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

HANCOCK COUNTY BOARD OF SUPERVISORS	§	
Plaintiff	§	
v.	§	**CAUSE NO. 1:10CV564 LG-RHW**
	§	
KAREN LADNER RUHR, in her official capacity as HANCOCK COUNTY CIRCUIT CLERK and HANCOCK COUNTY REGISTRAR, HANCOCK COUNTY REPUBLICAN EXECUTIVE COMMITTEE, and HANCOCK COUNTY DEMOCRATIC EXECUTIVE COMMITTEE	§	**CONSOLIDATED WITH:**
	§	**3:11CV119 LG-RHW**
	§	**3:11CV121 LG-RHW**
	§	**3:11CV122 LG-RHW**
	§	**3:11CV123 LG-RHW**
	§	**3:11CV124 LG-RHW**
	§	**4:11CV33 LG-RHW**
	§	**5:11CV28 LG-RHW**
Defendants	§	**5:11CV29 LG-RHW**
	§	**5:11CV30 LG-RHW**
JIM HOOD, ATTORNEY GENERAL FOR THE STATE OF MISSISSIPPI, *EX REL.* THE STATE OF MISSISSIPPI	§	
	§	
	§	
	§	
Intervenor	§	

MEMORANDUM OPINION AND ORDER OF DISMISSAL

BEFORE THE COURT in this consolidated case are the Motions [19, 43] to Dismiss and the Motion [56] for Summary Judgment filed by Mississippi Attorney General Jim Hood.[1] The issues have been fully briefed, and a hearing was conducted on May 13, 2011. For the reasons stated below, the Court concludes that the consolidated cases should each be dismissed.

These consolidated cases concern the redistricting of ten counties in Southern

[1] The Attorney General's dismissal motions have been joined by the Hancock County Democratic Executive Committee and the Simpson, Warren, Wayne, Copiah, and Adams County defendants.

Mississippi: Hancock, Madison, Pike, Simpson, Amite, Wayne, Claiborne, Adams, Copiah, and Warren. The County Board of Supervisors in each of the party counties has the statutory duty to draw the lines for its districts. The election cycle for county supervisors began January 1, 2011, when candidates could begin submitting qualification fees and paperwork. The qualifying period ended March 1, 2011. On or around February 4, 2011, near the middle of the qualifying period, the counties received the United States decennial census data. Having analyzed the census data, the Plaintiffs allege that the present districts within each of the counties will have more than 10% variance from one another. This deviation constitutes a *prima facie* case of invidious discrimination.

The Plaintiffs seek 1) a declaration that it would be unconstitutional to conduct elections using the current district lines, and 2) a sufficient delay in the statutory March 1, 2011, qualifying deadline for supervisor candidates to allow the board of supervisors in each county to complete the redistricting process. Thus, the Plaintiffs challenge the state's election statutes on the grounds that the deadlines imposed will cause violation of the "one person, one vote" principle of the Equal Protection Clause of the Fourteenth Amendment.

The Court consolidated these cases, because despite the factual differences (i.e., the specific variance percentages between districts), they share a common legal issue - whether a constitutional right will be violated if elections for county offices proceed prior to redistricting using the new 2010 decennial census information. The parties are not perfectly aligned - in some instances, the county board of supervisors is a plaintiff,

while in others it is a defendant. Further, the counties are at various stages of redistricting. The Madison, Hancock and Pike County Boards of Supervisors have adopted and presented a redistricting plan to the United States Department of Justice for preclearance, while other counties are in the preliminary stages of plan formulation. No plan has received Justice Department preclearance, and the Court has been provided only vague assertions that Justice Department preclearance *may* occur by May 27, 2011.

The Attorney General for the State of Mississippi argues that the Court lacks subject matter jurisdiction over this matter because Plaintiffs do not have standing to bring challenges based on "one person, one vote" violations. The Attorney General also argues that the Plaintiffs' claims fail on the merits. The Court is required to address jurisdictional issues before it assesses the merits of Plaintiffs' claims. *In re Great Lakes Dredge & Dock Co. LLC*, 624 F.3d 201, 209 (5th Cir. 2010); *Budget Prepay, Inc. v. AT & T Corp.,* 605 F.3d 273, 278 (5th Cir. 2010).

