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

JOHN ROBERT SMITH, ET AL. PLAINTIFFS

VERSUS CAUSE NO. 3:01-CV-00855-HTW-EGJ-DCB

ERIC CLARK, ET AL. DEFENDANTS

STATUS HEARING

BEFORE

THE HONORABLE HENRY T. WINGATE
UNITED STATES DISTRICT
THE HONORABLE DAVID C. BRAMLETTE
SENIOR UNITED STATES DISTRICT JUDGE
AND THE HONORABLE E. GRADY JOLLY
UNITED STATES CIRCUIT JUDGE
FEBRUARY 2, 2022
JACKSON, MISSISSIPPI

REPORTED BY: TAMIKA T. BARTEE, B.C.R., RPR, CCR #1782

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APPEARANCES:

FOR THE PLAINTIFFS:	ARTHUR JERNIGAN, ESQUIRE
FOR THE KELVIN BUCK PLAINTIFFS:	CARROLL RHODES, ESQUIRE JOHN WALKER, ESQUIRE CARLOS TANNER, ESQUIRE
FOR THE MS REPUBLICAN PARTY EXECUTIVE COMMITTEE:	MICHAEL WALLACE, ESQUIRE TATE LEWIS, EXECUTIVE DIRECTOR
FOR THE MS DEMOCRATIC PARTY EXECUTIVE COMMITTEE:	SAMUEL L. BEGLEY, ESQUIRE JUDGE TYREE IRVING ANITRA EUBANKS, ESQUIRE
FOR THE MS SECRETARY OF STATE:	TREY JONES, ESQUIRE MATT ALLEN, ESQUIRE LEIGH JANOS, ESQUIRE KYLE KIRKPATRICK, ELECTIONS DIV.
FOR MS EARLY VOTING INITIATIVE 78:	WILBUR O. COLOM, ESQUIRE APHRODITE McCARTHY, ESQUIRE DITA McCARTHY, ESQUIRE KELLY JACOBS, ESQUIRE
FOR THE MS GOVERNOR AND MS ATTORNEY GENERAL:	JUSTIN MATHENY, ESQUIRE DOUG MIRACLE, ESQUIRE
FOR THE MS NAACP:	MATTHEW CAMPBELL JAMIL JOHNSON
FOR CONGRESSMAN BENNIE THOMPSON:	FANNIE WARE

JUDGE JOLLY: The purpose of our meeting today is really quite -- is an informal meeting, and to try to find out the positions of the parties, where everybody is and what the issues are really before us.

So I'm not going to really resolve any legal issues today, but we hope to become better informed and narrow the issues. So with that understanding, let me have each of the parties identify themselves -- or each of the lawyers identify themselves and the party that they represent. Starting with you, Mr. Jernigan.

MR. JERNIGAN: May it please the Court. I am Arthur Jernigan, and I represent the original plaintiffs, John Robert Smith and Gene Walker. Unfortunately, Your Honor, we lost Shirley Hall in the last twenty years since this case was filed; she died last year. So they do remain the original plaintiffs.

JUDGE JOLLY: This is an old case, isn't it?

Okay. Next, please.

MR. RHODES: May it please the Court. Carroll Rhodes, along with John Walker and Carlos Tanner, and we represent the Kelvin Buck plaintiffs in the 2011 case.

JUDGE JOLLY: In opposition to the --

MR. RHODES: In opposition to the Republican Party's motion.

JUDGE JOLLY: All right, sir. Anybody else want to -- Mr. Wallace?

MR. WALLACE: Your Honor, I'm Mike Wallace, I represent the Mississippi Republican Party. They are the defendants in both of these consolidated cases.

JUDGE JOLLY: Anybody -- yes, indeed.

MR. MATHENY: Your Honor, Justin Matheny with the Attorney General's Office. I'm here with Doug Miracle, and I represent Governor Reeves and Attorney General Fitch in both cases.

JUDGE JOLLY: All right.

MR. JONES: May it please the Court. I'm Trey Jones, Your Honor, and this is my partner, Matt Allen, and we represent the Secretary of State's Office. And here with me is Kyle Kirkpatrick from the Secretary of State's Office.

JUDGE JOLLY: All right.

MR. BEGLEY: May it please the Court, Sam Begley. I represent the Mississippi Democratic Party Executive Committee. We are the defendants in both cases.

JUDGE JOLLY: All right. Anybody else will share an appearance?

MS. McCARTHY: May it please the Court. Aphrodite McCarthy and Wilbur Colom. We here represent MEVI 78. We're proposed plaintiff intervenors in this case.

JUDGE JOLLY: Okay. You're not a party at this point, but you are the --

MS. McCARTHY: No, Your Honor.

JUDGE JOLLY: -- intervenor. You've moved to intervene in

the case.

JUDGE JOLLY: Does anybody else wish to enter an appearance at this time?

I'm going to read a little statement here from the Southern District of Mississippi, and to clarify the fact -- the reason we're having this hearing when so many hearings are precluded from trial or from in-person arguments.

This is the statement: As many of you are aware, the Southern District of Mississippi is presently operating under Special Order No. 17, promulgated by Chief Judge Dan Jordan for the Southern District of Mississippi, and agreed to by all other district court judges.

This order cancels in-court proceedings in various courtrooms in the Southern District of Mississippi because of the perils presented by COVID-19. This order, however, contains an exception for matters deemed to be extraordinary, and we deem this redistricting matter, as an exception to Special Order No. 17. We have thus chosen to proceed with all safety precautions in place.

Now, we have the two basic parties here, as I understand the proceeding at this point. We have the Mississippi Republican Party that has moved to vacate an injunction entered in 2011 or '12 -- I forget when it was. And then, we have the opposition to the vacating of that injunction.

Now, what I would like to know is, is there anybody here that does not align themselves with one or -- with either of those

parties? Who does not align themselves with those -- and I'm saying that in order to try to reduce the number of people that we're going to hear from today.

I want to hear from the primary parties, that is, the movant and the opposition to the motion, and then, if anybody wants to add to that, we would be happy to hear you. But if you are aligned with either the movant or the opposition to the movant, then there will be less inclination to hear from you.

So now -- so, Mr. Jernigan, who do you represent?

MR. JERNIGAN: Your Honor, I represent John Robert Smith and Gene Walker. They were the original plaintiffs in the original redistricting case filed in 2001 or '2, after the 2000 census. Your Honor, we -- we initiated this, and asked for the original three-judge court to enter a constitutional redistricting plan or order elections at large.

This Court entered a constitutional redistricting plan, which was appealed to the United States Supreme Court and affirmed. Because I'm a counsel of record for the original plaintiffs, I'm here, Your Honor, but we ask for the same relief from the Court now that we asked for then, and that's for this Court to affirm a constitutional redistricting plan. We submit, Your Honor, that was done by the Mississippi Legislature a couple or three weeks ago and signed into law by the governor and meets all the constitutional requirements to be confirmed.

