

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

HANCOCK COUNTY BOARD OF SUPERVISORS	§	
V.	§	
RUHR	§	NO. 1:10CV564 LG-RHW
MADISON COUNTY BOARD OF SUPERVISORS, <i>et al.</i>	§	
V.	§	
STATE OF MISSISSIPPI	§	NO. 3:11CV119 LG-RHW
NAACP, <i>et al.</i>	§	
V.	§	
COPIAH COUNTY BOARD OF SUPERVISORS	§	NO. 3:11CV121 LG-RHW
NAACP, <i>et al.</i>	§	
V.	§	
PIKE COUNTY BOARD OF SUPERVISORS	§	NO. 3:11CV121 LG-RHW
NAACP, <i>et al.</i>	§	
V.	§	
SIMPSON COUNTY BOARD OF SUPERVISORS	§	NO. 3:11CV123 LG-RHW
NAACP, <i>et al.</i>	§	
V.	§	
AMITE COUNTY BOARD OF SUPERVISORS	§	NO. 3:11CV124 LG-RHW
NAACP, <i>et al.</i>	§	
V.	§	
WAYNE COUNTY BOARD OF SUPERVISORS	§	NO. 4:11CV33 LG-RHW
NAACP, <i>et al.</i>	§	

V. § NO. 5:11CV28 LG-RHW
WARREN COUNTY BOARD OF §
SUPERVISORS §

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

**PLAINTIFFS’ MOTION FOR LEAVE TO AMEND
COMPLAINTS IN THE CONSOLIDATED CASES**

COME NOW the plaintiffs in the following cases: (1) in Case No. 5:11cv30-LG-RHW (Adams County), the Adams County, Mississippi Branch of the NAACP, Jacqueline Marsaw, and Brenda Proby, on behalf of themselves and all others similarly situated;¹ (2) in Case No. 3:11cv124-LG-RHW (Amite County), the Amite County, Mississippi Branch of the NAACP, Glen Wilson, and Hugh McGhee, on behalf of themselves and all others similarly situated;² (3) in Case No. 3:11cv121-LG-RHW (Copiah County), the Hazlehurst, Mississippi Branch of the NAACP, Nanette Thurmond-Smith, Pamela Jefferson, and Robert Catchings, on behalf of themselves and all others similarly situated;³ (4) in Case No. 3:11cv122-LG-RHW (Pike County), the Pike County, Mississippi Branch

¹Jacqueline Marsaw was an original plaintiff. Brenda Proby was listed as a plaintiff in plaintiffs’ motion to amend and amended complaint [Doc. 16]. Brenda Proby is a voter in Supervisor District 5, an overpopulated district.

²Glen Wilson was an original plaintiff. Hugh McGhee was listed as a plaintiff in plaintiffs’ motion to amend and amended complaint [Doc. 7]. Hugh McGhee is a voter in Supervisor District 4, an overpopulated district.

³Nanette Thurmond-Smith was an original plaintiff. Pamela Jefferson and Robert Catchings were listed as plaintiffs in plaintiffs’ motion to amend and amended complaint [Doc. 55]. Pamela Jefferson is a voter in Supervisor District 5 and Robert Catchings is a voter in Supervisor District 2, both overpopulated districts.

of the NAACP, Frank Lee, and Gregory Partman, on behalf of themselves and all others similarly situated;⁴ (5) in Case No. 3:11cv123-LG-RHW (Simpson County), the Simpson County, Mississippi Branch of the NAACP, L. J. Camper, and Laster Smith, on behalf of themselves and all others similarly situated;⁵ (6) in Case No. 5:11cv28-LG-RHW (Warren County), the Vicksburg, Mississippi Branch of the NAACP and Fannie Tonth, on behalf of themselves and all others similarly situated;⁶ and (7) in Case No. 4:11cv33-LG-RHW (Wayne County), the Wayne County, Mississippi Branch of the NAACP, Leah Parson, Jimmie Green, and David Jones, on behalf of themselves and all others similarly situated;⁷ pursuant to Fed. R. Civ. P. 15, and move the Court to grant plaintiffs leave to amend their complaints in the NAACP cases on the following grounds:

1. Plaintiffs have not previously amended their complaints. They have a right to amend their complaints. A plaintiff who has not previously amended his or her complaint has a right to amend the complaint before a responsive pleading is filed. See, *Zaidi v. Erhlich*, 732 F.2d 1218 (5th Cir. 1984). “Accordingly, neither a motion to dismiss nor a motion for summary judgment

⁴Frank Lee was an original plaintiff. Rev. Lee is a voter in Supervisor District 4, an overpopulated district. Gregory Partman was listed as a plaintiff in plaintiffs’ motion to amend and amended complaint [Doc. 9]. Gregory Partman is a voter in Supervisor District 3, an overpopulated district.

⁵L. C. Camper was an original plaintiff. Laster Smith was listed as a plaintiff in plaintiffs’ motion to amend and amended complaint [Doc. 19]. Laster Smith is a voter in Supervisor District 5, an overpopulated district.

