Plaintiffs contend this action is ripe and not premature based on an alleged combination of a final "failure" of the Legislature to adopt a redistricting plan, the alleged over whelming importance of the March 1 qualifying date for congressional candidates, and the presumed delay of a 60 day period it would take for DOJ to consider preclearance of any plan. Upon examination, these contentions are overblown and do not hold up or require immediate court action.

First, as a factual matter, and contrary to the implication given by Plaintiffs, the Extraordinary Session of the Legislature at which redistricting has not terminated sine die, and has only adjourned subject to being reconvened by the Governor at any time prior to the January 8, 2002,

start of the 2002 Regular Session. The practical significance of this adjournment of the Special Session, (rather than termination sine die), is that the Extraordinary Session on redistricting could continue exactly where it left off before adjourning, that is, with redistricting plans in a conference committee status. See Testimony of Senate Staff Counsel William Neely, Exhibit A to this Response. Moreover, as pointed out below, the matter could be considered and a plan adopted at the Regular Session without impact on the crucial date – the November 2002 general election.

Second, the plaintiff response gives no weight to the most important substantive consideration is determining whether court action is premature under the circumstances here: that the courts should give a state legislature every reasonable opportunity to draft a plan. In *Abrams v. Johnson*, 521 U.S. 74, 117 S.Ct. 1925 (1997), the Supreme Court reiterated this fundamental principle which informs the ripeness calculation in this case:

The task of redistricting is best left to state legislatures, elected by the people and as capable as the courts, if not more so, in balancing the myriad factors and traditions in legitimate districting policies.

*Abrams*, 117 S.Ct. at 1941. See also *White v. Weiser*, 412 U.S. 783, 794, 93 S.Ct. 2348, 37 L.Ed.2d 335 (1973) (“we have recognized that reapportionment is primarily a matter for legislative consideration and determination, that that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having an adequate opportunity do so”). These defendants have similarly asked the Chancery Court Judge, Hon. Pat Wise, to dismiss the state court action, *Branch v. Clark*, see Exhibits B and C.

Under Plaintiffs’ proposed ripeness analysis, overemphasizing the importance of a March 1 qualifying date and a 60 day preclearance delay, the 2002 Regular Session of the Legislature beginning January 8, 2002 would never get to consider redistricting.

Contrary to Plaintiffs' contentions, the truly important and significant date here – which should not be missed or interfered with – is the November 2002 general election date for Congress. Moreover, the June primary dates (June 4, 2001; Miss. Code Ann. § 23-15-1031) may or may not in fact be very important dates under the circumstances, depending such factors as whether incumbents have intra party opposition, etc. However, the March 1 qualification deadline for candidates does directly not depend on whether a redistricting plan has been adopted and precleared. With respect to candidates for federal election office such as Congress or the Senate, the candidate simply pays \$200 to the party executive committee, Miss. Code Ann. § 23-15-297(g) and § 23-15-299(3), and gives “a written statement containing the name and address of the candidate, the party with which he or she is affiliated, and the office for which he or she is a candidate.” § 23-15-299(4)(a). To qualify for Congress, a person must only meet the exclusive constitutional requirements of Art. I, Sec. 2, Cl. 2, which are to be 25 years old, a citizen for 7 years, and a resident of the state in which he shall be chosen. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S.Ct. 1842, 131 L.Ed.2d 881 (1995). There is no requirement under state law or federal law that exact districts be adopted and finally approved as a prerequisite to a potential candidates taking the minimal steps to qualify to run for Congress, nor does the absence of an approved but not yet precleared plan directly prohibit any incumbent congressman or other candidate for the office from taking steps to qualify. Moreover, the Complaint does not allege that any of the Plaintiffs are candidates or potential candidates who want to run for Congress. While a voter may have a cognizable interest in voting in an election, it is submitted that he has no direct personal stake in a qualifying date for potential candidates.

Similarly, the purported 60 day preclearance time period, which Plaintiffs want to insert

before the March 1 qualifying date for their ripeness analysis, is entirely contingent and speculative as a time frame. After submission of a plan, the Department of Justice could take two weeks, or two months, or two years to approve (or not approve), depending on circumstances which are entirely unknown at this time.

This matter is premature at this juncture, and the Plaintiffs' analysis overemphasizes the purported significance of a March 1 qualifying date at the expense of the Supreme Court's substantive mandate that legislatures should have every reasonable opportunity to adopt a redistricting plan.