JUDGE JOLLY: So you are fully aligned with the Republican

Party in this case, or the interests of the Republican Party?

MR. JERNIGAN: We are essentially asking for the same relief, Your Honor, yes.

JUDGE JOLLY: All right. Good. So --

JUDGE BRAMLETTE: Well, let me see. What relief is that? I mean, do you agree with what the legislature has done or not?

MR. JERNIGAN: We do, Your Honor, and we submit that that plan is constitutional and should be confirmed.

MR. BEGLEY: Sam Begley representing the Mississippi Democratic Party Executive Committee. The party is aligned with the plaintiffs, and the proponents to the motion.

JUDGE JOLLY: All right. Does anyone else care to make a response to my question? All right. Then what we will do is hear first from the movant, who is Mr. Wallace.

And I emphasize again, although we may get into some of merits of your argument, the purpose here today, of course, is not to decide any of the issues that have been raised in this proceeding, but is to simply try to narrow the issues and narrow the parties so that it can be more expeditiously and effectively resolved.

So, Mr. Wallace, why don't we hear from you and --

MR. WALLACE: Thank you, Your Honor. May it please the Court. I'm Mike Wallace for the Republican Party defendants in this case. We thank the Court for assembling so speedily today. It is always difficult to assemble a three-judge panel. We know

that, especially in the emergency conditions that this Court is facing right now. That is why we filed our motion the instant the governor signed the bill and it became law and there was something for you to consider. The good news is that ours is largely a procedural motion about how we ought to proceed, and the good news is that Mr. Rhodes and his clients largely agree with that.

We have said in our motion that this Court is the place to determine whether Mississippi has adopted a constitutional congressional redistricting plan. That's the language you used in the order that is still in effect. We think this is the Court where that ought to be established, and the Buck plaintiffs agree with that.

The Buck plaintiffs say they want to file a motion to enjoin the new statute, and we agree that they have a right to do that, and that this is the place to do it. So we're -- we're all on the same page there.

He also says that they have the burden of proof, and once again, we agree with them a hundred percent. They do have the burden of filing a motion and proving House Bill 384 to be unconstitutional or illegal.

We think the issues you will need to address are the ones that we laid out in our motion. First, does H.B. 384 constitute a constitutional redistricting plan, and a legal redistricting plan? Does it satisfy all state and federal constitutional and statutory requirements? Mr. Rhodes says it doesn't, and he ought to have an

opportunity to say why.

And the other issue is whether it is unconstitutional for being -- the existing plan is unconstitutional for being malapportioned. We think we all agree on that.

JUDGE JOLLY: I'm going to ask you a question you probably may or may not have thought of, and certainly not hold you to any spontaneous answers that you may make.

But there is a motion before us to dissolve the injunction. And the grounds for the assertion of jurisdiction of this panel is because we said that -- that until -- that we maintain jurisdiction until the state of Mississippi came up with a legitimate plan, in effect, creating our own jurisdiction over the redistricting for 2020, for this next decade.

Now, you filed a motion to dissolve, and we are the ones that created the jurisdiction of this panel. Now, if we said we grant the motion to dissolve without comment on the constitutionality of the present redistricting plan drawn by the legislature, would we be in error or can we do that, or should we do that?

MR. WALLACE: I have thought about that, Your Honor, and to some extent, I think we've addressed that in our brief. As I recall the language of our motion, we've asked you to vacate the injunction and to determine what injunction, if any, should replace it.

So it's a -- it's a vacate or modify, is what we've

technically asked for. You probably have the authority to say, we think grounds for vacation are here and we want to vacate it and not go any further. That may be within your power. I don't believe it is best practices for a court of equity, and we've cited some authority on that, including the *Jackson* case from the Fifth Circuit that says a redistricting court generally ought to consider all possible challenges to the redistricting and wrap it up in one case.

I've cited the usual equitable principles which apply in federal court, as well as in any other court of equity, which is that equity does justice by a whole and not by halves. You want to tie up all the loose ends so there will be no further litigation later on.

If you disregard those principles of equity, and we know they are all very elastic, but if you were to dismiss this case, you would not foreclose further litigation.

Mr. Rhodes has already told you that he has a client that wants to file more litigation. You could end this case, but you could not end this dispute. It would keep on going, and it would go to some other judge who doesn't know as much about it as this panel does.

Last night, I had the wonderful experience of sitting down and rereading the trial from 20 years ago. We -- Mr. Johnston got it back from the archives yesterday. A lot of what you learned 20 years ago is about old arguments that are dead. But you also

learned about how the secretary of state runs an election, how the local election commissioners run an election. How much time they need; how complicated it is. You three judges are the experts on all of the practical facets of running an election.

And if a new Court has to start over, learn all of that and finish all of that by March 1st, they're going to have a very difficult time.

So, Your Honor, I have anticipated your question. I can't sit here and tell you that you can't just bring the hammer down today and tell us we're done, go home. But, I think, under the usual proceedings in equity, it would be prudent to finish what you've started, and let's find out whether this statute is really constitutional or whether it isn't.

JUDGE JOLLY: Okay. Let me ask Mr. Rhodes his position with respect to that question. If you'd just step down a minute. Is this --

MR. WALLACE: And the only thing we disagree on, he wants -- he wants -- he wants -- he wants the -- he wants you to extend the filing deadline to March 1. That's where we'll have a fight, but I will get out of his way for right now.

JUDGE JOLLY: Okay. Glad to see you, Mr. Rhodes. Haven't seen you in a long time.

MR. RHODES: Thank you, Judge. Glad to see you. And it's good to be here, too. And I'd like to thank the three-judge court for convening so quickly.

And, Judge Jolly, to answer your question: The Republican Party has asked this Court to vacate its prior injunction. The prior injunction that this Court entered in 2011 enjoined the use of the plan that was in existence that had been drawn by the Court before and put in place. The Court drew or adopted a plan that the parties agreed to, put that plan in place in 2011, for the 2012 congressional elections and all succeeding congressional elections.

But now, because of the 2020 census, it shows that the plan that the Court put in place in 2011, is now malapportioned. And when the Court put that plan in place in 2011, the Court said the injunction would stay in place until the state of Mississippi produces a constitutional plan that has been precleared. Preclearance no longer is required after the *Shelby County* case. But this Court has to determine whether the state has met its burden of producing a constitutional plan. So the Court cannot just vacate or dissolve the injunction without making that determination. And for making that determination --

JUDGE JOLLY: Well, I mean, we could, we could just say, you know, we're not going to reach that question now. We created the jurisdiction ourselves, and because we created it, we dis-create it. And --

MR. RHODES: Yes, Judge, but you said, "until -- "

JUDGE JOLLY: Sir?