⁶The Vicksburg, Mississippi Branch of the NAACP was the original plaintiff. Fannie Tonth was listed as a plaintiff in plaintiffs’ motion to amend and amended complaint [Doc. 18]. Fannie Tonth is a voter in Supervisor District 1, an overpopulated district.

⁷Leah Parson was an original plaintiff. Jimmie Green and David Jones were listed as plaintiffs in plaintiffs’ motion to amend and amended complaint [Doc. 13]. Jimmie Green is a voter in Supervisor District 2, an overpopulated district. David Jones is a voter in Supervisor District 3, an overpopulated district.

extinguishes a plaintiff's right to amend a complaint." *Id.*, at 1220. The plaintiffs initially requested leave to amend their complaints to add a plaintiff who was a voter in overpopulated and under represented supervisor district. Plaintiffs now seek leave to amend their complaint by adding a voter with standing, requesting post-election as well as pre-election relief, and challenging the existing apportionment schemes as malapportioned and discriminatory against African-American voters. The Fifth Circuit has held:

Rule 15(a) provides that '[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served.' FED. R. CIV. 15(a). Because a Rule 12(b)(6) motion to dismiss is not a 'responsive pleading,' the filing of such a motion does not extinguish a party's right to amend as a matter of course.

McKinney v. Irving Independent School District, supra, at 315. The Court stated:

The McKinneys had not previously amended their complaint. Therefore, they were entitled to amend their complaint at the time the district court granted defendants' motion to dismiss. 'When, as in this case, a plaintiff who has a right to amend nevertheless petitions the court for leave to amend, the court should grant the petition.'

Id. The Fifth Circuit indicated that, upon remand, the plaintiffs may amend their complaint to add plaintiffs and claims. *Hancock County Board of Supervisors vs. Ruhr*, 5th Cir. No. 60446. Plaintiffs have requested leave to amend their complaint before all the defendants filed responsive pleadings. Therefore, the amendment should be allowed. See, *McKinney v. Irving Independent School District*, supra; *Zaidi v. Erhlich*, supra.

The total population deviation in the existing apportionment schemes for all of the counties exceeds 10%. Therefore, the existing scheme is *prima facie* unconstitutional. See, *Reynolds v. Sims*, 377 U. S. 533, 560-61, 84 S. Ct. 1362, 1381, 12 L. Ed. 2d 506 (1964); *Brown v. Thomson*, 462

U. S. 835, at 842-843, 103 S. Ct. 2690, at 2696, 77 L. Ed. 2d 214 (1983); *Fairley v. Hattiesburg, Mississippi*, 584 F. 3d 660, at 675 (5th Cir. 2009); *Dyer v. Rich*, 259 F. Supp. 741 (N. D. Miss. 1966). There is no justifiable reason under state law for this malapportionment. Consequently, the plaintiffs were entitled to pre-election relief. *White v. Weiser*, 412 U. S. 783, 93 S. Ct. 2348, 37 L. Ed. 2d 335 (1973); *Wise v. Lipscomb*, 437 U. S. 535, 98 S. Ct. 1493, 57 L. Ed. 2d 411 (1978); *Georgia v. Ashcroft*, 539 U. S. 461, at 488, n. 2, 123 S. Ct. 2498, 156 L. Ed. 2d 428 (2003); *Moore v. Itawamba County, Mississippi*, 431 F. 3d 257 (5th Cir. 2005)(per curiam); *Tucker v. Buford*, 603 F. Supp. 276 (N. D. Miss. 1985). Plaintiffs were entitled to an injunction requiring compliance with the one-person, one-vote mandate before the August, 2011 primaries and the November, 2011 general election. *White v. Weiser*, supra; *Wise v. Lipscomb*, supra; *Georgia v. Ashcroft*, supra; *Tucker v. Buford*, supra.

However, if there was insufficient time for the Court to enjoin the elections and fashion a remedy prior to the primaries, the Court should set the election aside and order special elections for supervisor. *Taylor v. Monroe County Bd. of Supervisors*, 394 F. 2d. 333 (5th Cir. 1972); *Keller v. Gilliam*, 454 F. 2d 55 (5th Cir. 1972); *Moore v. Leflore County Board of Election Commissioners*, 351 F. Supp. 848 (N. D. Miss. 1971) (three-judge court); *Chargois v. Vermillion Parish School Board*, 348 F. Supp. 498 (W. D. La. 1972); *Fain v. Caddo Parish Police Jury*, 312 F. Supp. 54 (W. D. La. 1970); *Chavis v. Whitcomb*, 307 F. Supp. 1362, 1367 (Ind. 1969) (three-judge court) (per curiam); *Tucker v. Buford*, supra.