**2. ROLE OF SECRETARY OF STATE, ATTORNEY GENERAL  
AND GOVERNOR**

In their Memorandum at pp. 5-6, Plaintiffs do not, and cannot, specify any statutory role the State Board of Election Commissioners have where there is no legislative plan with respect to redistricting – a legislative function – or with conducting party primary elections, etc. Moreover, it is uncontroverted the State Board fo Election Commissioners does not intend to conduct any future election under a scheme that is then contrary to the federal statutory apportionment of Mississippi from 5 to 4 seats under the recent Census as prescribed by law, 2 U.S.C.A. § 2a(a) and § 2a(b). The State Board of Election Commissioners is at present neither violating any federal law nor threatening to violate any federal law. The burden is on Plaintiffs in this regard and they have failed to meet that burden.

**3. STANDING**

As noted above, the Plaintiffs claim alleged "injury" as voters, but such injury is speculative at this point. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Moreover, as set forth above,

none of Plaintiffs claim to be candidates, or potential candidates, who are somehow suffering injury by the current lack of a redistricting plan vis-a-vis the March qualification date.

**4. NO PRELIMINARY INJUNCTION OR OTHER  
COERCIVE ORDER SHOULD ISSUE**

For the reasons set forth in these Defendants original Memorandum and in this rebuttal, Plaintiffs cannot meet their burden for the issuance of a preliminary injunction. In this regard it is noted that technically the current districts outlined by law are not, and would not be, unconstitutional until such time as the new Congress is sworn in in January 2003; that is, until that time Mississippi continues to be represented in Congress by five Congressmen from the districts as described by law. Any new elections for such positions however, must be in accord with the reapportionment from 5 seats to 4 pursuant to 2 U.S.C.A. § 2a(a) and 2a(b).

Respectfully submitted,

ERIC CLARK, Secretary of State of Mississippi;  
MIKE MOORE, Attorney General for the State of  
Mississippi; RONNIE MUSGROVE, Governor of  
Mississippi, Defendants

**BY: MIKE MOORE, ATTORNEY GENERAL**

BY:

  
T. HUNT COLE, JR., MSB No. 6349  
SPECIAL ASSISTANT ATTORNEY GENERAL

Office of the Attorney General  
Post Office Box 220  
Jackson, Mississippi 39205  
Telephone No. (601)359-3824

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI

BEATRICE BRANCH, ET AL.

PLAINTIFFS

VS.

CAUSE NUMBER 2001-1777 W/4

ERIC A. P. SECRETARY OF STATE  
OF MISSISSIPPI, ET AL.

DEFENDANTS

EXHIBIT A  
PARTIAL TRANSCRIPT OF PROCEEDINGS HAD AND DONE  
IN THE ABOVE STYLED AND NUMBERED CAUSE BEFORE  
THE HONORABLE PATRICIA D. WISE, CHANCELLOR,  
ON THE 19TH DAY OF NOVEMBER, 2001.

APPEARANCES:

HONORABLE ROBERT B. McDUFF  
Attorney at Law  
Jackson, MS 39202

-and-

HONORABLE CARLTON W. REEVES  
Attorney at Law  
Jackson, MS 39225-2725

(REPRESENTING PLAINTIFFS)

HONORABLE MIKE MOORE  
Attorney General  
HONORABLE T. HUNT COLE  
Special Assistant Attorney General  
Jackson, MS

(REPRESENTING DEFENDANTS CLARK, MOORE AND  
MUSGROVE)

(Appearances Continuing):

HONORABLE GRANT M. FOX  
Attorney at Law  
Tupelo, MS 38802-0797

-and-

HONORABLE KEITH BALL  
Attorney at Law  
Louisville, MS

(REPRESENTING INTERVENORS)

HONORABLE TOMMIE S. CARDIN  
Attorney at Law  
Jackson, MS

(REPRESENTING MR. REYNOLDS)

PROCEEDINGS OF NOVEMBER 19, 2001:

These proceedings took place following arguments by the attorneys on the pending motions):

. . .

MR. MOORE: The State calls Mr. Neely. I don't know his proper name. I always call him Buddy.

MR. NEELY: William.

MR. MOORE: William Neely, Your Honor.

THE COURT: Okay, Mr. Neely.