MR. RHODES: You said it will remain in place until they

produce a constitutional plan. So if you vacate or dissolve, the assumption here is that their plan is already constitutional, and we would like to litigate that issue.

JUDGE JOLLY: No, no, that -- I'm saying, we would pretermit that question. We would not even address -- we would specifically not decide that question, but we would dissolve the -- which in case would put you in the position of asking for another three-judge court.

MR. RHODES: Yes, Your Honor. And we would have to try to ask for another three-judge court in short order, and ask that the plan that the State has adopted be enjoined because it is unconstitutional. So it's better if this Court -- and we ask the Court not to vacate its injunction but to amend it. And to amend it by putting in place just an interim plan that -- the Court fashioned a plan in 2002. All the Court did make minor changes to equalize population. The Court did the same thing 2011. And we're asking the Court to do the same thing again, while this issue of whether or not what the State did is constitutional is litigated, and let the elections go forward on the schedule.

The only reason we said that the Court want to move the qualification deadline back, is because the qualification deadline is already opened, and voters and candidates do not know what the districts really look like yet. But you can keep the qualification deadline just like it is, and just put in place an interim plan to use while the parties sort out whether or not the

state plan is constitutional.

JUDGE BRAMLETTE: Mr. Rhodes, in 2002, we did enter a final judgment as you said. At that time, the Mississippi legislature had not acted. We came along in 2011, and we amended the prior judgment. As you know, again, the Mississippi legislature was silent.

But in 2022, the legislature has created a new four district plan, which has been signed into law. Now, we stated in our 2011 opinion, this: Primary responsibility for reapportionment lies with the State of Mississippi. If the State of Mississippi can timely reapportion the districts in a constitutionally and acceptable manner, the federal courts have no duties to draw up the district lines.

So I'm concerned about our jurisdiction. I mean, we're a court. We're not consultants or advisors. Do we have jurisdiction? I guess my question is: How long does this injunction of 2002 last?

MR. RHODES: Judge --

JUDGE BRAMLETTE: How will its purpose be achieved? Is it equitable to apply it prospectively *ad infinitum*. I mean, clearly, Judge Jolly and I are running out of time.

MR. RHODES: Judge, some of the plaintiffs' lawyers are running out of time, too. But Judge, what y'all said was that that injunction stays in place until the State of Mississippi produces a constitutionally-accepted plan.

Now, all we're asking for the Court to do, is to amend its injunction and put a temporary plan in place that the Court fashions, or one the NAACP offered.

In the plan that the NAACP offered, the NAACP followed the Court's guidance from its 2002 opinion and 2011 opinion, to make only minor changes to equalize population, maintain a black majority district, keep districts compact, not have districts unusually large, keeping universities and military bases, et cetera. We followed the Court's neutral criteria and the other criteria that this Court did to make minor changes.

So the NAACP is asking to use their plan, and all the Buck plaintiffs are saying, the Court could draw or fashion its own plan, just make minor changes to the existing plan until that issue of whether or not what the State did is constitutional.

And that's where the Buck plaintiffs are challenging what the state did as unconstitutional. And we're saying the Court needs to resolve that issue prior to dissolving itself.

JUDGE WINGATE: Mr. Rhodes, if we just tinker with the plan, make some amendments to it, won't a potential, aspiring office holder still be confused as to where they are running from? What district would actually be the district which would envelop their efforts?

MR. RHODES: Judge, not as much as if this -- if the Court just dissolved the injunction and let the state plan go into place. Because the state plan does more than tinker with the

existing districts. So election officials will have less to do if the Court just tinkers with the existing plan a little bit.

Voters would not be as confused if the Court just tinkers a little bit. And candidates would not be confused. So what the Court has done in the past, if the Court does again, will be better for voters and election officials and candidates than what the State does.

Because if the State -- if you just dissolve your injunction, and the State put its plan in place, elected officials in four counties in Southwest Mississippi will have to notify people, and there are more split counties, split precincts in the state plan than in the NAACP plan, which the NCAAP plan is asking the Court not to just tinker with this a little bit, and not do any major changes, you know, so the elections can proceed as they're already scheduled.

JUDGE WINGATE: Mr. Rhodes, one additional question: Somewhere in your papers, you said that the legislative plan has some racial problems. Did you say that?

MR. RHODES: Yes.

JUDGE WINGATE: What are you talking about?

MR. RHODES: Judge, the NAACP has engaged or engaging political scientists to do analysis. Although that plan put black voters into the Second Congressional District, the question is: How performing are those black voters?

JUDGE BRAMLETTE: How what?

MR. RHODES: Performing. You know, as far as being able to keep the ability of black voters in the Second District able to elect a candidate of their choice. And this is one of the concerns that the Buck plaintiffs have.

JUDGE WINGATE: Okay. I don't quite understand that. Could you put some more meat on that skeleton?

MR. RHODES: Okay. Yes, Your Honor.

JUDGE WINGATE: Because you are talking about the Second District, right?

MR. RHODES: Second District. But I'm talking about the additional area from the state plan, Franklin County.

JUDGE WINGATE: The additional area which is far south?

MR. RHODES: Farther south.

JUDGE WINGATE: All right.

MR. RHODES: Bringing them in would further dilute or limit the ability of black voters to elect, not just a current congressman. It's about being able to elect a candidate of choice.

If President Biden, for instance, is re-elected and decides to appoint Congressman Thompson as the Secretary of Homeland Security or any other position, then that becomes -- Second District becomes an open seat.

The question becomes whether or not any other black candidate would be able to raise funds and campaign that full length of the state, and be able to get black voters to turn out

like they would if you had the voters from central Mississippi, Hinds County area, or some other area in that district.

New candidate would be able to campaign better, you know, just in a compact district. The Second District that the State drew is not as compact, and there is some investigation going on as to whether or not legislators had an intent to harm the ability of black voters to elect. That's why we're asking for an evidentiary hearing on that issue of intent.

JUDGE WINGATE: I want to follow up on that. You know, when you first started, you provided the factors that were necessary for us to consider on redistricting: compactness, et cetera, et cetera. Right?

MR. RHODES: Yes.

JUDGE WINGATE: All right. Now, among those factors, where is the factor that will speak to your concern about someone new coming in, some minority, some new person aspiring for that position to run with a district that the person is not familiar with as to constitute a racial bias? I mean, how does racial bias generate from that when that district is 60-plus percent African-American? And right now, I think, it's something like 62 percent. And -- but under the state plan, it's still plus 60 percent African-American.

MR. RHODES: Yes, Your Honor, and it depends on where that African-American addition to the Second Congressional District is coming from. And although --

JUDGE WINGATE: I didn't quite understand.

MR. RHODES: -- although the criteria -- this Court, in 2011, recognized that Second Congressional Dist- -- Mississippi needs one black congressional district. The Court realized that the State should comply with Section 2 of the Voting Rights Act, that criteria. Section 2 of the Voting Rights Act says that black voters need to be afforded the opportunity to elect a candidate of their choice.