I. STANDING

The standing doctrine is a threshold inquiry to adjudication, which defines and limits the role of the judiciary. *McClure v. Ashcroft*, 335 F.3d 404, 408 (5th Cir.2003) (citing *Warth v. Seldin*, 422 U.S. 490, 517-18 (1975)). It is well settled that unless a plaintiff has standing, a federal district court lacks subject matter jurisdiction to address the merits of the case. In the absence of standing, there is no "case or controversy" between the plaintiff and defendant which serves as the basis for the

exercise of judicial power under Article III of the Constitution. *Warth*, 422 U.S. at 498-499.

The "irreducible constitutional minimum of standing contains three elements": "[T]he plaintiff must have suffered an injury in fact;" "there must be a causal connection between the injury and the conduct complained of;" and "it must be likely ... that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The Plaintiffs, as the parties invoking federal jurisdiction, bear the burden of establishing these elements. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998). Failure to establish any one element deprives the federal courts of jurisdiction to hear the suit. *Id*. Plaintiffs must demonstrate that they have standing to sue at the time the complaint is filed, *Pluet v. Frazier,* 355 F.3d 381, 385 (5th Cir. 2004), but it is only necessary for one of the Plaintiffs to have standing for the Court to consider their challenge. *Massachusetts v. EPA,* 549 U.S. 497, 518 (2007).

"[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.,* with the manner and degree of evidence required at the successive stages of the litigation." *Lujan,* 504 U.S. at 561. "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presume that general allegations embrace those specific facts that are necessary to support the claim.'" *Id.* (quoting *Lujan v. Nat'l Wildlife Fed'n,* 497 U.S. 871, 889 (1990)); *see also Little v.*

KPMG LLP, 575 F.3d 533, 540 (5th Cir. 2009) ("At the pleading stage, allegations of injury are liberally construed."). "It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Renne v. Geary,* 501 U.S. 312, 316 (1991).

At this stage in the proceedings, the Court is required to accept the allegations in the Complaints as true. *Williamson v. Tucker*, 645 F.2d 404, 412 (5th Cir. 1981). The Court must assess the Complaints to determine whether Plaintiffs have plead sufficient facts to establish a "certainly impending" injury. *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990); *Prestage Farms, Inc. v. Bd. of Supervisors*, 205 F.3d 265, 268 (5th Cir. 2000).

HANCOCK AND MADISON COUNTY:

The Attorney General advances two reasons why the Hancock County Board of Supervisors and the Madison County Board of Supervisors lack standing. First, as subdivisions of the State, they may not sue other subdivisions of the State for violations of the 14th Amendment. This argument goes primarily to the assertion of third party, or *jus tertii*, standing. Second, both fail to establish an injury in fact that is fairly traceable to the defendants, and which a favorable judgment would remedy.

Both the Hancock County Board of Supervisors and the Madison County Board of Supervisors have sued other divisions of their respective counties on behalf of their voting residents, challenging a state statute under the Fourteenth Amendment. The counties are political divisions of the State of Mississippi. *Leflore Cnty. v. Big Sand*

Drainage Dist., 383 So.2d 501, 502 (Miss. 1980). The Fifth Circuit and others have stated that subdivisions of a state have no standing to sue one another for violations of the Fourteenth Amendment. *Town of Ball v. Rapides Parish Police Jury*, 746 F.2d 1049, 1051 n.1 (5th Cir. 1984); *see also City of Herriman v. Bell*, 590 F.3d 1176, 1183 (10th Cir. 2010) ("[A] political subdivision may not challenge the validity of a fellow subdivision's actions under the Fourteenth Amendment, unless such a suit is expressly authorized."); *Delta Special Sch. Dist. No. 5 v. State Bd. of Ed.*, 745 F.2d 532, 533 (8th Cir. 1984) ("A political subdivision of a state cannot invoke the protection of the fourteenth amendment against the state."). Furthermore, the fact that a political subdivision is considered a "person" for purposes of 42 U.S.C. § 1983 does not also give it enforceable 14th Amendment rights. *See United States v. Alabama*, 791 F.2d 1450, 1456 (11th Cir. 1986) ("The *Monell* decision does not call into question the principle that a city or county cannot challenge a state statute on federal constitutional grounds.")