(THE WITNESS CAME FORWARD AND WAS ADMINISTERED THE OATH BY THE DEPUTY CLERK.)

THE COURT: When you're ready.

WILLIAM NEELY,

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q. State your name for the record, please, sir.

A. William A. Neely, Jr.

Q. All right, and what is your job with the Mississippi Legislature?

A. I'm Staff Attorney and the committees that I handle, I'm assigned to, are the Finance Committee, the Elections Committee, Local and Private Committee, Highways and Transportation and Economic Development.

Q. Have you been involved, Mr. Neely, with the redistricting effort on the congressional districts in the State of Mississippi during the last year?

A. As the attorney for the Elections Committee, yes, I have been.



1 Q. And what are your duties? What do you do?

2 A. Basically what I do is I draft legislation. I  
3 assist them in conference and give them legal opinions.

4 Q. Are you familiar with the extraordinary session  
5 of the 2001 Legislature that the Governor called recently  
6 dealing with redistricting?

7 A. Yes, I am.

8 Q. All right. And could you tell us the status of  
9 that session of the Legislature?

10 A. In our -- in the legal opinion of my office, and  
11 we have issued -- written a memo on this -- I don't have  
12 it with me -- the Governor does not have the authority  
13 under Section 121 of the Constitution to adjourn the  
14 Legislature without day, which is sine die. Section 121  
15 of the Constitution says that he can -- if the Legislature  
16 -- if both houses of the Legislature disagree with respect  
17 to a time of adjournment, he can adjourn them to such time  
18 as he shall think proper, not beyond the next stated  
19 meeting of the Legislature, and without day -- that gives  
20 him authority to adjourn them to a day certain -- and not  
21 without day.

22 Q. Was there in fact disagreement between the  
23 Mississippi House of Representatives and the Mississippi  
24 Senate on the date of adjournment of the special session?

25 A. Yes, there was.

26 Q. All right --

27 THE COURT: You can't shake your head or do  
28 anything. You just have to be still. Okay.

29 Q. (Continuing: Was there disagreement?

1 A. There was disagreement, yes.

2 Q. All right. And so the Governor issued a  
3 resolution or proclamation --

4 A. He issued a proclamation adjourning and --  
5 basically what he did was he stated language similar to  
6 what is in the Constitution. He did not set a date, a  
7 date certain in the proclamation, and if he had, it  
8 probably -- in our opinion, if he had done that, it would  
9 have been in violation of Section 121 of the Constitution.

10 Q. All right. For the legislative session that we  
11 are in recess to continue, what would the Governor have to  
12 do?

13 A. He would have to issue a proclamation to call the  
14 Legislature back in, basically amending the proclamation  
15 that he issued earlier.

16 Q. And you would be able to continue doing your  
17 business just as you left off on the day that the  
18 Legislature left?

19 A. That's correct.

20 Q. All right. So, the Legislature basically is in  
21 recess on this redistricting issue.

22 A. That's correct.

23 (BRIEF PAUSE WHILE MR. MOORE CONFERRED WITH MR. COLE.)

24 Q. (Continuing by Mr. Moore): So, the practical  
25 effect of it is that the conference committee could  
26 consider redistricting right where they were, the same  
27 three members from the House and the same three members  
28 from the Senate.

29 A. If the Governor called -- if the Governor issued

1 a proclamation calling the Legislature back into -- back  
2 out of adjournment, back into session, matters would  
3 continue just as they were at the time they were  
4 adjourned.

5 MR. MOORE: While I've got you on the stand,  
6 does the Court need any further on that or --

7 THE COURT: No, we just were going to  
8 establish that one way or the other.

9 MR. MOORE: All right.

10 THE COURT: Any cross?

11 CROSS-EXAMINATION BY MR. REEVES:

12 Q. Mr. Neely, I just have a couple of questions:  
13 Has the Governor issued a proclamation calling the Legis-  
14 lature back into session?

15 A. No, he has not.

16 Q. And based on your work with the Elections  
17 Commission, isn't March 1st the deadline for qualifica-  
18 tions to run for elections next year?