Now, it doesn't say whether that candidate of choice was an incumbent or somebody new. And with all the litigation that has gone on within the Fifth Circuit and the United States Supreme Court over that issue of what constitutes vote dilution since the 1980s, have been -- the Courts have been more concerned with black voters generally, whether it's a newcomer, incumbent, or whoever, to be able to be elected, whether black voters can elect someone that they choose.

And what we're saying is that it matters where those black voters come from when you add them. You can add folks who are not as politically active, you can add people who are as politically active, and it makes a difference as to whether or not the black voters are able to elect a candidate of their choice.

JUDGE WINGATE: Thank you.

JUDGE JOLLY: Okay. Mr. Rhodes, do you have anything further to say?

MR. RHODES: Your Honor, we are just asking the Court to

amend its injunction, tinker with it, and let elections proceed while we litigate this issue with the same three-judge court.

JUDGE JOLLY: So we understand, your position is that the discrimination really comes from the size -- from the geographical size of the district? Is that --

MR. RHODES: Not just geographical size, but where the black voters are added to, to the Second Congressional -- where they're coming from.

JUDGE BRAMLETTE: How does that factor in though? In other words, Wilkinson County, when you add Wilkinson and Adams and Jefferson -- you mentioned Franklin County a moment ago, that offsets Franklin; Franklin's majority Caucasian. But these other counties are black. Are you saying that black voters -- nobody wants to come to Wilkinson County, I understand that. That's where I'm from. Are you saying the black voters down there are not as prepared to make the right decision, vis-a-vis, a black candidate? Is that what you're saying?

MR. RHODES: Your Honor, in the 1980s, I, along with Deborah McDonald and Willie Rose litigated that issue in front of Judge Barbour in *Monroe v. City of Woodville*. And Judge Barbour said in that case -- and it was affirmed by the Fifth Circuit -- that black voters are not losing elections because of statistically significant white/black voting. Black voters are losing elections because too many black voters are crossing over and voting for the white candidates.

Although Wilkinson County is majority black, they have majority white elected. Now, that might be the candidates of their choice, but, you know.

JUDGE BRAMLETTE: It's not now, I can tell you that. You can walk through the courthouse down there; most of the officials elected are African-American.

MR. RHODES: And, Your Honor, there have been quite a few losses where African-American officials in Wilkinson County over the last 20, 30 years, have lost to white candidates. And because the black turnout is not as high, and that's another reason, you know, in the Second Congressional District.

Franklin County is not going to have a -- and Amite County is not going to have that high of a black voter turnout, and that's why the concern is, where are the black voters you're adding to the Second District, where are they coming from?

JUDGE JOLLY: So, I mean, you're alleging racial discrimination that would support the change in the district on the basis of the enthusiasm -- the voter enthusiasm of the black population?

MR. RHODES: Judge, what we're saying is that the districts were drawn with certain information in mind. Where we get the black voters from in drawing this district that the legislature came up with, and which configuration would give a white candidate a better chance to be elected in the Second Congressional District. That's one of the intentional

discrimination issues we need -- we want to have an evidentiary hearing on it.

JUDGE JOLLY: Is that the nub of your claim of discrimination, is that it does not include more black enthusiastic voters? Is that --

MR. RHODES: Well, Judge, and the additional claim is that neutral redistricting criteria that was adopted by this Court, when the legislature considered what criteria they're going to use to draw a district this time around, the Joint Legislative Congressional Redistricting and Legislative Reapportionment Committee came up with criteria. And No. 4 in their criteria was to use the neutral criteria that this Court adopted in its 2011 order.

That neutral criteria included the size of the district, not running the district all the way down the Mississippi River. Compactness; compactness was the first neutral criteria that this Court stated. And the Court stated why compactness was important.

And we're saying that this Second Congressional District has been compact, going all the way back to *Jordan v. Winter*. After the *Jordan v. Winter* case was over in 1984, the legislature in the 1990s, drew congressional districts; they kept the Second Congressional District compact.

This time around, they did not. The Court did after 2001 and 2011; the Court kept it compact. And the additional criteria was the size. The Court talked about how geographically large

these districts do not need to be.

JUDGE JOLLY: You're right about that.

MR. RHODES: So we're talking about they subordinated racially-neutral criteria to a consideration of race. That's one of the issues we're talking about in intent of discrimination.

JUDGE JOLLY: The district runs from Memphis, Tennessee, all the way down to the Louisiana line. It's a long, long district. That much is certainly obvious.

MR. RHODES: Yes. But the Court in the past has cut it off at Jefferson County.

JUDGE JOLLY: But is that racially discrim- -- are you saying it is racially discriminatory because of its size?

MR. RHODES: No, Judge. We said that this Court adopted --

JUDGE JOLLY: Does that even figure into your argument, that the Second Congressional District is physically larger, making it much more difficult for whomever was the congressman or the candidate from that area to campaign than it would in any other district; is that your argument?

MR. RHODES: For making it unnecessarily larger. This Court in 2001 and 2011 said compactness was an issue and refused, refused to run the district all the way down to Wilkinson County, that area. Instead, the Court picked up population within Hinds County.

The Court, in its opinion, also said, you need to put

growth areas in different congressional districts. One of the growth areas in this area of Hinds County, is the Jackson Metropolitan area. Northeast Jackson growing, Madison County growing. You can pick up population and put in the Second Congressional District from there, and not subordinate this neutral criteria that this Court adopted in 2011. Compactness, not having unusually large districts; those are criteria that this Court adopted in 2011, and the legislature, this year -- well, in 2021, stated that they wanted to use the Court's neutral criteria in drawing the congressional district. And all we're saying is that the Court -- is that the legislature did not use, but subordinated that neutral criteria to their criteria of race of drawing the district the way it did. And that's why we want an evidentiary hearing on that issue, from the same Court.

JUDGE JOLLY: Thank you, Mr. Rhodes. Oh, hold on just a minute.

JUDGE WINGATE: And if you had a hearing on this point, how would you make your proof?

MR. RHODES: Part of it would come from the floor debate in the senate.

JUDGE WINGATE: From where?

MR. RHODES: The floor debate. We have captured some testimony from the floor debate as to race being intentional, and we want to be able to engage in discovery, Your Honor. We would like to take depositions of committee members, staffers, as to

what instructions were given on the drawing of the lines, who had input on the drawing of the lines. Before we have that evidentiary hearing, we would like to have some discovery of those issues.

JUDGE BRAMLETTE: What would happen to the qualifying date of March 1st if we did that, obviously -- that date, March 1st, so what is your response to my question? What would we do about the qualifying date?