Instead, the specific constitutional rights that the Hancock and Madison County Boards seek to enforce belong to the voters residing within those counties. The Boards may only have *jus tertii* standing to enforce these rights if the Boards fall "within the category of 'vendors and those in like position (who) have been uniformly permitted to resist efforts at restricting their operations by acting as advocates for the rights of third parties who seek access to their market or function.'" *Deerfield Med. Ctr. v. City of Deerfield*, 661 F.2d 328, 334 (5th Cir. 1981) (quoting *Carey v. Population Servs. Int'l*, 431 U.S. 678, 684 (1977). Examples are an abortion provider enforcing women's

privacy rights, *Deerfield*, 661 F.2d at 334, a beer vendor enforcing the equal protection rights of men between 18 and 21 years of age, *Craig v. Boren*, 429 U.S. 190, 194 (1976), and a contraceptive vendor enforcing the privacy rights of citizens of New York. *Carey*, 431 U.S. at 683. Unlike the plaintiffs in these examples, Hancock and Madison County as entities possess no "rights or interests" that are affected or restricted by the district voting lines.

The *Allen* case cited by the Madison County Board is similarly inapplicable. In *Allen,* the court determined that a board of education had standing because there was "no doubt" the individual members of the board had a personal stake in the outcome of the litigation. They intended to disobey a state statute because they believed it was unconstitutional, and expected that they would be expelled from office and the district lose funding as a result. *Bd. of Educ. v. Allen*, 392 U.S. 236, 241 n.5 (1968). There is no personal interest alleged to be at stake for any County Board member in this case.

Furthermore, as illustrated by the complaints filed by the NAACP that are now part of this consolidated case, aggrieved citizens routinely bring suits to enforce voting rights, both as individuals and as members of an association. It is not necessary for the counties to institute litigation to vindicate these rights.

Hancock and Madison County invite the Court to expand the concept of *jus tertii* standing beyond established precedent. Absent authority to the contrary, the Court concludes that neither Madison nor Hancock County Board of Supervisors has *jus tertii* standing to bring claims on behalf of its resident voters.

Turning to the elements of Article III standing, Madison and Hancock County

allege two injuries-in-fact: 1) the dilution of votes that will occur if the qualifying deadline is not extended and if the elections are not run under the newly adopted plans casts doubt on the integrity of the elections; and 2) the imminent threat of one person, one vote lawsuits against them. The Court finds that the County Boards have not alleged an injury-in-fact that is real and immediate. The County Boards' allegations that an unmodified qualifying deadline will cast doubt on the integrity of the election are "too abstract and speculative" to meet the requirements for standing. *See Public Citizen, Inc. v. Bomer*, 274 F.3d 212, 218 (5th Cir. 2001). And although future litigation may be a possibility, there are no allegations of any particularized threat of litigation sufficient to create standing. *See Shields v. Norton*, 289 F.3d 832, 836-37 (5th Cir. 2002) ("saber rattling" not a sufficient threat of litigation). The County Boards have therefore alleged only a conjectural or hypothetical threat of future injury insufficient to support standing.

THE REMAINING PLAINTIFFS:

The NAACP claims institutional standing in each of its complaints. Although, as a general rule, a litigant may not raise the rights of a third party, an exception allows organizations to sue on behalf of members who have been injured by the challenged action. To have standing, an association or organization must satisfy the requirements of *Lujan v. Defenders of Wildlife,* 504 U.S. 555 (1992). First, the plaintiff must have suffered an injury in a fact--an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the

injury and the conduct complained of. The injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

The individual Plaintiffs, John Robinson, Rev. Frank Lee, Nanette Thurmond-Smith, L.J. Camper, Glen Wilson, Leah Wilson, and Jacqueline Marsaw allege Article III standing. To meet the minimum constitutional standards for individual standing under Article III, a plaintiff must show (1) it has suffered an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc .,* 528 U.S. 167, 180-81 (2000).