The United States District Court for the Northern District of Mississippi held in *Tucker v. Buford* that an election held under unconstitutionally malapportioned districts should be set aside

when pre-election relief is sought. *Tucker v. Buford*, supra. In *Tucker*, election districts for members of the board of supervisors, board of election commissioners, and school board were coterminous. *Tucker v. Buford*, supra, at 277-279. According to the 1980 decennial census, the districts had a total population deviation of 30.96%. *Tucker v. Buford*, supra, at 277. An election for supervisors was held in November, 1983. *Id.*, at 278. The board of supervisors “had ample opportunity to take some corrective action prior to the November, 1983 election.” *Id.* However, the board was tardy in its redistricting responsibility. *Id.* Elections for election commissioners were scheduled for November, 1984. *Id.*, at 277-279. Plaintiffs filed suit on October 3, 1984 seeking to set aside the 1983 and 1984 election results and order new elections for supervisors, election commissioners, and school board members. *Id.*, at 277-279. The district court refused to set aside the election results for supervisor candidates because the plaintiffs failed to seek pre-election relief. *Id.*, at 277-279. However, the court set aside the November 6, 1984 general election results. *Id.*, at 279. The court held that “wherein officials were elected from admittedly malapportioned districts, and pre-election relief was sought, the paramount fact is that all persons in Panola County are currently represented by unconstitutionally elected officials.” *Id.*, at 279. This holding clearly indicates that candidates elected to office under malapportioned districts cannot serve a full four-year term when pre-election relief is requested. *Id.*, at 279. This holding is identical to the holding in *Watkins v. Mabus*, 771 F. Supp. 789, 804 (S. D. Miss. 1991) (three-judge court) (per curiam), *aff’d, in part, and vacated, in part*, 502 U. S. 954. In *Watkins*, the three-judge district court set aside election results and shortened the term of office for legislators elected in grossly malapportioned districts⁸ when plaintiffs had requested pre-election

⁸The total range of population deviation in state house of representative districts was 110.124% and 42.31% in state senate districts. *Watkins v. Mabus*, supra, 790-791.

relief.⁹ *Watkins v. Mabus*, supra. Plaintiffs requested pre-election relief of an injunction enjoining the 2011 elections. However, elections were held as scheduled and supervisors are serving in malapportioned districts. Therefore, the Court should set aside the 2011 election results and order special elections.

Furthermore, the plaintiffs have asserted that the existing apportionment scheme results in discrimination against African-American voters . An election held under an apportionment scheme that results in discrimination against African-American voters should be set aside and special elections ordered when pre-election relief is sought. *Bell v. Southwell*, 376 F. 2d 659 (5th Cir. 1967); *Hamer v. Campbell*, 358 F. 2d 215 (5th Cir. 1966). Therefore, the 2011 elections should be set aside and special elections ordered.

⁹The candidate qualification deadline was August 12, 1991 Primaries were held on September 17, 1991, and a general election was held on November 5, 1991. *Watkins v. Mabus*, supra, at 791. Plaintiffs filed their complaint between June 24, 1991 and July 2, 1991. *Id.*

CONCLUSION

On the basis of the foregoing facts and authorities, the Court should grant plaintiffs' motion for leave to amend their complaints. A copy of the amended complaint for each set of plaintiffs is attached hereto and incorporated herein. The amended complaint for Adams County is attached as Doc. 23-1 (filed in Case No. 5:11cv30-LG-RHW). The amended complaint for Amite County is attached as Doc. 10-1 (filed in Case No. 3:11cv124-LG-RHW). The amended complaint for Copiah County is attached as Doc. 21-1 (filed in Case No. 3:11cv121-LG-RHW). The amended complaint for Pike County is attached as Doc. 15-1 (filed in Case No. 3:11cv122-LG-RHW). The amended complaint for Simpson County is attached as Doc. 23-1 (filed in Case No. 3:11cv123-LG-RHW). The amended complaint for Warren County is attached as Doc. 22-1 (filed in Case No. 5:11cv28-LG-RHW). And, the amended complaint for Wayne County is attached as Doc. 21-1 (filed in Case No. 4:11cv33-LG-RHW).

Since the authorities for this motion are contained herein, plaintiffs request leave of Court from the requirement of filing a separate memorandum of authorities.

This the 14th day of November, 2012.

Respectfully submitted,
NAACP, et. al., 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 Motion, 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

Counsel for Intervenor Mississippi Attorney General Jim Hood

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

Counsel for Adams County Defendants

Tomie Cardin, Esq.
Butler, Snow, O'Mara, Stevens & Cannada
Post Office Box 6010
Ridgeland, Mississippi 39157-6010

Counsel for Amite County Defendants

Elise B. Munn, Esq.
Berry & Munn, P. A.
Post Office Drawer 768
Hazlehurst, Mississippi 39083

M. Garner Berry, Esq.
Shannon Law Firm
100 West Gallatin Street
Hazlehurst, Mississippi 39083

Counsel for Copiah County Defendants

C. Wayne Dowdy, Esq.
Dowdy & Cockerham
215 East Bay Street
Magnolia, Mississippi 39652

Alfred Lee Felder, Esq.
Felder Law Firm
Post Office Box 1261
McComb, Mississippi 39649-1261

Counsel for Pike County Defendants

Benjamin E. Griffith, Esq.
Griffith & Griffith
Post Office Drawer 1680
Cleveland, Mississippi 38732

Counsel for Simpson, Warren, and Wayne County Defendants

This the 24th day of November, 2012.

/s/ Carroll Rhodes

CARROLL RHODES