

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

CIVIL LITIGATION DIVISION

May 25, 2012

United States Court of Appeals for the Fifth Circuit
Office of the Clerk
Attn: Ms. Sabrina M. Hains
600 S. Maestri Place
New Orleans, LA 70130

**RE: No. 11-60446, Hancock County Board of Supr., et al. v. Karen Ruhr, et al.,
Consolidated with No. 11-60676, Tallahatchie Cty. MS Br. NAACP, et al. v.
Tallahatchie Cty. MS Bd. of Supr., et al.**

Dear Ms. Hains:

I represent Jim Hood, Attorney General for the State of Mississippi *ex rel.* the State of Mississippi (the "Attorney General") in the above-referenced consolidated appeals. The Attorney General was an intervenor-defendant at the District Court level in each of the consolidated cases and has submitted the primary briefs supporting the positions of the defendants/appellees. The Attorney General submits this Consolidated Supplemental Letter Brief in response to the Court's request dated May 23, 2012 and in advance of the oral argument scheduled for June 4, 2012.

Consolidated Supplemental Letter Brief

Issue #1

Please provide detailed information about the current status of the redistricting and pre-clearing process. For each county, please specify whether new lines have been drawn, submitted to the public for comment, voted upon, submitted to the Department of Justice, and/or approved by the Department of Justice.

Response

The redistricting status information requested for each Mississippi County involved in these consolidated appeals is set forth below. The Attorney General does not represent the Counties involved in these consolidated appeals. The information has been provided to undersigned counsel by counsel of record for the County defendants/appellees now before the Court, and is submitted in this consolidated form consistent with the Court's May 23, 2012 letter.

The information is accurate to the best of undersigned counsel's knowledge and belief.

Each of the below listed Counties conducted its 2011 Board of Supervisors August primary and November general elections using existing supervisor district lines. The district lines utilized were based upon 2000 census data, and had been previously precleared by the Department of Justice subsequent to the 2001 release of the 2000 census data. None of the district lines utilized for the elections had been previously adjudged, by any court, to violate the "one person, one vote" principle of the Fourteenth Amendment, or any other state or federal law.

Adams County

Adams County has not developed a redistricting plan for its existing supervisor district lines based upon the Census Bureau's 2010 data. Following receipt of the 2010 census data, the Board of Supervisors retained the redistricting consulting firm of Holland and Rigby. The consultants determined that the 2010 data released by the Census Bureau was inaccurate, and therefore, recalculated the data and measured it against the existing supervisor district lines.

The primary inaccuracy in the 2010 census data arose from inclusion of population figures for the Adams County Correctional Facility, a privately run minimum security prison that chiefly houses illegal immigrants detained by the federal government. The prison has over 2,500 beds, normally houses more than 2,200 inmates, and is located in existing supervisor district five. The prison population was included in the Census Bureau's 2010 population statistics for existing supervisor district five. The Holland and Rigby firm determined that when compared to the existing supervisor district lines, the total population figures for Adams County, minus the number of federal inmates at the facility and including other appropriate adjustments based on their research, revealed a maximum relative population deviation of approximately 9.73%.

Based upon that data, the then-Board Attorney recommended that the Board of Supervisors would not be required to redistrict its supervisor districts prior to the 2011 elections. The Board of Supervisors officially adopted that recommendation and therefore has not undertaken the redistricting or preclearance processes for supervisor districts.

Amite County

Amite County has not completed its redistricting and preclearance process, as of this writing. Following the candidate qualifying deadline, the Board of Supervisors submitted two plans for public comment. Public hearings were held on March 14 and 21, and April 5, 2011. The Board of Supervisors adopted a redistricting plan on April 14, 2011, and submitted the plan to Department of Justice on April 28, 2011.