Although generally challenging the NAACP and all of the individual Plaintiffs on the issue of standing, the Attorney General concedes that the NAACP, John Robinson, and Rev. Frank Lee have properly alleged an "injury-in-fact." The Court agrees. *See Fairley v. Patterson*, 493 F.2d 598, 603 (5th Cir. 1974). According to the Complaints however, Nanette Thurmond-Smith, L.J. Camper, Glen Wilson, Leah Wilson, and Jacqueline Marsaw, all reside in an *over* rather than under represented district.[2] Thus, each has failed to allege an injury-

[2] *NAACP v. Copiah Cnty., Miss. Bd. of Super.*, Cause No. 3:11cv121 LG-RHW (S.D. Miss. Feb. 28, 2011); *NAACP v. Simpson Cnty., Miss. Bd. of Super.*, Cause No.

in-fact and lacks standing. *See Fairley v. Patterson*, 493 F.2d 598, 604 (5th Cir. 1974); *N.A.A.C.P. v. City of Kyle, Tex.*, 626 F.3d 233, 237 (5th Cir. 2010).

Where the Plaintiffs seek a declaration of the unconstitutionality of a state statute and an injunction against its enforcement, the causation element requires that the Defendant have some connection with enforcement of the provision at issue. *Okpalobi v. Foster*, 244 F.3d 405, 426-28 (5th Cir. 2001). The named officials in each case are the officers and/or entities responsible for executing Mississippi election statutes, including the qualifying deadline at issue in this case. Accordingly, the causation element is satisfied.

The redressability prong of the standing analysis presents a much closer question. It is designed to bar disputes that will not be resolved by judicial action, and the Court is to inquire whether "'the prospect of obtaining relief from the injury as a result of a favorable ruling is too speculative.'" *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1385 (5th Cir. 1986) (quoting *Allen v. Wright*, 468 U.S. 737, 752 (1984)). Plaintiffs seek a modification or extension of the qualifying deadline. This *may* give the Madison and Pike County Plaintiffs relief from their potential Fourteenth Amendment injuries. But that is far from certain, and far less certain for the remaining Plaintiffs whose County officials lag behind in the approval and

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3:11cv123 LG-RHW (S.D. Miss. Feb. 28, 2011); *NAACP v. Amite Cnty., Miss. Bd. of Super.*, Cause No. 3:11cv124 LG-RHW (S.D. Miss. Feb. 28, 2011); *NAACP v. Wayne Cnty., Miss. Bd. of Super.*, Cause No. 4:11cv33 LG-RHW (S.D. Miss. Feb. 28, 2011); *NAACP v. Adams Cnty., Miss. Bd. of Super.*, Cause No. 5:11cv30 LG-RHW (S.D. Miss. Feb. 28, 2011).

preclearance process. As the Attorney General noted, the qualifying deadline set out in Mississippi Code section 23-15-299 is only the first for the 2011 county elections. After June 2, it will be too late to use any new plan for the August 2 primary elections, as changes to existing lines must be accomplished at least two months prior to any election. MISS. CODE ANN.§ 23-15-285. Absentee ballots must be printed and available by June 18. MISS. CODE ANN. § 23-15-649. These dates, established pursuant to State law are rapidly approaching. The date for Justice Department preclearance remains nebulous. Accordingly, the Court finds that due to the obvious time constraints, the prospect of obtaining effective relief is not likely and is too speculative to satisfy the redressability prong of the standing analysis.

