

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

HANCOCK COUNTY BOARD OF SUPERVISORS §
V. § **NO. 1:10CV564 LG-RHW**
RUHR §

(CONSOLIDATED WITH)

NAACP, et al. §
V. § **NO. 5:11CV30 LG-RHW**
ADAMS COUNTY BOARD OF SUPERVISORS §

SECOND AMENDED COMPLAINT

JURISDICTION

1. This is an action for declaratory and injunctive relief for violation of rights secured to plaintiffs by the United States Constitution. The federal question jurisdiction of this Court is invoked pursuant to the 14th amendment to the United States Constitution, 28 U. S. C. §§ 1331, 1343, 2201, and 2202.

VENUE

2. The venue for this action is in the Western Division of the United States District Court for the Southern District of Mississippi because the defendants reside within this venue.

PARTIES

3. Plaintiff, the Adams County, Mississippi Branch of the NAACP (“National Association for the Advancement of Colored People”) is a civil rights organization whose

membership consists primarily of African American citizens and many registered voters throughout Adams County, Mississippi, including Supervisor Districts 1, 2, 3, 4, and 5 in Adams County, Mississippi.

4. Plaintiff, Jacqueline Marsaw, is a registered African-American voter in Supervisor District 3 in Adams County, Mississippi.

5. Plaintiff, Brenda Proby, is a registered African-American voter in Supervisor District 5 in Adams County, Mississippi.

6. Plaintiffs bring this action individually and, pursuant to *Fed. R. Civ. P. 23(a), (b)(2), and (c)*, on behalf of themselves and all others similarly situated as a class action with the class defined as “all African-American citizens and voters in Adams County, Mississippi.”

7. With respect to the class, (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law and fact common to the class, (c) the claims of the representative parties are typical of the claims of the class, (d) the representative parties will fairly and adequately protect the interests of the class, and (e) the parties opposing the class have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

8. Defendant, the Adams County, Mississippi Board of Supervisors, is a local governmental body of the State of Mississippi responsible for conducting primary, special, and general elections for the office of supervisor, constable, and justice court judge for Adams County, Mississippi. This defendant may be served with the process of this Court by serving the Chancery Clerk, Tommy O’Beirne, whose address is Post Office Box 1006, Natchez, Mississippi 39120.

9. Defendant, the Adams County, Mississippi Democratic Executive Committee

(“ACDEC”), is a political party and quasi-governmental entity responsible for conducting primary elections for the Democratic Party in Adams County, Mississippi. This defendant may be served with the process of this Court by serving its Chairperson, Audrey Seale, whose address is Natchez, Mississippi 39120.

10. Defendant, the Adams County, Mississippi Republican Executive Committee (“ACREC”), is a political party and quasi-governmental entity responsible for conducting primary elections for the Republican Party in Adams County, Mississippi. This defendant may be served with the process of this Court by serving its Chairperson, Sue Stedman, whose address is Natchez, Mississippi 39120.

11. Defendant, the Adams County, Mississippi Board of Election Commissioners, is a local governmental body of the State of Mississippi responsible for conducting special and general elections for the office of supervisor, constable, and justice court judge for Adams County, Mississippi. This defendant may be served with the process of this Court by serving its Chairperson, Larry Gardner, whose address is Natchez, Mississippi 39120.

12. Defendant, Edward Walker, is a local governmental official and Circuit Clerk for Adams County, Mississippi who, pursuant to § 23-15-299, Miss. Code Ann. (1972), is responsible for conducting elections for supervisor, justice court judge, and constable for Adams County, Mississippi. This defendant’s address is Natchez, Mississippi 39120.

FACTS

13. The population for Adams County, Mississippi according to the 2010 federal decennial census is 32,297 persons of whom 17,287 (or 53.52%) are African-American.

14. Adams County, Mississippi is governed by a five (5) member board of supervisors

elected from single member districts.

15. Members of the Adams County, Mississippi Board of Supervisors are elected by popular vote to four year terms of office.

16. The terms of office for current members of the Adams County, Mississippi Board of Supervisors expire December 31, 2015.