MR. RHODES: Judge, what we're -- leave the qualifying date the same. What we're asking the Court to do is to draw its own interim plan or to adopt the NAACP plan as an interim plan. Let people run. The Court schedule an evidentiary hearing some time later on this year, give us time to conduct some discovery. If the state can prove, or if the -- let me say it another way. If the plaintiffs, the Buck plaintiffs, fail to prove that the State plan was drawn unconstitutionally for an intentional racial purpose, then the Court could vacate its injunction, and put in place a state plan.

On the other hand, if the Buck plaintiffs prove that the State did use race as a predominant factor in drawing its plan, then the Court could, again, keep its interim plan in place until the State comes back with a constitutional plan that complies with Section 2.

JUDGE WINGATE: Mr. Rhodes, on the NAACP plan, there are some sections that are in red of areas that have been added or

moved.

MR. RHODES: Yes.

JUDGE WINGATE: All right. Where were they moved to?

MR. RHODES: In the Second Congressional District. Primarily, the shifts were between the Third Congressional District and the Second Congressional District. And between the Third District and the Fourth District, there was a move.

And the reason this movement took place, Judge, the Second Congressional District lost 65,000 people. First, Third, and Fourth gained. So all of them have to, you know, move some population around.

But in the NAACP plan, they only split, I think, four counties -- three counties, excuse me, three counties, in order to achieve zero percent population deviation.

You can move people from the Third District to the Second. You can move them from the First District to the Second. But the way the Court has been drawing the plans in the past, the Court has come into the Jackson metro area to pick up population to put in the Second District when the Second District loses population. And we ask the Court to put an interim plan in place doing that, or use the NAACP plan.

JUDGE WINGATE: And none of these plans violate the protocols that are set up for a minority elected from a majority/minority district?

MR. RHODES: Well, the NAACP is maintaining that the state

plan does by where the black voters, or the black population was moved into the Second District.

JUDGE WINGATE: But the Second District would still have greater than 60 percent?

MR. RHODES: Yes. Yeah.

JUDGE WINGATE: And that was a big concern the last time we did this?

MR. RHODES: Yes, Judge, but since that time, the math and science has become more sophisticated, and the Supreme Court has also indicated, you don't need no target number. You need enough black voter in each population within a district to give black voters an equal chance to elect a candidate of their choice.

In the past, we were covered by Section 5 of the Voting Rights Act. And Section 5 prohibited retrogression. People misunderstood retrogression to mean we can't reduce that number below what it is.

But the Court -- the Supreme Court has said, no, retrogression -- you can reduce the number, but you have to give black voters the ability to elect.

Now, we maintain that given the racial black voting within Mississippi, and within the Second Congressional District, it would still need to be around that 60 percent. But we just don't want to say that -- that you got to have 60 percent. You need enough blacks in the Second Congressional District to give them a chance to elect a candidate of their choice.

JUDGE WINGATE: But your percentage in the Second District that you submitted is still more than 60 percent?

MR. RHODES: It's still more than 60 percent.

JUDGE WINGATE: In fact, right now, it's what, 62 percent?

MR. RHODES: It's 62 percent in the plan we submitted. And that's because of Northeast Jackson. We put all of Hinds County into the Second Congressional District. White vote -- white population leaving Jackson, blacks moving into Northeast Jackson.

Southern Madison County, white populations are leaving, the black folks are moving in. So what we did was added where there was growth, and it just so happens that that growth happened to be in black areas.

JUDGE WINGATE: Last question: Since Congressman Bennie Thompson is the incumbent, is he in lockstep with your argument?

MR. RHODES: Yes, Your Honor, I believe some -- I believe Ms. Fannie Ware from his office is here today, too.

JUDGE WINGATE: So he's in lockstep with your argument here about the Second District as constituted by the Mississippi Legislature?

MR. RHODES: In opposition.

JUDGE WINGATE: That it's too sparse, too large --

MR. RHODES: Yes.

JUDGE WINGATE: -- even though the number of

African-Americans in that district would still comprise more than 60 percent?

MR. RHODES: Yes. And Judge, in Wilkinson County, Mississippi, in *Monroe v. City of Woodville*, African-Americans were over 50 percent of the town of Woodville, unable to elect alderman.

JUDGE WINGATE: Okay. Now, why were they unable to elect somebody?

MR. RHODES: As Judge Barbour said, they didn't lose because of white statistical black voting, but because too many black folks were crossing over and voting for white candidates.

JUDGE BRAMLETTE: Judge Barbour didn't know too much about Wilkinson County.

JUDGE WINGATE: You get in trouble on Wilkinson County.

JUDGE JOLLY: Anything further? Thank you, Mr. Rhodes.

MR. RHODES: Thank you, Your Honor.

MR. WALLACE: Your Honor, may I?

JUDGE JOLLY: Yes, indeed.

MR. WALLACE: May it please the Court. I want to say something about Judge Bramlette's question about jurisdiction, and then I'll talk as much or as little as you like about Mr. Rhodes' allegations, which I've just heard for the first time here this afternoon, just as you have.

The Court has jurisdiction. The retentive power of equity is pretty strong, and so you have jurisdiction. The question is

the extent to which you want to exercise it. I'm reminded of what this Court did in the legislative redistricting hearing ten years ago.

The Court issued an order in 2011 that says you're going to go ahead and use the old plan for the time being because we don't have time to set up a new one, but this Court's going to retain jurisdiction. And when the Court adopts a plan next year, come see us, and we won't have to repeat anything that's already been done, and we're going to look at it. And that's what the Court did, and the Court denied further relief to the plaintiffs. So you can keep jurisdiction until you are satisfied that the problem has been completely addressed.

Judge Bramlette, it doesn't mean you have to keep it for ever and ever world without end. I'm -- I'm like any defendant; my ultimate goal is to have this complaint dismissed. But I think to get there, you have to make the determination you've said you need to make: Has the legislature adopted a constitutional plan? We think it has.

Once this Court makes that determination, it says so, it allows the statutory plan to go into effect, and at that point, this Court dismisses the case with a job well done and all the loose ends tied up.

So we think you have jurisdiction to do that. We think you ought to do that. And the fact that we've already been told what the claims are going to be is all the more reason for us to

do it here.

If the Court does dismiss this case, then it takes weeks, and I don't know how long to assemble a three-judge Court, get all the parties, all these same parties -- we're all indispensable parties; nobody's going to be missing. We'll all be back in some courtroom, and then I will have my opportunity to respond to what Mr. Rhodes just said. And we're getting pretty close to March 1st by the time that happens.

You were also right, Judge Bramlette; it is not this Court's business to grant any relief until it determines that the legislature has done something wrong. And there -- to this point, there has been no cognizable allegation that there's anything wrong with House Bill 384. And without some such well-supported allegation, then you can't go moving deadlines, you can't enjoin House Bill 384; you need to let -- you need to let it go into place.