II. THE CLAIMS

Alternatively, for the reasons stated below, the Court finds that these claims should be dismissed on the merits. In essence these complaints focus on the potential violation of the "one person, one vote" rule if the county supervisor primary elections stay on schedule in the party counties. The Supreme Court has determined that the 14th Amendment Equal Protection Clause requires "no substantial variation from equal population in drawing districts for units of local governments having general governmental powers over the entire geographic area served by the body." *Avery v. Midland Cnty., Tex.*, 390 U.S. 474, 484-85 (1968). This "one person, one vote" rule applies to apportionment of county supervisor districts in Mississippi. *Martinolich v. Dean*, 256 F. Supp. 612 (S.D. Miss. 1966). District plans with population deviations of more than ten percent from one district to another create a *prima facie* case of

discrimination under the Fourteenth Amendment. *Moore v. Itawamba Cnty., Miss.*, 431 F.3d 257, 259-60 (5th Cir. 2005) (citing *Brown v. Thompson*, 462 U.S. 835, 842-43 (1983)). Preliminary analysis of the 2010 census data indicates deviations greater than ten percent in all of the party counties. Plaintiffs allege that it would be unconstitutional to conduct 2011 elections for supervisors using district lines drawn prior to the 2010 census.

The central argument underlying the Attorney General's motions is that no constitutional injury will result from allowing supervisor elections to go forward using the current district lines, which were drawn after the 2000 census and precleared by the Department of Justice. The support for this argument is found in two Mississippi cases that followed the 1990 census: *Bryant v. Lawrence County, Mississippi,* 814 F. Supp. 1346 (S.D. Miss. 1993) and *Fairley v. Forrest County, Mississippi*, 814 F. Supp. 1327 (S.D. Miss. 1993). In *Bryant*, the plaintiffs challenged an election held in 1991 (after the decennial census), contending that redistricting had not taken place before the election, and therefore the supervisors' terms should have been cut short and a special election held using the redistricting plan that was cleared after the election. The court disagreed, because the board of supervisors had not had an adequate opportunity to redistrict in time for the 1991 regular elections. *Bryant,* 814 F. Supp. 1353 (S.D. Miss. 1993). The court stated that,

> After receiving census data, the Defendants had to analyze same and draw maps. They had to balance competing interests and take into account other valid considerations in regard to redistricting. They had to prepare materials to submit to the Justice Department under the Voting Rights Act. All of this took time. The Board submitted the Plan

> to the Justice Department for approval, however, it was not pre-cleared in time to be implemented for the regular elections held every four years (in 1991).

Bryant, 814 F. Supp. at 1352.

Examining the question of "how long should a legislative body have to redistrict after decennial census information becomes available," *id*. at 1353, the court held that when there was a constitutional district plan in place, a board of supervisors "must have a reasonable time after each decennial census in order to develop another plan and have it pre-cleared by the Justice Department." *Id*. at 1354. The court relied on language from the United States Supreme Court case of *Reynolds v. Sims*, 377 U.S. 533 (1964), that "legislative reapportionment is primarily for legislative consideration" and "judicial relief would only be appropriate when a legislative body fails to reapportion 'in a timely fashion *after having had an adequate opportunity to do so*.'" *Bryant*, 814 F. Supp. at 1353 (emphasis in original). The court found that Lawrence County supervisors had not had an adequate opportunity to redistrict before the 1991 election, and therefore the court should not intrude into legislative matters. The court denied the request for a special election for the board of supervisors.

With no Fifth Circuit law on point, the court found support from the Sixth and Seventh Circuits. The Seventh Circuit case, *Political Action Conference of Illinois v. Daley*, 976 F.2d 335 (7th Cir. 1992), addressed a slightly different question: whether "a system that locks into place elected officials for four years, shortly before a redistricting on the basis of new census data becomes possible, can[ ] pass muster." *Id*. at 338. Nevertheless, the discussion is relevant to the issue before this Court.