While the preclearance submission was pending, the 2011 primary election was held using existing supervisor district lines. The United States Attorney General interposed an objection to the plan on October 4, 2011, approximately a month prior to the general election. Due to a new Board of Supervisors taking office, and the pendency of these consolidated appeals,

the Board of Supervisors has yet to formulate a new redistricting plan to be submitted to Department of Justice.

Claiborne County

Claiborne County has not completed its redistricting or preclearance process, as of this writing. Counsel for the Attorney General has been advised that the Board of Supervisors has recently begun its redistricting process by adopting criteria for developing new lines, and hopes to have a plan adopted within thirty days. The Board of Supervisors further plans to hold public hearings by mid-June.

Counsel who appeared on behalf of the Claiborne County defendants in the District Court below have withdrawn during the pendency of these consolidated appeals. Counsel filed a motion to withdraw on May 21, 2012 that was granted by order entered on May 22, 2012. Counsel for the Attorney General understands that Mr. Carroll Rhodes (counsel for plaintiffs/appellants in these consolidated appeals) is now representing the Board of Supervisors in connection with their redistricting efforts. The May 21, 2012 motion to withdraw includes a letter from Mr. Rhodes explaining that

The Claiborne County Board of Supervisors that took office in January, 2012 terminated all contracts with all attorneys effective the first Monday of January, 2012. The Board of Supervisors will not have an attorney present at oral argument. Furthermore, the new Board of Supervisors has not authorized any attorney to make any argument or file any document on behalf of the Board of Supervisors. There will not be any further representation for the appellants or appellees in the Claiborne County case.

[See May 21, 2012 Motion to Withdraw at Ex. "1"]. As of this writing, neither the Claiborne County plaintiffs/appellants nor the defendants/appellees have filed a Motion to Dismiss or otherwise sought to terminate their participation in these consolidated appeals.

Copiah County

Copiah County has not completed its redistricting or preclearance process, as of this writing. Copiah County contracted with Central Mississippi Planning & Development District ("CMPDD") to assist in devising redistricting plans for its Board of Supervisors, Justice Court Judges and Constables upon release of census data in 2011 that revealed a need to redistrict lines for those offices. The raw data released by the Census Bureau indicated a maximum relative population deviation of 40.36%. However, the Census Bureau data relied upon outdated district lines that existed prior to the County's redistricting in response to the 2000 Census. CMPDD, who had worked with Copiah County on redistricting following the 2000 Census, had to recalculate the data using the most current, pre-cleared lines, adopted after the 2000 Census. CMPDD determined the maximum relative population deviation is 22.51%.

CMPDD and the Board of Supervisors devised a proposed plan for supervisor districts and submitted it to the public for comment. Public hearings were held on March 28 and 29, 2011. At the March 29, 2011 hearing, Nanette Thurmond-Smith and the President of Hazlehurst, Mississippi NAACP stated they would like the opportunity to present a proposed plan. The Hazlehurst, Mississippi NAACP submitted a proposed plan dated April 7, 2011 followed by a second proposed plan dated April 13, 2011.¹

The Board of Supervisors considered the public comments and proposals, and continued working with CMPDD on proposed plans for Justice Court and Constable districts. Meanwhile, it was forced to litigate this case. On May 13, 2011, the District Court below conducted a hearing on pending motions. On May 16, 2011, the District Court dismissed the case and held the County was not required to have new lines adopted and pre-cleared for the 2011 elections.

At that time, the qualifying deadline having passed, primaries less than three months away and with the general election set for November, the Board of Supervisors determined it would be confusing to the public to create further publicity, hold hearings, or make changes to the supervisor district lines in the middle of the election cycle. The Board of Supervisors also considered the burdens on election officials, such as the Circuit Clerk and Election Commissioners, that would be created by attempting to implement a new plan that would move voters into different districts and alter polling places while preparing to hold the elections. Therefore, the Board of Supervisors decided not to adopt new supervisor district lines until after the 2011 elections.

The Board of Supervisors' Justice Court and Constable plans are now ready to be presented to the public. A new supervisor district plan is finalized and will be adopted within the next several weeks. Once these plans are adopted, the Board intends to submit them to Department of Justice for preclearance.