19 A. I believe that's correct.

20 MR. REEVES: That's all.

21 THE COURT: All right, anything further?

22 MR. MOORE: Since he asked that last  
23 question, Judge, I might ask a question to  
24 clarify the record on that:

25 REDIRECT EXAMINATION BY MR. MOORE:

26 Q. Mr. Neely, should the Legislature need more time  
27 to pass a plan that interferes with the March 1st dead-  
28 line, can the Legislature extend the March 1st deadline  
29 for qualification?

1           A.    Yes, sir.

2                   MR. MOORE:   Thank you.

3   EXAMINATION BY THE COURT:

4           Q.    And do you have the statutory authority that you  
5 could cite for the record to support that answer?

6           A.    Ma'am?

7           Q.    Do you have any statutory authority that you can  
8 cite for the record that would support your yes answer?

9           A.    The Legislature has the constitutional authority  
10 to amend laws, and what they -- in the past -- this has  
11 been done before where the deadline for certain elections  
12 have been changed, but basically they have the constitu-  
13 tional authority to amend laws and pass laws, and what  
14 they would be doing would be -- they would have the  
15 authority to extend the deadline if they wanted to.

16                   THE COURT:   Okay.   Anything further?

17                   MR. MOORE:   Thank you, Your Honor.

18                   THE COURT:   You may stand down.

19                                   Witness Stands Down.

20                                   . . .

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CERTIFICATE OF COURT REPORTER

STATE OF MISSISSIPPI

COUNTY OF HINDS

I, LINDA SUDDUTH, Official Court Reporter for the Chancery Court of Hinds County, Mississippi, do hereby certify that the foregoing constitutes a true and correct partial transcript of the proceedings held in the above matter on November 19, 2001, as taken down by me in shorthand and later transcribed into typewritten form to the best of my skill and ability.

GIVEN under my hand this the 29th day of November, 2001.



---

LINDA SUDDUTH, CSR #1124  
Official Court Reporter  
PO Box 686  
Jackson, MS 39205  
(601) 968-6550

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI

**BEATRICE BRANCH; RIMS BARBER;  
L.C. DORSEY; DAVID RULE; MELVIN HORTON;  
JAMES WOODARD; JOSEPH P. HUDSON; and  
ROBERT NORVEL**

**PLAINTIFFS**

**VS.**

**NO. G-2001-1777 W/4**

**ERIC CLARK, Secretary of State  
of Mississippi; MIKE MOORE, Attorney General  
of Mississippi; RONNIE MUSGROVE, Governor  
of Mississippi**

**DEFENDANTS**

**MOTION TO DISMISS AMENDED COMPLAINT**

The Attorney General of the State of Mississippi, on behalf of defendants, hereby respectfully moves the court to immediately and forthwith dismiss the Amended Complaint filed by plaintiffs for lack of ripeness and for lack of any present cause of action against these defendants. Under Mississippi law, if suit is brought prematurely and before the matter is ripe, it must be dismissed. *Gentry v. Wallace*, 606 So.2d 1117, 1121 (Miss. 1992). The requirement of ripeness is a constitutional doctrine. *State ex rel. Holmes v. Griffin*, 667 so.2d 1319, 1325 (Miss. 1995). Accordingly, the reasons outlined below, immediate dismissal is the proper and only course which may be taken by the Chancery Court at this juncture.

1. The Amended Complaint, brought by various individuals who allege that they are registered voters, was served on or about November 2, 2001, and asserts that the Joint



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Congressional Redistricting Committee of the Legislature has not presented a congressional redistricting plan to the Legislature and that under Miss. Code Ann. § 5-3-123 it must do so not later than 30 days prior to the first day of the 2002 legislative session, which is January 2, 2002. The Amended Complaint asserts generally that “unless the legislature adopts a plan in time” for the March 1, 2002, qualifying date for congressional candidates, the alleged interests of the plaintiffs and voters in the election laws will be compromised. Amended Complaint. Para. 5.

2. The Amended Complaint further alleges that “in the event” that no congressional plan is recommended by the Joint Committee, and the legislature fails to adopt a plan in a “timely” manner, it will be the “duty of this Court ... to adopt and implement a congressional redistricting plan ....” Complaint para 7. As relief the Amended Complaint demands that “in the event a congressional redistricting plan is not adopted by the Legislature in a timely manner” the Court issue an injunction adopting and directing the implementation of a congressional redistricting plan for the State. Amended Complaint para. 7.

3. On its face, the Amended Complaint does not set forth any presently enforceable cause of action for an injunction, does not describe how these official defendants are currently violating or imminently threatening to violate any law, and does not present a ripe suit that this Court can entertain or issue any relief upon.

