
No. 23-60463

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

DISABILITY RIGHTS MISSISSIPPI; LEAGUE OF WOMEN VOTERS
OF MISSISSIPPI; WILLIAM EARL WHITLEY; MAMIE
CUNNINGHAM; YVONNE GUNN

PLAINTIFFS–APPELLEES,

v.

LYNN FITCH, in her official capacity as Attorney General of the State of
Mississippi; MICHAEL D. WATSON, JR., in his official capacity as
Secretary of State of Mississippi,

DEFENDANTS–APPELLANTS,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
No. 3:23-cv-350-HTW-LGI

**PLAINTIFFS–APPELLEES’ RESPONSE TO DEFENDANTS-
APPELLANTS’ MOTION TO CANCEL ORAL ARGUMENT AND
HOLD APPEAL IN ABEYANCE**

Counsel on Next Page

LESLIE FAITH JONES
SOUTHERN POVERTY LAW CENTER
111 East Capitol Street, Suite 280
Jackson, Mississippi 39201
(601) 317-7519
leslie.jones@splcenter.org

BRADLEY E. HEARD
SABRINA KHAN
JESS UNGER
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Avenue, Suite 230
Decatur, GA 30030
(334) 213-8303
bradley.heard@splcenter.org
sabrina.khan@splcenter.org
jess.unger@splcenter.org

AHMED SOUSSI
SOUTHERN POVERTY LAW CENTER
201 Saint Charles Avenue, Suite 2000
New Orleans, Louisiana 70170
(334) 213-8303
ahmed.soussi@splcenter.org

ROBERT MCDUFF
Mississippi Center For Justice
210 E. Capitol St., Suite 1800
Jackson, Mississippi 39201
(601) 259-8484
rmcduff@mscenterforjustice.org

JOSHUA TOM
CLAUDIA WILLIAMS HYMAN
AMERICAN CIVIL LIBERTIES UNION
OF MISSISSIPPI FOUNDATION
101 South Congress Street
Jackson, Mississippi 39201
(601) 354-3408
jtom@aclu-ms.org
cwilliamshyman@aclu-ms.org

MING CHEUNG
CASEY SMITH
ARI J. SAVITZKY
SOPHIA LIN LAKIN
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
mcheung@aclu.org
csmith@aclu.org
asavitzky@aclu.org
slakin@aclu.org

GRETA KEMP MARTIN
DISABILITY RIGHTS MISSISSIPPI
5 Old River Place, Suite 101
Jackson, MS 39202
Office: (601) 968-0600
Facsimile: (601) 968-0665
gmartin@drms.ms

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following non-governmental persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Plaintiffs-Appellees:

- Disability Rights Mississippi
- League of Women Voters of Mississippi
- Mamie Cunningham
- William Earl Whitley
- Yvonne Gunn

Counsel

- Ahmed Soussi
- Ari J. Savitzky
- Bradley E. Heard
- Casey Smith
- Claudia Williams Hyman
- Greta Kemp Martin
- Jess Unger
- Joshua Tom
- Leslie Faith Jones
- Ming Cheung
- Robert McDuff
- Sabrina Khan
- Sophia Lin Lakin
- American Civil Liberties Union Foundation
- American Civil Liberties Union of Mississippi Foundation
- Disability Rights Mississippi
- Mississippi Center for Justice
- Southern Poverty Law Center

Defendants-Appellants:

- Lynn Fitch
- Michael D. Watson, Jr.

Counsel

- Anthony M. Shults
- Douglas T. Miracle
- Justin L. Matheny

- Gerald L. Kucia
- Scott G. Stewart

Non-Appealing Defendants:

- Elizabeth Ausbern
- Gerald A. Mumford

Dated: May 3, 2024

/s/ Leslie Faith Jones
Counsel of Record for Plaintiffs-
Appellees

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Pursuant to Fed R. App. P. 27(a)(3), Plaintiffs file this response to Defendants' motion, Dkt. 83-1. In light of Defendants' representation to this Court that Senate Bill 2425 ("S.B. 2425") does not prohibit a person of the voter's choice from providing assistance with the collection and transmission of a ballot, unless the chosen person is among the limited exceptions identified in S.B. 2425 § 1(4), Plaintiffs do not oppose canceling the scheduled oral argument date and holding this appeal in abeyance. *See* Dkt. 83-1 at 9 ("Under S.B. 2425, however, disabled voters like Mr. Whitley are not limited in their choice of assistant to the specific categories included in S.B. 2358. Rather, such voters may receive assistance from 'a person of [their] choice' 'other than' their 'employer' or 'union' officials, 'a candidate whose name is on the ballot,' certain family members of candidates, or 'a poll watcher who is observing the polling place on election day.'"); *id.* at 10 ("For similar reasons, when July 1 arrives Ms. Cunningham and Ms. Gunn will also no longer face injury from S.B. 2358. They wish to provide assistance with mail-in voting to blind, disabled, or illiterate voters and feared injury (in the form of prosecution) from S.B. 2358 for doing so."). However, Plaintiffs reserve the right to respond to any forthcoming motions regarding mootness.

