

No. 19-60662
c/w No. 19-60678

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

DENNIS HOPKINS, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; HERMAN PARKER, JR., INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; WALTER WAYNE KUHN, JR., INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; JON O'NEAL, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED; EARNEST WILLHITE, INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED
Plaintiffs-Appellees,

v.

SECRETARY OF STATE DELBERT HOSEMAN, IN HIS OFFICIAL CAPACITY,
Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
No. 3:18-cv-188

**DEFENDANT-APPELLANT'S MOTION TO EXTEND THE TIME TO FILE
PETITION FOR PANEL REHEARING AND/OR EN BANC REHEARING**

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Counsel for Defendant-Appellant

CERTIFICATE OF INTERESTED PERSONS

Under this Court's Rule 28.2.1, governmental parties need not furnish a certificate of interested persons.

s/ Justin L. Matheny

Justin L. Matheny

Counsel for Defendant-Appellant

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**MOTION TO EXTEND THE TIME TO FILE PETITION FOR
PANEL REHEARING AND/OR EN BANC REHEARING**

Defendant-Appellant the Mississippi Secretary of State requests an order granting a 14-day extension of time to file a petition for panel rehearing and/or en banc rehearing. *See* Fifth Circuit Rule 27.1.1.

These consolidated appeals involve constitutional challenges to long-standing Mississippi laws on felon disenfranchisement. The parties briefed the appeals in October/November 2019 and a panel of this Court heard oral argument in December 2019.

On August 4, 2023, this Court issued a divided panel decision ruling that the Mississippi Constitution's felon-disenfranchisement provision violates the Eighth Amendment. The Secretary of State's current deadline to file a petition for panel rehearing and/or en banc rehearing is August 18, 2023. *See* Fed. R. App. P. 35(c), 40(a)(1). A 14-day extension would make any petition due on or before September 1, 2023.

The requested level-one extension is needed for several reasons. These appeals present matters of exceptional importance. Plaintiffs-Appellees' class-action claims challenge state constitutional provisions that regulate voting in Mississippi and have been on the books for decades. The panel majority's decision invalidates a key feature of the State's felon-disenfranchisement laws. The requested extension will

allow counsel sufficient time to fully research, evaluate, and present the Secretary's grounds for rehearing.

Other practical considerations that will make preparation of the Secretary's rehearing petition a more complex task also support the requested extension. Over three-and-a-half years have elapsed since these appeals were briefed and argued to the panel. The panel's opinions are collectively sixty-seven pages long. The opinions rely on judicial decisions and other authorities issued in the intervening years since the appeals were argued. And former lead counsel for the Secretary (who was primarily responsible for preparing the Secretary's panel-stage briefs and presented argument in December 2019) is no longer employed at the Mississippi Attorney General's Office and has withdrawn.

Further, the Secretary's current rehearing petition deadline falls within August briefing schedules in other matters involving undersigned counsel pending before the Mississippi Supreme Court (No. 2022-SA-01129-SCT) and Hinds County Chancery Court (No. 25CH1:22-cv-01371). The requested extension will permit undersigned counsel to manage those pre-existing deadlines and the preparation of the Secretary's rehearing petition in these appeals.

On August 7, 2023, undersigned counsel exchanged emails back-and-forth emails with Plaintiffs-Appellees' counsel, advised them of the grounds for the Secretary's request, and requested their position on this

motion. But, as of this filing, Plaintiffs-Appellees' counsel have not advised whether they oppose the motion or intend to file an opposition. See Fifth Circuit Rule 27.4.

FOR THESE REASONS, the Secretary of State requests an order extending the time in which to file a petition for panel rehearing and/or en banc rehearing by an additional fourteen days, making any petition due on or before September 1, 2023.

Dated: August 8, 2023

Respectfully submitted,

LYNN FITCH
Attorney General

s/ Justin L. Matheny
Justin L. Matheny
Deputy Solicitor General

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Counsel for Defendant-Appellant

CERTIFICATE OF SERVICE

I, Justin L. Matheny, hereby certify that the foregoing motion has been filed with the Clerk of Court using the Court's electronic filing system, which sent notification of such filing to all counsel of record.

Dated: August 8, 2023

s/ Justin L. Matheny
Justin L. Matheny
Counsel for Defendant-Appellant

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS

This motion complies with the word limitations of Fed. R. App. P. 27(d)(2) because it contains 466 words. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because its text has been prepared in proportionally spaced typeface, including serifs, using Microsoft Word 2016, in Century Schoolbook 14-point font.

Dated: August 8, 2023

s/ Justin L. Matheny
Justin L. Matheny
Counsel for Defendant-Appellant