4. Under well settled Mississippi law, a Chancery Court may not entertain a matter that is not ripe. *Gentry v. Wallace*, 606 so.2d 1117, 1121 (Miss. 1992). The requirement that a matter be ripe for judicial intervention before any claim may be considered is a constitutional doctrine. *State ex rel. Holmes v. Griffin*, 667 So.2d 1319, 1325 (Miss. 1995). If a suit is not ripe, dismissal is required. In *Gentry*, the Mississippi Supreme Court held:

It is elementary one cannot sue unless he has an enforceable claim. [I]f, for some reason, suit is brought before it is ripe, dismissal is proper.

A cause of action must exist and be complete before an action can be commenced, and, when a suit is begun before the cause of action accrues, it will generally be dismissed if proper objection is made.

*Gentry*, 606 So.2d at 1117 (interval citations omitted); *Hodges v. Trantham*, 171 Miss. 374, 157 So. 2d 715 (1934) (noting that an “injunction will not issue to protect a right not in existence and which may never arise, nor upon a state of facts which does not give rise to a cause of action); *Erwin v. Mississippi State Highway Comm.*, 213 Miss. 805, 58 So.2d 52 (1952) (“courts of equity do not interfere to accommodate mere apprehensions of injury”).

5. The plaintiffs’ suit is clearly premature at present, and no cause of action currently exists. Under Mississippi law and the separation of powers, it is the function of the Legislative Branch of government, not the Courts, to consider and adopt a congressional redistricting plan.<sup>1</sup> The Chancery Court cannot, and should not, take that function away from the Legislature where no duly enacted precleared congressional redistricting plan is actually and properly before the Court for review.

6. At present the plaintiffs can show no violation of any law by these defendants. At a special session of the Legislature beginning on November 1, 2001, substantial progress in

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<sup>1</sup>Indeed, under Mississippi precedent, the jurisdiction of a chancery court at any point to entertain injunction actions in election matters of a political nature is highly questionable. *Brumfield v. Brock*, 169 Miss. 784, 142 So. 745 (1932) (in holding, in suit seeking to enjoin congressional redistricting act as violative of one-man one vote principles, that chancery court does not have jurisdiction to entertain suit; “courts of equity deal alone with civil and property rights and not with political rights”); *Goodman v. Rhodes*, 375 So.2d 991, 992 (Miss. 1979) (chancery court has “no jurisdiction in election cases” or in “suits involving political rights,” citing *Brumfield*).



compromise towards a redistricting plan was made. Although no congressional redistricting plan was ultimately adopted out of that special session, there remains substantial time for the Legislature to act, either at a second special session or at a Regular Session beginning January 2, 2002, without any disruption or delay to the candidate qualifying or primary dates, or general election in November 2002. The Legislature directive to the Special Joint Redistricting Committee to present a plan 30 days prior to the Regular Session, as stated in Miss. code Ann. § 5-3-123, is irrelevant, because the Legislature can consider and enact as a general law any plan introduced at the Regular Session. This internal housekeeping provision plays no determinative part in what the Legislature adopts as a congressional redistricting plan when it may adopt it.

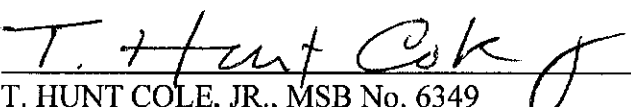
7. A suit is premature, as the Amended Complaint here, when it is premised on speculation, conjecture, and contingencies, which may or may not come to pass. At this point, there is no enacted plan for the Court to review, assuming it had jurisdiction to do so, and no current injury to the plaintiff voters. The Amended Complaint is based entirely on speculation that the Legislature may not adopt a congressional redistricting plan, when in fact there is substantial time for the Legislature to do so without any alternation of the current relevant dates.