17. Political party primary nomination elections for current members of the Adams County, Mississippi Board of Supervisors were held on Tuesday, August 2, 2011.

18. The qualification deadline for candidates for supervisor was March 1, 2011.

19. A majority vote is required for political party nomination elections in Mississippi.

20. Political party second primary nomination or run-off elections for current members of the Adams County, Mississippi Board of Supervisors were held on Tuesday, August 23, 2011.

21. A general election was held on Tuesday, November 8, 2011.

22. The ideal population for each supervisor district for Adams County, Mississippi is 6,459 persons according to the 2010 federal decennial census.

23. The total population for each supervisor district, the black population for each supervisor district, and the percentage of black population for each supervisor district in Adams County, Mississippi according to the 2010 federal decennial census is as follows:

<u>Supervisor District</u>	<u>Total Population</u>	<u>Black Population</u>	<u>Black Pop. %</u>
1	5,959	2,500	41.95%
2	6,912	2,170	31.39%
3	6,061	4,139	58.25%
4	5,408	4,482	82.88%

5 7,957 3,996 50.22%

24. The supervisor districts for Adams County, Mississippi have a total population deviation of 2,549 persons according to the 2010 federal decennial census with a maximum deviation percentage of 39.46%.

25. The Adams County, Mississippi Branch of the NAACP, is a civil rights organization whose members include and which represents citizens and registered voters Supervisor Districts 2 and 5 which are overpopulated and under represented, and the plaintiff is aggrieved by that under representation.

26. Plaintiff, Jacqueline Marsaw, is a citizen and voter in Supervisor District 3, which has a substantial black population, and plaintiff, Jacqueline Marsaw, does not want the black voting strength in Adams County, Mississippi diluted.

27. Plaintiff, Brenda Proby, is a citizen and voter in Supervisor District 5, which is overpopulated and underrepresented and which has a substantial black population, and plaintiff, Brenda Proby, is injured by that underrepresentation and she does not want the black voting strength in Adams County, Mississippi diluted.

28. Adams County, Mississippi is a jurisdiction covered by the preclearance requirements of § 5 of the Voting Rights Act of 1975, as amended and extended, 42 U. S. C. § 1973c, that has a long and official history of racial discrimination against African-American citizens and voters that has affected their right to register, vote, and participate in the political process.

29. Voting in elections in Adams County, Mississippi is racially polarized.

30. White bloc voting in Adams County, Mississippi is statistically significant.

31. The Adams County, Mississippi Board of Supervisors failed to redistrict the county's

supervisor districts to comply with the one-person one-vote principle of the Equal Protection Clause of the 14th amendment to the United States Constitution and obtain preclearance of any new redistricting plan prior to the March 1, 2011 candidate qualification deadline, the August, 2011 political party primary nominations, and the November, 2011 general election.

32. The existing apportionment scheme for Adams County, Mississippi results in discrimination against African-American voters in violation of rights secured to plaintiffs by Section 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973.

33. The present supervisor districts are grossly malapportioned.

34. The plaintiffs have been aggrieved because the 2011 elections were held under the grossly malapportioned existing apportionment scheme with the candidates elected being allowed to hold office for a full four-year term under the malapportioned districts.

35. Plaintiffs will continue to be aggrieved if the supervisors elected under the existing apportionment scheme are allowed to hold office for the full four year term of office.

36. African-American voters in Adams County, Mississippi are politically cohesive in Mississippi.

37. The African-American population in Adams County, Mississippi is geographically large and insular such that several black majority supervisor districts could be maintained or created.

38. African-American citizens and voters in Adams County, Mississippi suffer from the lingering effects of gross disparities in socioeconomic factors that adversely affect their ability to effectively participate in the political process and elect candidates of their choice to elective office.

39. African-American voters in Adams County, Mississippi have been denied equal opportunity to participate in the political process and to elect representatives of their choice under

the totality of the circumstances.

40. All of the actions and inactions of the defendants, as mentioned above, have been intentional and deliberate or have resulted in impermissible discrimination against the plaintiffs.

41. As a proximate results of the actions and inactions of the defendants, as mentioned above, the plaintiffs have suffered a violation of their constitutional and statutory rights.