> The 1990 census figures became available only two weeks before the February 26, 1991 election. Redrawing Chicago's ward for that election using the new census data was not possible. Redistricting is complex; obtaining new census data is merely the first step toward developing and approving a new map for the City. Therefore, the critical question is whether the 1991 election, which was based on a ward map approved in 1985 using 1980 census data, was valid under *Reynolds*? *Reynolds'* explicit language concerning the probable "imbalance" in the map toward the end of the decennial period demonstrates that Chicago's 1991 election represents no constitutional violation. We hold that the district court properly dismissed the plaintiff's constitutional claims for failure to state a claim.
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> The four-year terms that Chicago aldermen serve merely indicate that every fifth election (i.e. when the election year falls on the same year that the new census data becomes available) likely will result in a four-year delay in using the new census data. But this simple consequence of the two different schedules (i.e. census every ten years, elections every four) does not diminish the voting power of any protected minority; there is merely a four-year time lag that occurs every other decade between redistricting and elections.

Daley, 976 F.2d at 340-41. The Seventh Circuit concluded that the Illinois elections conducted after census figures were available but before redistricting was accomplished did not violate constitutional requirements or the Voting Rights Act. *Id.*

The *Bryant* court also cited a Sixth Circuit opinion -- *French v. Boner*, 963 F.2d 890 (6th Cir. 1992). In that case, there were large deviations from the average in many districts "that the parties agree will not pass constitutional muster if the council districts currently in effect must be tested against the 1990 census rather than the 1980 census under which the plan was drawn." *French*, 963 F.2d at 891.

> The question before us is whether the City has a constitutional duty to rerun elections held just after the new decennial census data became available in 1991 but before the old apportionment plan could be changed and a new one put into effect prior to the impending election.

. . .

> In any system of representative government, it is inevitable that some elections for four-year or longer terms will occur on the cusp of the decennial census. The terms inevitably will last well into the next decade; and, depending on shifts in population in the preceding decade, the representation may be unequal in the sense that the districts no longer meet a one-person-one-vote test under the new census.

. . .

> [T]he Supreme Court has never drawn hard and fast rules about the length of terms or how long after a decennial census year new elections under the new census must be conducted. The principles of mathematical equality and majority rule are important, but we should not allow them to outweigh all other factors in reviewing the timing of elections. In *Reynolds v. Sims*, 377 U.S. 533, 583, 585, 84 S.Ct. 1362, 1392-93, 1393-94, 12 L.Ed.2d 506 (1964), Chief Justice Warren wrote that the Court was not imposing a rule that "decennial reapportionment is a constitutional requirement," although less frequent apportionment "would assuredly be constitutionally suspect." The Court also noted that where "an impending election is imminent and a state's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediate relief in a legislative reapportionment case, even though the existing apportionment scheme was found invalid." *Reynolds*, 377 U.S. at 585, 84 S.Ct. at 1394.

. . .

> [T]here must be some tolerances in the machinery of majority rule under the Equal Protection Clause in order to take into account the values outlined above, as well as the practicalities of the local electoral processes established by states and cities for their own self-government.

French, 963 F.2d at 891-92.

In a companion case to *Bryant*, the court considered a request for a special election for supervisors and election commissioners in Forrest County, Mississippi. The court examined much of the same precedent and concluded:

> The voters of Mississippi are situated in an analogous situation as the

> voters of Illinois (Ramos case) and probably many other states. One election every 20 years (1971, 1991, 2001, etc.) will be held so close to the taking of the decennial census that decision makers acting in good faith may be unable to devise a constitutionally-acceptable reapportionment in time for the regularly scheduled elections. Does that mean that the Constitution requires the holding of special elections in every state in which this occurs once every 20 years? This Court thinks not.
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> . . .
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> The Constitution does not require anything that is impossible of performance. The performance of the Forrest County Board of Supervisors in this case was reasonable. The Constitution, under the facts of this case, requires no more. No special elections, under the one-man one-vote principle, will be ordered.

Fairley v. Forrest Cnty, Miss., 814 F. Supp. 1327, 1343, 1346 (S.D. Miss. 1993).