**WHEREFORE**, under these circumstances, the Attorney General respectfully submits that the Court must forthwith issue an Order dismissing the Amended Complaint as premature and not ripe. *Gentry, supra; Griffin, supra; Hodges, supra.*

Respectfully submitted,

ERIC CLARK, Secretary of State of Mississippi;  
MIKE MOORE, Attorney General of Mississippi;  
RONNIE MUSGROVE, Governor of Mississippi,  
Defendants

**BY: MIKE MOORE, ATTORNEY GENERAL**

BY:   
T. HUNT COLE, JR., MSB No. 6349  
SPECIAL ASSISTANT ATTORNEY GENERAL

Office of the Attorney General  
Post Office Box 220  
Jackson, MS 39205  
Telephone (601)359-3824

**CERTIFICATE OF SERVICE**

I, T. Hunt Cole, Jr., Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this date caused to be hand delivered a true and correct copy of the above ***Motion to Dismiss Amended Complaint*** to the following:

Robert B. McDuff, Esq.  
767 North Congress Street  
Jackson, MS 39202

**THIS** the 13 day of November, 2001.

T. Hunt Cole Jr.  
T. HUNT COLE, JR.

**IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT  
HINDS COUNTY, MISSISSIPPI**

**BEATRICE BRANCH; RIMS BARBER;  
L.C. DORSEY; DAVID RULE; MELVIN HORTON;  
JAMES WOODARD; JOSEPH P. HUDSON; and  
ROBERT NORVEL**

**PLAINTIFFS**

**VS.**

**CAUSE NO. G-2001-1777 W/4**

**ERIC CLARK, Secretary of State  
of Mississippi; MIKE MOORE, Attorney General  
of Mississippi; RONNIE MUSGROVE, Governor  
of Mississippi**

**DEFENDANTS**

**DEFENDANTS' SUPPLEMENTAL MOTION TO DISMISS  
THE AMENDED COMPLAINT, TO RECONSIDER,  
AND APPLICATION FOR RELIEF PURSUANT TO M.R.APP.P. RULE 21**

Defendants, Eric Clark, Secretary of State, Mike Moore, Attorney General, and Ronnie Musgrove, Governor, by and through the Attorney General as counsel, hereby supplement their motion to dismiss in this cause and further request the Court to reconsider its Order denying defendants' motion dated November 19, 2001, and for general relief as may be proper.

1. As indicated by testimony of Hon. William Neely, Senate legal staff, at the hearing on November 19, 2001, the Legislative Extraordinary Session to consider redistricting of congressional districts has only adjourned and the Extraordinary Session has not ended sine die; accordingly, the adjourned Extraordinary Session may be reconvened by the Governor at any time up until the start of the 2002 Regular Session and it may reconvene to the point where it adjourned, i.e. with proposed redistricting measures before conference committee negotiators. There is no clear demonstration by the plaintiffs that further legislative consideration would not result in the adoption of a plan.

Even if not adopted by a reconvened extraordinary session, there remains substantial time

Exhibit  
C

for the legislature to adopt a plan in its 2002 regular session, which concludes on April 7, 2002, without any disruption of the November 2002 general election date. Even legislative leaders in redistricting such as Representative Tommy Reynolds, who asserts frustration at the preview failure by the legislature to yet adopt a final plan, indicated in his testimony that he was personally willing to continue to negotiate to fulfill the legislative function of redistricting.

3. The holding of any hearings of any kind or of scheduling of any substantive proceedings of any kind by this Court while the matter is still before the legislature, either in the current Extraordinary Session or the 2002 Regular Session, would be improper and exceed the jurisdiction of the Chancery Court.

4. The defendants respectfully request that the Court reconsider its oral ruling denying defendants' motion to dismiss and hold that the matter is premature and not ripe and immediately dismiss the amended complaint. Gentry v. Wallace, 606 So.2d 1117, 1121 (Miss. 1992). Hodges v. Trantham, 171 Miss. 374, 157 So.2d 715 (1934); Meek v. Humphreys Co., \_\_\_\_ Miss. \_\_\_\_, 97 So. 674 (1923).

5. In its current posture, with no legislatively adopted congressional redistricting plan to review, this Court has no subject matter jurisdiction to entertain this suit seeking to have the Chancery Court of the First Judicial District of Hinds County de novo to draw the congressional district lines for the entire State of Mississippi. Brumfield v. Brock, 169 Miss. 784, 142 So. 745 (1932) (holding that Chancery Court did not have jurisdiction to entertain redistricting suit even where there was a legislative plan to review; Chancery Court has no jurisdiction in "suits involving political rights" or "in election cases"); In re McMillan, 642 So.2d 1336, 1339 (Miss. 1994) (holding that Chancery Courts in Mississippi "do not have the jurisdiction to enjoin elections or otherwise

political rights” or “in election cases”); In re McMillan, 642 So.2d 1336, 1339 (Miss. 1994) (holding that Chancery Courts in Mississippi “do not have the jurisdiction to enjoin elections or otherwise interfere with political and electoral matters which are not within the traditional reach of equity jurisdiction”, citing with approval Brumfield v. Brock, supra). The amended complaint should be dismissed for lack of jurisdiction and this Court should not exceed its jurisdiction or exercise jurisdiction where none exists..