CAUSES OF ACTION

COUNT I - 14th AMENDMENT EQUAL PROTECTION ONE PERSON ONE VOTE

42. The existing redistricting plan for Adams County, Mississippi is unconstitutionally malapportioned and violate rights secured to plaintiffs by the Equal Protection Clause of the 14th Amendment to the United States Constitution and 42 U. S. C. § 1983.

COUNT II - VOTE DILUTION CLAIM -§ 2 of the VOTING RIGHTS ACT OF (1965)

43. The existing redistricting plan for Adams County, Mississippi results in discrimination against African-American voters in violation of rights secured to plaintiffs by Section 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973.

CAUSATION, INJURY, AND REMEDY

44. As a proximate result of the actions and inactions of the defendants, as mentioned above, plaintiffs have suffered a violation of their federal constitutional rights, and plaintiffs have incurred expenses, attorney fees, and court costs.

EQUITABLE RELIEF

45. Plaintiffs request the a declaratory judgment, pursuant to 28 U. S. C. §§ 2201 and 2202, that the defendants have violated rights secured to plaintiffs by the 14th amendment to the United States Constitution and Section 2 of the Voting Rights Act of 1965, as amended, 42 U. S.

C. § 1973, and plaintiffs requested pre-election injunctive relief and now request post-election injunctive relief of setting aside the 2011 elections and ordering special elections with shortened terms of office for members of the Board of Supervisors.

46. And, plaintiffs request an award of court costs and attorney fees and litigation expenses pursuant to 42 U. S. C. §§ 1973l(e) and 1988.

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully request the following legal and equitable relief:

a. A declaratory judgment, pursuant to 28 U. S. C. §§ 2201 and 2202, that the present apportionment scheme and the actions and inactions of the defendants violate rights secured to plaintiffs by the 14th amendment to the United States Constitution and Section 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973;

b. A temporary restraining order, preliminary injunction, and/or a permanent injunction enjoining the defendants from conducting elections under the existing redistricting plans for supervisor in Adams County, Mississippi;

c. An Order setting aside the 2011 elections for Supervisor and ordering a special election for Supervisor for Adams County, Mississippi;

d. A temporary restraining order, preliminary injunction, and/or a permanent injunction requiring that any new redistricting plan for supervisors for Adams County, Mississippi comply with the 14th and 15th amendments to the United States Constitution, 42 U. S. C. § 1983, and §§ 2 and 5 of the Voting Rights Act of 1965, as amended and extended, 42 U. S. C. §§ 1973 and 1973c;

e. Award plaintiffs court costs and a reasonable attorney's fee pursuant to 42

U. S. C. §§ 1973l(e), and 1988; and

f. Grant plaintiffs general relief.

This the 5th day of November, 2012.

Respectfully submitted,
ADAMS COUNTY, MISSISSIPPI BRANCH OF THE
NAACP, JACQUELINE MARSAW, and BRENDA PROBY,
on behalf of themselves and all others similarly situated

/s/ Carroll Rhodes

CARROLL RHODES, ESQ., MSB # 5314
LAW OFFICES OF CARROLL RHODES
POST OFFICE BOX 588
HAZLEHURST, MS 39083
TEL.: (601) 894-4323
FAX: (601) 894-1464
e-mail: crhode@bellsouth.net

DEBORAH MCDONALD, MSB #2384
P.O. BOX 2038
NATCHEZ, MS 39120
TEL.: (601) 445-5577
attorneydmc@bellsouth.net
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, CARROLL RHODES, hereby certify that I have this day electronically filed using the Court's ECF filing system a true and correct copy of the above and foregoing Amended Complaint, and the Court has electronically served a copy of the motion upon the following:

Justin L. Matheny, Esq.
Special Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205

Bryan H. Callaway, Esq.
Post Office Box 21
Natchez, Mississippi 39121-0021
bhcallaway@bellsouth.net

Bobby L. Cox, Esq.
Post Office Box 892
Natchez, Mississippi 39121

This the 5th day of November, 2012.

/s/ Carroll Rhodes

CARROLL RHODES