Now, the only -- as I said, I'll say as much or as little as you want about his allegations. But his principal allegation is that he has an expert who will tell you that the 60 percent black majority in District 2 under House Bill 384 is not performing. And what "performing" means is that it doesn't perform, or it may not perform the way Mr. Rhodes wants it to. What does the statute say? The statute says that black voters have to have an equal opportunity to elect candidates of their choice.

If he has an expert that is going to tell this Court that a 60 percent black voting-age population majority anywhere in the State of Mississippi lacks an equal opportunity to elect candidates of the choice, I want to see that expert report.

As a matter of fact, I want to see it tomorrow. I think what this Court ought to do, is tell Mr. Rhodes to go home, compose his motion, attach his expert report, and send it in here, and then I will say as much as I would like to say about the allegations we've heard today.

Judge, I don't know Wilkinson County; I'm from Biloxi. And I don't know the Delta all that well, either. But I do not believe there is a distinction between the way black voters perform in Wilkinson County and the way they perform in --

JUDGE JOLLY: Let me ask you: Has the inability to perform or the performance question ever been recognized as a basis for discrimination in redistricting cases?

MR. WALLACE: I think what he's talking about is a term of art that says, are they cohesive enough to elect candidates of their choice? We had that discussion last year with Judge Reeves about a state senate district, which was black majority, and he thought it wasn't a performing black majority. And it was mooted in the middle of en banc oral argument at the Fifth Circuit a few months later. So we don't know what the law really is on that.

But I don't know of any authority. That's why I -- that's why common sense tells me a 60 percent majority will get you

there. I'm -- I'm old enough to remember Frank Parker. I wish Mr. McDuff were here to tell me if I'm getting him wrong. Mr. Parker's theory was, you needed a 65 percent black voting -- black majority because there were all kinds of impediments to blacks registering and getting to the polls and getting organized and all of those things. And you needed a 60 percent voting age population majority for all of those reasons.

We are here 40 years later, and now for the first time, I'm hearing a lawyer tell me that a 60 percent voting age population isn't good enough. And I really want to see that expert report, because I don't believe that's the law.

So I know this -- this Court has every reason to want this cup to pass from you. I understand that. But you are further down the road than anybody. Mr. Rhodes is obviously ready to file his motion and his expert report, and we've got a deadline on March 1st. And I came here to ask you to set a schedule, and that's what I'm going to do, and I'm going to sit down.

Please -- please tell Mr. Rhodes to get busy, and we'll see what he has to say. And if you think his argument is legally sufficient, then we'll see if it's factually sufficient. But right now, we're just talking. Let's get it scheduled and do some law.

JUDGE BRAMLETTE: What about the qualifying deadline? Does this Court have authority to delay that?

MR. WALLACE: There's a -- there's a -- there's a lot of

law on that, Your Honor, and it all says that qualifying deadlines are an important part of the statutory scheme, and they ought to be respected by the Court.

As you've said, what the legislature has done can be disrupted if there's good reason to believe the legislature has messed something up. We went through that in great detail in the 2011 legislative litigation ten years ago about when you can and when you should change dates. And the Court, ten years ago, decided not to do it.

Until I see any reason to believe that the legislature has done something wrong, I would tell you it would be error to extend dates. Let's -- let's see their case, and if you think it's serious, then we can see what kind of authority this Court ought to exercise. Thank you, Your Honor.

JUDGE JOLLY: Thank you, Mr. Wallace. We have a motion to intervene, and after we have heard the motion to intervene, if the parties have something to say about it, I think we will then set a briefing date, but I'll have to talk to my colleagues here about that. So let's hear on the motion to intervene.

Mr. Colom?

MR. COLOM: Yes, Your Honor, thank you for the opportunity. I think our issue is probably not ripe for being addressed now. We are concerned about the previous order and language in it that we believe affected the right to initiative in Mississippi and that we did not believe that this Court intended

for that injunction creating the four districts going back to 2001, I believe, to have any impact.

However, the Court's decision on Mr. Rhodes' motion on behalf of the NAACP will determine whether or not we want to make suggestions to the Court to what should be put in such an injunction.

JUDGE JOLLY: But why should you have any right to make those suggestions in this proceeding. This is a reapportionment proceeding, and I'm not fully understanding why you think your claim is relevant, to put it in legal terms. What kind of standing do you have to raise that issue in this proceeding?

MR. COLOM: Our clients are individuals, citizens of Mississippi, seeking to advance an initiative for early voting. The Supreme Court has made -- or Mississippi, has made the -- the initiative process in Mississippi inoperable because it says that there are only four districts in Mississippi, and the Constitution of Mississippi contemplates getting initiative voters to sign petitions from five districts.

It's our belief, they rely upon this Court's opinion, given the injunction, for the -- for the conclusion that the five districts, for initiative purposes, no longer exist, when we believe that this Court's jurisdiction did not extend to the Mississippi Constitution's provision on initiatives and that this Court did not intend to have its injunction of effect in any way the initiative process in Mississippi.

So I will request to this Court, and I will -- we actually made our motion to amend the order that this Court had entered -- that's before the new redistricting plan -- to state that it in no way extended to in anyway to affect the Mississippi constitutional provision on initiatives.

JUDGE JOLLY: We can't issue a decision and then decide anticipatory issues that might come up with respect to it.

MR. COLOM: Well, the Court maintained jurisdiction to modify or amend its own order. And we -- we wanted to modify language within the injunction to make it clear that it only affected the election of people to Congress and had no application to anything else operative within the state of Mississippi laws and Constitution.

JUDGE JOLLY: It's like it's self-evident.

MR. COLOM: Well, the Mississippi Supreme Court did not see it that way. I just wanted this Court to make that clear, because they took the districts the Court had created for elections to Congress, right, as -- as applicable to the Mississippi Constitution for purposes of the initiative process.

JUDGE BRAMLETTE: Counselor, aren't you asking this Court, though, to perform a legislative function by amending Section 273 of the State Constitution of 1890, in order to provide for a voter initiative process. Isn't that what you're doing?

MR. COLOM: No, sir. I'm asking this Court to make it clear that it is not taking on the legislative purposes -- for

legislative purposes, doing that. That the jurisdiction of this Court, when it entered its orders, were only to enforce the federal Constitution and the Voting Rights Act, and that this -- the order entered by this Court did not reach anything else. It's solely within the Mississippi Constitutional and statutes that has no application to those federal Constitution and statutory provisions. It is to clarify the limits of the order by this Court. It is to clarify and modify it to make it clear.

JUDGE JOLLY: Who said we did do that?

MR. COLOM: The Mississippi Supreme Court said you did.

JUDGE JOLLY: How did they say that?

MR. COLOM: In an opinion striking down the initiative proc- -- well, not strike it down. They said it was inoperative because of the order entered by this Court creating four districts, when the Constitution says the initiative petitions had to be collected from the five congressional districts, the old one that existed in 1990.