6. In the alternative, the amended complaint should also be dismissed because the named defendant officials are not proper defendants. The Secretary of State, Attorney General, and Governor, are not alleged to be violating, or threatening to violate, any law or duty with regard to congressional redistricting. These defendants, who collectively make up the State Board of Election, have no express statutory duty to perform with regard to adopting a congressional redistricting plan, which is a legislative function; nor do they have any statutory duties to administer or enforce with regard to elections a congressional redistricting plan. These defendants are not alleged, and do not threaten, to violate any provision of law. An injunction may not issue against public officials where the officials have no specific duty to perform, where there is no cause of action against them, where it cannot be shown beyond a reasonable doubt that an injunction would be proper, and where any remedy, such as an injunction against these defendants, would be ineffective and meaningless. In re McMillan, supra; Warrior, Inc. v. Easterly, 360 So. 2d 700, 703 (Miss. 1978). Accordingly, the amended complaint must be dismissed. A suit may not proceed which does not join proper parties.

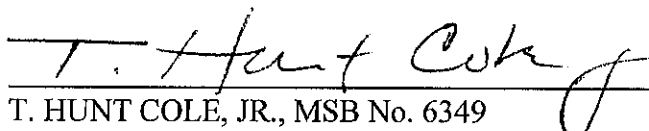
WHEREFORE, Defendants supplement their motion to dismiss and respectfully apply for reconsideration and relief from this Court’s Order denying their motion to dismiss and for general relief, see Miss. R. App. P. Rule 21.

Respectfully submitted,

ERIC CLARK, Secretary of State of Mississippi;  
MIKE MOORE, Attorney General for the State of  
Mississippi; RONNIE MUSGROVE, Governor of  
Mississippi, Defendants

**BY: MIKE MOORE, ATTORNEY GENERAL**

BY:

  
T. HUNT COLE, JR., MSB No. 6349  
SPECIAL ASSISTANT ATTORNEY GENERAL

Office of the Attorney General  
Post Office Box 220  
Jackson, Mississippi 39205  
Telephone No. (601)359-3824

**CERTIFICATE OF SERVICE**

This is to certify that I, T. Hunt Cole, Jr., Special Assistant Attorney General for the State of Mississippi, have this date caused to be delivered by hand a true and correct copy of *Defendants'*

*Supplemental Motion to Dismiss the Amended Complaint and to Reconsider* to the following:

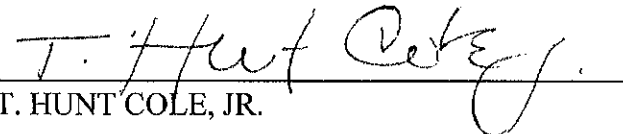
Robert B. McDuff, Esq.  
767 North Congress Street  
Jackson, MS 39202

Carolton Reeves, Esq.  
Piggott, Reeves, Johnson & Minor, P.A.  
775 North Congress St.  
Jackson, MS 39202

and by first-class mail to:

Grant Fox, Esq.  
P. O. Box 797  
Tupelo, MS 38802-0797

This the 20 day of November, 2001.

  
T. HUNT COLE, JR.



**CERTIFICATE OF SERVICE**

This is to certify that I, T. Hunt Cole, Jr., Special Assistant Attorney General for the State of Mississippi, have this date caused to be hand delivered, a true and correct copy of *State Defendants'*

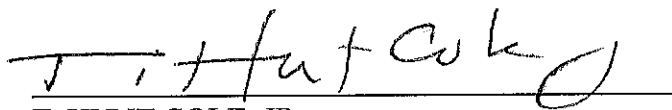
*Rebuttal in Response to Plaintiffs' Reply to Motion to Dismiss* to the following:

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This the 30 day of November, 2001.

  
\_\_\_\_\_  
T. HUNT COLE, JR.