These cases lead the Court to conclude that the relief requested by Plaintiffs should be denied. The parties do not dispute the need for the counties to redistrict based on 2010 census data. But each county's board of supervisors must have adequate time to formulate a redistricting plan and obtain preclearance from the Department of Justice before its failure to do so results in a declaration that elections held using the existing plan are unconstitutional. Courts have generally accepted that some lag-time between release of census data and redistricting is both necessary and constitutionally acceptable, even when it results in elections based on malapportioned districts in the years that census data is released. The time frame here was a matter of weeks between the counties' receipt of new census information and the qualifying deadline. The Constitution requires "reasonableness" from the boards of supervisors. None of the counties has been able to complete the redistricting process prior to expiration of the qualifying deadline, despite some having made advance preparations to do so.

There is simply an insufficient amount of time for the County Boards of Supervisors to receive and evaluate the 2010 decennial census data, to redistrict each County in order to remedy any malapportionment, and to comply with State election statutes. Under the circumstances, and absent Justice Department preclearance of the submitted plans, the 2011 elections in the affected Counties must be conducted as they are presently configured.

This conclusion is reinforced, rather than contradicted, by the *Watkins* cases cited by Plaintiffs. In those cases, which concerned redistricting for statewide legislative offices, Judge Lee stated:

> [F]or obvious reasons, this [one person, one vote] principle does not—and indeed cannot—require absolute, mathematical exactness. There cannot be total equality, or equal weight, for every vote. Moreover, it is clear that, because of the swiftness with which population can shift and the high cost of creating new election districts, a state may conduct elections for a reasonable amount of time with districts whose deviations are higher than constitutionally optimal.

Watkins v. Mabus, 771 F. Supp. 789, 802 (S.D. Miss. 1991) *(aff'd mem. in part and vacated as moot in part*, 502 U.S. 954) (citation omitted).[3] It should also be noted that in that case, the legislature had adequate time to enact a plan of reapportionment. The plan was submitted to and drew objections from the Department of Justice, all before any qualifying deadline. Those circumstances do not exist in this case. The three counties that were able to create and submit redistricting plans to the

[3] The district court continued its supervision of Mississippi's reapportionment in the second *Watkins* case cited by Plaintiffs, *Watkins v. Fordice*, 791 F. Supp. 646 (S.D. Miss. 1992).

Department of Justice, did so after the March 1 qualifying deadline the Plaintiffs wish to modify or enjoin.

The Motions to Amend Complaint

A number of motions for leave to file an amended complaint have been filed in these cases.[4] The purpose of each proposed amendment is to add one or more individuals as a plaintiff. The Court has determined that Plaintiffs lack standing, and that the allegations fail to state a claim in any event. Plaintiffs without standing may not amend their complaint. *Summit Office Park v. U.S. Steel Corp.*, 639 F.2d 1278, 1282 (5th Cir. 1981) ("where a plaintiff never had standing to assert a claim against the defendants, it does not have standing to amend the complaint and control the litigation by substituting new plaintiffs."); *Aetna Cas. & Surety Co. v. Hillman*, 796 F.2d 770, 774 (5th Cir. 1986) (Rule 15 does not allow a plaintiff to amend his complaint to substitute a new plaintiff in order to cure the lack of subject matter jurisdiction). Moreover, in exercising its discretion in considering a motion to amend a complaint, the Court may consider, among other factors, the futility of amendment. *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 872-73 (5th Cir. 2000). An amendment is futile if "the amended complaint would fail to state a claim upon which relief could be granted." *Id.* at 873.

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[4] Plaintiffs filing motions were the Hancock County Board of Supervisors, the Adams County, Mississippi Branch of the NAACP, Amite County, Mississippi Branch of the NAACP, Claiborne County, Mississippi Branch of the NAACP, Hazelhurst, Mississippi Branch of the NAACP, Pike County, Mississippi Branch of NAACP, Simpson County, Mississippi Branch of the NAACP, Vicksburg, Mississippi Branch of the NAACP, and the Wayne County, Mississippi Branch of the NAACP.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motions [19, 43] to Dismiss filed by Mississippi Attorney General Jim Hood and the Motion [56] for Summary Judgment filed by the State of Mississippi are **GRANTED**. The Plaintiffs' claims are **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED AND ADJUDGED that all other pending motions are **DENIED.**

SO ORDERED AND ADJUDGED this the 16th day of May, 2011.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE