UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ROY HARNESS, ET AL. PLAINTIFFS

V. CIVIL ACTION NO. 3:17-CV-791-DPJ-FKB

DELBERT HOSEMANN, SECRETARY OF STATE
OF MISSISSIPPI DEFENDANT

CONSOLIDATED WITH

DENNIS HOPKINS, ET AL. PLAINTIFFS

V. CIVIL ACTION NO. 3:18-CV-188-DPJ-FKB

DELBERT HOSEMANN, SECRETARY OF STATE
OF MISSISSIPPI DEFENDANT

# ORDER

Second, “[a] class action may be maintained” if “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). Again, Hosemann preserves his merits-based opposition to Plaintiffs’ claims but acknowledges that they “dovetail with Rule 23(b)(2)’s expressed requirements.” Def.’s Mem. [50] at 8.

Accordingly, there is effectively no dispute Plaintiffs’ motion satisfies all t ^ ư Ⱦʿ ʿ o b

> which they are entitled is the same. . . . [T]he very nature of the rights appellants seek to vindicate requires that the decree run to the benefit not only of the named plaintiffs but also for all persons similarly situated. For racial discrimination is by definition class discrimination. Even with the denial of class action status, the requested injunctive and declaratory relief will benefit not only the individual appellants and the nonprofit corporation but all other persons subject to the practice under attack.

*Id.* (internal citations omitted).

Hosemann understandably construes this language as suggesting that courts must deny unnecessary certifications—even when Rule 23 is satisfied. But the Fifth Circuit has not read *United Farmworkers* as adopting a necessity requirement. *See Johnson v. City of Opelousas*, 658 F.2d 1065, 1069–70 n.5 (5th Cir. 1981) (considering *United Farmworkers* yet stating that Fifth Circuit "has not confronted the [necessity] question directly"); *see also Pederson v. La. State Univ.*, 213 F.3d 858, 867 n.8 (5th Cir. 2000) (observing that Fifth Circuit "has, in the past, declined to decide whether necessity can play a role in class certification decisions" and "again declin[ing] to decide this question"); *Mitchell v. Johnson*, 701 F.2d 337, 345 n.11 (5th Cir. 1983) ("Since this Court concludes that class certification was 'necessary,' we need not decide whether lack of need is a valid basis for denial of class certification.").

Even assuming *United Farmworkers* had judicially created an additional requirement not present in Rule 23's text, the decision would not withstand Justice Scalia's analysis of Rule 23 in *Shady Grove Orthopedic Associates, P.*

> permission, *see*, *e.g.*, [Fed. R. Civ. P.] 8(d)(2)–(3), 14(a)(1), 18(a)–(b), 20(a)(1)–(2), 27(a)(1), 30(a)(1), as do federal statutes that establish procedural entitlements, *see, e.g.*, 29 U.S.C. § 626(c)(1); 42 U.S.C. § 2000e-5(f)(1).)
> . . .
>
> Allstate asserts that Rule 23 neither explicitly nor implicitly empowers a federal court "to certify a class in each and every case" where the Rule's criteria are met. [Br. For Resp't] at 13–14. But that is *exactly* what Rule 23 does: It says that if the prescribed preconditions are satisfied "[a] class action *may be maintained*" (emphasis added)—not "*a class action may be permitted*." Courts do not maintain actions; litigants do. The discretion suggested by Rule 23's "may" is discretion residing in the plaintiff: He may bring his claim in a class action if he wishes.

559 U.S. at 398–400 (emphasis in original).

In other words, Rule 23's plain text "unambiguously authorizes *any* plaintiff, in *any* federal civil proceeding, to maintain a class action if the Rul

Pls.' Mem. [45] at 11. Hosemann suggests two alterations. First, he proposes that subsection (a) be revised to specify disenfranchisement "by reason of a conviction of a disenfranchising offense." Def.'s Mem. [50] at 15–16. Plaintiffs agree. Pls.' Reply [52] at 9.

Second, Hosemann proposes that subsection (b) should include only felons who have completed "all terms of their full sentence" including "payment of fines or restitution." Def.'s Mem. [50] at 16. Plaintiffs oppose this revision, characterizing it as a "fundamental merits question that goes to the heart of this litigation: *when should individuals convicted of disenfranchising offenses regain the right to vote?*" Pls.' Reply [52] at 19 (emphasis in original).

The Court agrees; the issue encompasses the merits. So for now, the class should be broadly defined to include individuals who have not yet paid all fines and restitution. *See In re Sheffield*, 281 B.R. 35, 35 (Bankr. S.D. Ala. 2001) (finding that broad definition of class was appropriate until trial). If this definition is proven to be overly broad, the Court has authority to modify it. *See* Fed. R. Civ. P. 23(c)(1)(C) ("An order that grants or denies class-certification may be altered or amended before final judgment."); *McNamara v. Felderhof*, 410 F.3d 277, 280 n.8 (5th Cir. 2005) (noting a district court can reconsider or modify its class-certification ruling). Defendant's request to modify the class definition to exclude those who have not satisfied their fines and restitution is denied without prejudice.

## III. Conclusion

The Court has considered all arguments raised by the parties; those not addressed would not have changed the outcome. For the reasons given, Plaintiffs' motion for class certification is granted. The class is defined as follows:

> Any person who (a) is or becomes disenfranchised under Mississippi state law by reason of a conviction of a disenfranchising offense, and (b) has completed the term of incarceration, supervised release, parole, and/or probation for each such conviction.

There are, however, a few loose ends the parties will need to address. First, the Court must appoint class counsel under Rule 23(g). In their proposed order, the Hopkins Plaintiffs named themselves as class representatives and their attorneys as counsel. But this case was consolidated with *Harness v. Hosemann*, and the Court is unsure how the Rule 23(g) designations affect the Harness Plaintiffs and attorneys. Second, the Court needs input on how notice should be addressed under Rule 23(c)(2)(A). Finally, the parties must provide guidance on whether class certification and Rule 23's notice provisions (or any others) impact the pending summary-judgment motions and/or the remaining course of litigation. A joint status report outlining the parties' positions on these issues should be filed within 14 days of this Order.

this the 13th day of February, 2019.

s/ *Daniel P. Jordan III*
CHIEF