JUDGE WINGATE: But even if we were to put in the order that you asked, to say that we didn't intend for our ruling to have that far reaching effect, you'd still be left, realistically, with four districts.

MR. COLOM: Yeah, for purposes of electing the people to Congress, that's -- that's understandable, because that's a federal constitutional requirement.

JUDGE WINGATE: But the statute that concerns you says

that you have to have petitions from five districts.

MR. COLOM: Not the statute, the constitutional provision says that.

JUDGE WINGATE: Right.

MR. COLOM: And the Mississippi Supreme Court says this -- but it also says, Your Honors, that Mississippi Legislature cannot adopt any legislation that undermines the constitutional right to initiative.

So what the Court -- the way the opinion of this Court has been applied, it has done something that the legislature, in fact, could not do. That the legislature could not adopt a redistricting plan, in our view, that undermined the constitutional right to initiative.

And so, we're saying, we wanted this Court to simply clarify in any order or opinion, that it is not extending its jurisdiction to any other provision within the Mississippi Constitution or statutes.

JUDGE WINGATE: Would that be binding on the Mississippi Supreme Court?

MR. COLOM: No, sir. It would be binding on this Court, and -- to clarify its order. Again, we would approach the Mississippi Supreme Court to address that issue once this Court makes it clear that its order, its writ, does not go to the initiative process in the Mississippi Constitution.

JUDGE JOLLY: I mean, don't you -- I mean, does it occur

to you, though, that if everybody has a question about what our redistricting order does, they file to us for an interpretation of our redistricting order. I mean, it seems to me that that clearly is not the avenue for the relief you are seeking. I mean, you can do it by an independent action, but to try to intervene in this particular case, it's just not germane to what we are doing.

MR. COLOM: Well -- well, our argument, Your Honor, is since you maintained jurisdiction and only this Court can interpret its orders, and we've asked to modify it. The other side said --

JUDGE JOLLY: Any Court can interpret our order. Any competent court can interpret our order.

MR. COLOM: Well, in some questions -- in this case, Your Honor, we believe the Court was silent.

JUDGE JOLLY: You need an independent action to ask some legitimate court to say that the redistricting order doesn't mean this; let somebody else interpret our order. I mean, we can't answer every question that every citizen would ask about our order. I mean, it doesn't make sense, does it?

MR. COLOM: Well, I was -- I think it's appropriate because it goes beyond -- I was arguing that this Court's order had limited scope, and had limited jurisdiction, and to simply clarify that within the order.

Now, it says clearly in the order that you can amend or modify or clarify -- I think the word is used "clarify," if I

remember correctly -- and we wanted you to clarify that order.

JUDGE JOLLY: Thank you very much.

MR. COLOM: Thank you.

JUDGE JOLLY: Thank you, sir. And now --

JUDGE WINGATE: We just heard from those who wish to be intervenors. What about the ones who are already intervenors?

MR. WALLACE: May it please the Court. Those are Mr. McDuff's clients, the Branch intervenors, and he sent an e-mail to your chambers this morning that says they -- they do not care to participate.

JUDGE WINGATE: And he's speaking for all of his clients?

MR. WALLACE: That's the way I interpreted the e-mail, but I'd encourage the Court to go back and look at it.

JUDGE JOLLY: I understand what you're saying now. All right. If anybody else has anything they would like to say, any other represented party here would have any kind of remarks, Mr. Begley from the Democratic point of view, or any of the other parties that would like to make further comment? Okay. I believe not.

So we will -- now, Mr. Wallace, you have filed the motion to dissolve the injunction. And ordinarily, I mean, that puts the burden on you to initially file the motion -- I mean, file the first brief.

But on the other hand, if, to the extent that it is at issue in this case, Mr. Rhodes has the burden to show that the

legislature acted in a discriminatory way --

So, I believe the way to handle this, and I'll be glad to hear from either of you on this, but is for you to file the first brief supporting your motion to dissolve the injunction. And then Mr. Rhodes' response to that, and, of course, you would have any kind of opportunity you wanted to to respond to his initial response to your motion. Have I got that sufficiently confused for you?

JUDGE BRAMLETTE: And also, Mr. Wallace, when you do that, of course, you have to argue in your brief why it is and how it is that this three-judge panel should move forward and make a decision on the constitutionality of the legislative plan.

MR. WALLACE: Thank you. And may it please the Court. Yes, we did file the motion. We filed it in the name of vacating the injunction and for other relief. Our ultimate objective is to vacate the injunction. The other relief we asked for was a schedule to permit the Court to decide to -- to -- to make the decision on whether it's constitutional or not. So we have filed that brief, and they've filed an answer to it.

So I understand the Court's concern about jurisdiction. I think we've addressed that to some extent in our prior briefing, but we will be happy to say more about it. But ultimately -- ultimately, the Buck plaintiffs have agreed they have the burden of proof. I don't care whether we go first or they go first, but it's hard for us to say any more than we've said now until we see

what their actual claim is.

JUDGE JOLLY: That's exactly right. And that's fine. We can't cut anybody off and say, You file a motion, you file a response and that's it.

So, Mr. Rhodes, do you have anything that you would like to contribute to this conversation? And the conversation being about whose burden it is to proceed first on the motion to dissolve the injunction.

MR. RHODES: Your Honor, since Mr. Wallace's client filed a motion to vacate, then they should carry the burden on those two issues they raised, to vacate, and whether or not the legislative plan is constitutional. Because they're saying, "vacate your injunction altogether," and your injunction says, "You are enjoined until the legislature propose a constitutional redistricting plan." So his motion to vacate, and say vacate all of that order. And so they -- I think they would have the burden of showing that the legislature plan is constitutional and we could respond. And we could have the burden of proving it's not.

JUDGE JOLLY: We'll just start it this way. Mr. Wallace, you filed the first brief on the motion to dissolve, and we'll just take it from there. Then, I think, at that point, when you file a motion to dissolve, you are asserting that the present motion -- that the present plan is satisfactory, which, of course, is his burden to show that it is unconstitutional.

So, I mean, we do have it a bit confused here about who

has what burden, but I don't know if that ultimately has any substantial effect on who -- who goes first and who goes second.

MR. WALLACE: We will be happy to go first. We'll tell you why we think it's constitutional and legal. And, I guess, we'll be anticipating the argument that he has briefly stated today, and we'll have more to say in rebuttal once we hear him and see him flesh out his arguments in his brief.

JUDGE JOLLY: Okay. What --

MR. RHODES: Your Honor, for us to meet our burden, that's why, in our response, we asked for an evidentiary hearing. We want to take depositions, because the burden is on us to prove intent of discrimination. We want to gather evidence to produce in the record. We wanted to -- that's why we didn't want to short circuit it. We wanted to --

JUDGE JOLLY: We'll have briefing first, and if the substantial issues of dispute are raised in the briefing, then you will have your opportunity to engage in such discovery procedures that may be appropriate and available.

So we will go with the schedule that I indicated. Mr. Wallace goes first; you respond to that. Then if anybody feels like they've been shortchanged, or that the procedure has precluded them from making the arguments that they wanted to make, we'll take it up at that time.

All right. Now, let me ask you about the timing of these briefs. Any kind of suggestions about that? I mean, we,

obviously, need to act fast if we're going to keep the March date. So...

MR. WALLACE: Your Honor, this group of defendants are cooperating. I think we have a pretty good idea of what our arguments are. There are elected officials who need to be consulted, and I don't know how easy they will be to consult when the legislature is in town.

I would say I can have a brief to you by this time next week, but I don't know whether that's going to provide sufficient opportunity for the other defendants to look at that and have input. Attorney general --

JUDGE JOLLY: Why don't we make it a week from Monday. What date would that be? The week from this coming Monday. Is that what you said?

MR. WALLACE: I think that's February 14th, isn't it?

JUDGE JOLLY: Well, not to interfere with anybody's romantic plans.

MR. WALLACE: I'm looking around at the other folks, and they seem to think we can do it by the 14th. I think we can do it by the 14th.

JUDGE JOLLY: Close of business on the 14th.

MR. WALLACE: Yes, Your Honor.

JUDGE JOLLY: All right. And then, Mr. Rhodes, you would respond in -- can you respond in seven days thereafter?

MR. RHODES: Judge, we would like to be given about the

same length of time. So theirs was -- they have a little bit longer, I think about ten days for theirs.

JUDGE JOLLY: Ten days?

MR. RHODES: Yes.

JUDGE JOLLY: All right. Then, ten days from the 14th -- well, ten days, I guess, from the 15th. It would be the close of business on the 14th, theirs would be filed. You would have from that point forward, ten days to file your brief.

MR. BEGLEY: Your Honor, Sam Begley for the Democratic Party.

JUDGE JOLLY: Sure. Sure.

MR. BEGLEY: The parties would like the opportunity to respond to the Republican Party at the same time that the Buck plaintiffs do, by filing a brief.

JUDGE JOLLY: You're a party to this case. As of now, you're not an intervenor or anything; you're a party.

MR. BEGLEY: I just wanted to make sure you weren't limiting to these parties right here.

JUDGE JOLLY: No, I certainly am not.

MR. BEGLEY: Okay.

JUDGE JOLLY: Does anybody else want to file a brief who is entitled to file a brief?

JUDGE WINGATE: Does anybody contemplate moving the qualifying date?

MR. WALLACE: I expect we will oppose that. I can't speak

for the elected officials, but I think they will oppose it. I think we will -- since -- since we still haven't seen what their claim really is, we will have to have a rebuttal after the 24th -- after the 24th. We can do it quickly, but we do have to have a chance to rebut these arguments that we have not yet seen.

JUDGE JOLLY: Mr. Rhodes, I would say that I am a bit confused about the basis for -- of your position of the discriminatory intent of the plan itself, and how this is discriminatory in terms of black voting rights.

So you need to spell that out in this brief. This is your opportunity to do it, and to attach all affidavits, maps, or other documents that are necessary to establish your position.

MR. RHODES: Yes, Your Honor.

JUDGE JOLLY: Thank you, Mr. Rhodes.

Yes, sir?

MR. MATHENY: I have a question, Your Honor. Justin Matheny for the Attorney General and the Governor.

JUDGE JOLLY: Right.

MR. MATHENY: We would like the opportunity to either join Mr. Wallace's brief or file our own on the same time schedule, and, of course, we will not be duplicating anything that he does or --

JUDGE JOLLY: Well, you're certainly entitled to do so if there is no duplication.

MR. MATHENY: Yes, Your Honor.

JUDGE JOLLY: But, we do not want duplication.

MR. MATHENY: Crystal clear.

JUDGE JOLLY: Don't need it. Does anybody? Does anybody else have any matter they'd like to raise at this point?

MR. JERNIGAN: No, Judge Bramlette, just we want constitutional reenforcement. I think we're going to file with Mr. Wallace and ride that horse as long as we can, Your Honor.

JUDGE JOLLY: Okay.

MR. JONES: Your Honor?

JUDGE JOLLY: Yes, Mr. Jones.

MR. JONES: May it please the Court. Do we have a small window of time to file a reply, a rebuttal, following the 24th?

JUDGE JOLLY: Well, I mean, at that time, I mean, there would be reply brief -- you would be entitled to file a reply brief. We're not asking for simultaneous briefs. So there would be a reply; there would be a time for a reply that we have not thought about or talked about today. And I would say a reply brief should be five days thereafter. Would that be --

MR. WALLACE: We will have a busy weekend, Your Honor, but we'll do that. The --

JUDGE JOLLY: We'll make it convenient to you.

MR. WALLACE: My brother rides in the Irish parade on the 26th, but if he files a brief on Thursday the 24th, we'll have a rebuttal for you on the 28th.

JUDGE JOLLY: Well, I wouldn't dare interfere with the

parade. So you can extend that if you wish.

JUDGE WINGATE: So Mr. Wallace, do you see the last brief being filed on the 24th?

MR. WALLACE: Their brief is to be filed on the 24th. We will get you our rebuttal by Monday the 28th.

JUDGE WINGATE: It's the 28th.

MR. WALLACE: Monday -- their brief is Thursday the 24th, and we will get you the rebuttal by Monday, the 28th.

JUDGE WINGATE: And the qualifying deadline is when?

MR. WALLACE: It's the next day, Judge.

JUDGE WINGATE: I know. That's why I asked the question a few moments ago: Did anyone contemplate moving the qualifying deadline? If so, then I need -- I think we would like to see whatever authority you have for moving it or not moving it, so that we don't have to say, go out and research this matter on that late date to see if we have that authority to do it. So that we can look at all of that at one time.

MR. WALLACE: Your Honor, I can commit that in this brief I'm going to file a week from Monday, I will cover the cases that control and sort of rebutting an argument that hasn't been made yet, but I will tell you what we think the law is on your authority to move the deadline, and why we think you can't. And then I suppose you'll hear from him on that on the 24th.

JUDGE WINGATE: All right. As long as you place it in issue. Thank you.

JUDGE JOLLY: Does anybody have anything else they wish to raise before we adjourn this meeting, this proceeding? Okay. The proceeding is adjourned.

(Adjourned.)

COURT REPORTER'S CERTIFICATE

I, Tamika T. Bartee, Certified Court Reporter, in and for the State of Mississippi, Official Court Reporter for the United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of the proceedings had in the aforenamed case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

THIS the 7th day of February, 2022.

s/ Tamika T. Bartee

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