Pike County

Pike County has completed its redistricting process but has not completed the preclearance process, as of this writing. In November 2010, the Board of Supervisors contracted with the Stennis Institute to provide demographic and related services for redistricting. The Board of Supervisors received 2010 census data on February 17, 2011. Public hearings were held on March 21, 25 and 31, 2011. A redistricting plan for supervisor districts was adopted on March 31, 2011 and submitted to Department of Justice on April 15, 2011.

¹ Like the Census Bureau's data, the Hazlehurst NAACP's proposed plans dated April 7 and 13 relied on the incorrect pre-2000 district lines that skewed the actual population deviation existing based upon the actual current supervisor district lines. The proposed plans were also flawed for various legal, political, and practical reasons that had to be evaluated by the Board. The proposed plans appeared to have a potentially retrogressive impact on minority voters in one district. The proposed plans also sought to move an incumbent from an existing district. Further, the proposed plans did not include detailed maps and failed to identify certain areas by census block, both of which made it difficult – if not impossible – to determine precisely where all the plans' proposed lines should be set.

Subsequently, the Board of Supervisors received information from county election officials, including the Circuit Clerk and Election Commissioners, who were concerned about approaching deadlines related to the August 2011 primaries and November 2011 general election. Among the concerns raised was that absentee ballots were required by federal law to be available to overseas and military voters forty-five days in advance of the August 2011 primary election. The Board of Supervisors was also notified of concerns regarding sufficient time to complete other election-related tasks in advance of the elections.

The Board of Supervisors considered these concerns, and the fact that candidates had qualified for supervisor offices prior to the March 1, 2011 qualifying deadline based upon the existing district lines, and voted to rescind its April 15, 2011 submission to Department of Justice. A Board resolution to that effect was entered on June 9, 2011.

Following the 2011 elections, and after the new Board of Supervisors took office in 2012, the Board adopted new supervisor district lines. The Board is in the process of preparing a submission of the new lines to Department of Justice and expects the submission to be made in June 2012.

Simpson County

Simpson County has completed its redistricting process and received Department of Justice preclearance. Public hearings were held on March 15 and 17, 2011 and were attended by several members of the community and political party leaders. General information was provided regarding census data along with an explanation of the redistricting process.

The Board of Supervisors developed a proposed redistricting plan. On April 17, 2011, a public hearing was held with maps and tables provided to the attendees. Members of the community attended and participated in a public discussion regarding the proposed redistricting plan. On May 2, 2011, the Board of Supervisors held a final public hearing. No comments or objections were made regarding the proposed plan. No alternative plan was submitted by anyone at any point in the redistricting process. Following the public hearing, the Board of Supervisors adopted a final order approving the proposed plan.

A submission was compiled and sent to Department of Justice. By letter dated March 28, 2012, the Department advised the Attorney General did not interpose any objection to the redistricting plan. The May 2, 2011 final order of the Board of Supervisors adopting the new redistricting plan was published for three consecutive weeks on May 3, 10 and 17, 2012, as provided by law.

Tallahatchie County

Tallahatchie County has completed its redistricting process and received Department of Justice preclearance. Public hearings were held on March 26, 2011 and April 2, 11 and 26, 2011 at various locations throughout the County. Three different supervisor redistricting plans were

considered. On May 2, 2011, the Board of Supervisors adopted a redistricting plan for the Board of Supervisors, Election Commissioners, Justice Court Judges, and Constables. On July 7, 2011, the Board of Supervisors was notified by Department of Justice that the United States Attorney General did not interpose any objection to the redistricting plans.