After the passage of Senate Bill 2358 (codified as Miss. Code Ann. § 23-15-907), Plaintiffs obtained a court order preliminarily enjoining the implementation of the law. ROA.338. The district court held that the law likely conflicted with Section

208 of the Voting Rights Act of 1965, 52 U.S.C. § 10508, by depriving voters who have a disability, blindness, or an inability to read or write of their right to select a person of their choice to assist them in the return of their absentee mail-in ballot. ROA.338. The district court also criticized the state law as vague and lacking “guideposts” for determining the meaning of “vital terms,” particularly “caregiver, family members, [and] household members.” ROA.336–37.

In response to the district court’s order and injunction, Mississippi passed S.B. 2425 to amend Miss. Code Ann. § 23-15-907 to address the flaws identified in the district court’s order.¹ As Defendants acknowledge, S.B. 2425 adds language—largely tracking the text of Section 208 of the VRA—exempting the provision of assistance needed by voters due to “blindness, disability, or inability to read or write.” Dkt. 83-1 at 6–7. S.B. 2425 also sought to clarify the terms that the district

¹ In the floor debate for S.B. 2425, Representative Willie Baily raised concerns about the legality of the pending legislation in light of the instant litigation and the district court’s finding that S.B. 2358 impermissibly restricted voters with disabilities their choice of an assistant. Mississippi Legislature, *MS House Floor – 4 April, 2024; 10:00 A.M.*, YouTube (April 4, 2024), https://www.youtube.com/watch?v=ChZ_1F6lYDg (debate begins at 1:02:15 mark, Baily statements begin at 1:11:48 mark) (last visited May 3, 2024). Representative Noah Sanford—the Chair of the Apportionment and Elections Committee—responded that S.B. 2425 was amended during the 2024 legislative session to guarantee voters with disabilities the right to select a person of their choice to provide assistance, and that members should vote for the amended version allowing such assistance. *Id.* at 1:13:45. Similarly, Senator Jeff Tate spoke on the Senate floor and explained that the amendment was intended to “clarify that if you’re blind, disabled, or illiterate that you can receive assistance in voting.” Mississippi Legislature, *MS Senate Floor – 15 April, 2024; 4:00 PM*, YouTube (April 15, 2024), https://www.youtube.com/watch?v=5pSJRup0Zx8&ab_channel=MississippiLegislature (Tate statement at 35:00 mark) (last visited May 3, 2024).

court held to be vague, adding definitions for “caregiver,” “family member,” and “household member.” Dkt. 83-2 at 3–4.

Given Defendants’ interpretation of S.B. 2425 to exempt persons like the individual Plaintiffs from criminal liability, Plaintiffs do not oppose Defendants’ motion to cancel oral argument and hold the appeal in abeyance.

Dated: May 3, 2024

Respectfully submitted,

/s/ Leslie Faith Jones
Leslie Faith Jones

LESLIE FAITH JONES
SOUTHERN POVERTY LAW CENTER
111 East Capitol Street, Suite 280
Jackson, Mississippi 39201
(601) 317-7519
leslie.jones@splcenter.org

BRADLEY E. HEARD
SABRINA KHAN
JESS UNGER
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Avenue, Suite 230
Decatur, GA 30030
(334) 213-8303
bradley.heard@splcenter.org
sabrina.khan@splcenter.org
jess.unger@splcenter.org

AHMED SOUSSI
SOUTHERN POVERTY LAW CENTER
201 Saint Charles Avenue, Suite 2000
New Orleans, Louisiana 70170
(334) 213-8303
ahmed.soussi@splcenter.org

JOSHUA TOM
CLAUDIA WILLIAMS HYMAN
AMERICAN CIVIL LIBERTIES UNION
OF MISSISSIPPI FOUNDATION
101 South Congress Street
Jackson, Mississippi 39201
(601) 354-3408
jtom@aclu-ms.org
cwilliamshyman@aclu-ms.org

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AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
mcheung@aclu.org
csmith@aclu.org
asavitzky@aclu.org
slakin@aclu.org

ROBERT MCDUFF
MISSISSIPPI CENTER FOR JUSTICE
210 E. Capitol St., Suite 1800
Jackson, Mississippi 39201
(601) 259-8484
rmcduff@mscenterforjustice.org

GRETA KEMP MARTIN
DISABILITY RIGHTS MISSISSIPPI
5 Old River Place, Suite 101
Jackson, MS 39202
Office: (601)968-0600
Facsimile: (601)968-0665
gmartin@drms.ms

COUNSEL FOR PLAINTIFFS-APPELLEES

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limits of Fed. R. App. P. 27(d)(2)(A) because it contains 654 words, excluding parts exempted by the Rules. This document complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5)-(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Leslie Faith Jones
Leslie Faith Jones

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2024, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system.

/s/ Leslie Faith Jones

Leslie Faith Jones

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