The August 2011 primaries and November 2011 general elections were conducted using the prior redistricting plan for Supervisor, Justice Court, and Constable districts. The Board of Supervisors chose to use those existing lines in the 2011 elections because candidates qualified under the existing lines (preclearance was not achieved until after the qualifying deadline) and other deadlines in the election cycle had passed. On November 7, 2011, the Board of Supervisors adopted an order implementing the 2011 redistricting plan for future elections. Subsequently, the County received preclearance from Department of Justice for a voting precinct and polling place change in connection with the new plans.

Tunica County

The Tunica County appellants/plaintiffs' appeal was originally part of these consolidated appeals, but their individual appeal (Cause No. 11-60674) was dismissed on motion of the appellants/plaintiffs on May 7, 2012. The appeal was dismissed following the Board of Supervisors' receipt of correspondence from appellants/plaintiffs Marilyn Young and the Tunica County NAACP. Copies of the correspondence were filed with the Clerk of this Court on May 4, 2012. The correspondence advised that the Tunica County NAACP is not involved in the pending lawsuit, rather the "Mississippi State Conference NAACP and the national NAACP are the only parties involved in this process." Further, the letter explained that

Because of time restrictions in early 2011, the State NAACP only required two residents of Tunica County to be in the litigation to insure fairness in the redistricting litigation. At this time, we are removing ourselves from the pending redistricting litigation per the letter we are attaching to this document.

[See Correspondence filed May 4, 2012 in Cause No. 11-60674].

Tunica County has not completed its redistricting or preclearance process, as of this writing. The newly elected Board of Supervisors is in the process of developing a proposed redistricting plan with the assistance of the consulting firm Bridges and Watson. The prior Board of Supervisors began the process of redistricting in 2011 and its successor is continuing to work as diligently as possible. Public hearings have been held, and input has been received from the general public, but the process is not complete. However, no proposed redistricting plans have been submitted to the public at this time.

Warren County

Warren County has completed its redistricting process and received Department of Justice preclearance. Following release of the 2010 census data, the Board of Supervisors developed a

plan with the assistance of CMPDD. The plan was submitted to the public for comment and subsequently adopted by the Board of Supervisors. On January 30, 2012, the plan was submitted to Department of Justice for preclearance. On February 15, 2012, Department of Justice requested additional information. On March 22, 2012, the Board of Supervisors was notified by Department of Justice that the United States Attorney General did not interpose any objection to the supervisor redistricting plan.

Wayne County

Wayne County has completed its redistricting process but has not completed the preclearance process, as of this writing. Following release of the 2010 census data, the Board of Supervisors analyzed the data with the assistance of the South Mississippi Planning and Development District ("SMPDD"). On October 20, 2011, the Board of Supervisors conducted a public hearing, proposed a redistricting plan, and provided other redistricting information to the public.

Discussions at the hearing included the issue of a purported maximum relative population deviation of 30.20% existing among supervisor districts. However, the discussions also included information that the Board and SMPDD compared the data to the existing supervisor district lines, and several statistical errors were detected. Primarily, the initial census data failed to account for the most recent supervisor district lines. SMPDD's analysis concluded that a comparison of the actual current lines to the data revealed a maximum relative population deviation of 8.27%. Although the true deviation presumptively would not violate the Fourteenth Amendment's "one person, one vote" principle, concerns were raised about potential retrogression in the percentage of minority voters present in supervisor district one.

As part of the public hearing, the Wayne County NAACP (one of the plaintiffs/appellants in these consolidated appeals) objected to the Board of Supervisors' proposed plan and presented an alternative plan. The alternative plan did not include clearly defined district and voting precinct boundary lines. Following the public meeting, the Board of Supervisors considered the information discussed and the alternative plan.

The Board of Supervisors has since voted to approve its proposed redistricting plan developed with the assistance of SMPDD. The redistricting plan is being prepared for submission to Department of Justice. Submission of the plan is expected to take place the last week of May or the first week of June 2012.

Sincerely,

S/Justin L. Matheny

Justin L. Matheny
Special Assistant Attorney General

JLM:fh

cc: Carroll Rhodes
Elise Munn
James Shannon
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