

**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**

**(CONSOLIDATED WITH)**

**NAACP, *et al.*  
V.  
WARREN COUNTY BOARD OF  
SUPERVISORS**

§  
§  
§  
§

**NO. 5:11CV28 LG-RHW**

**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 14<sup>th</sup> 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 Vicksburg, 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 Warren County, Mississippi, including Supervisor Districts 1, 2, 3, 4, and 5 in Warren County, Mississippi.

4. Plaintiff, Fannie Tonth, is a registered African-American voter in Supervisor District 1 in Warren County, Mississippi.

5. Plaintiffs bring this action individually and, pursuant to *Fed. R. Civ. P. 23(a), (b)(2)*, and ©, 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 Warren County, Mississippi.”

6. 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, © 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.

7. Defendant, the Warren 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 Warren County, Mississippi. This defendant may be served with the process of this Court by serving the Chancery Clerk, Dot McGee, whose address is Post Office Box 351, Vicksburg, Mississippi 39181.

8. Defendant, the Warren County, Mississippi Democratic Executive Committee (“WCDEC”), is a political party and quasi-governmental entity responsible for conducting primary elections for the Democratic Party in Warren County, Mississippi. This defendant may be served with the process of this Court by serving its Chairperson, John Shorter, whose address is Vicksburg,

Mississippi 39181.

9. Defendant, the Warren County, Mississippi Republican Executive Committee (“WCREC”), is a political party and quasi-governmental entity responsible for conducting primary elections for the Republican Party in Warren County, Mississippi. This defendant may be served with the process of this Court by serving its Chairperson, Karoline Finch, whose address is Vicksburg, Mississippi 39180.

10. Defendant, the Warren 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 Warren County, Mississippi. This defendant may be served with the process of this Court by serving its Chairperson, Patricia Smith, whose address is Vicksburg, Mississippi 39180.

11. Defendant, Shelly Ashley-Palmertree, is a local governmental official and Circuit Clerk for Warren 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 Warren County, Mississippi. This defendant’s address is Vicksburg, Mississippi 39181.

### **FACTS**

12. The population for Warren County, Mississippi according to the 2010 federal decennial census is 48,773 persons of whom 22,920 (or 46.99%) are African-American.

\_\_\_\_\_13. Warren County, Mississippi is governed by a five (5) member board of supervisors elected from single member districts.

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

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

16. Political party primary nomination elections for the current term of office for members of the Warren County, Mississippi Board of Supervisors was held on Tuesday, August 2, 2011.

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

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

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

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

21. The ideal population for each supervisor district for Warren County, Mississippi is 9,755 persons according to the 2010 federal decennial census.

22. 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 Warren County, Mississippi according to the 2010 federal decennial census is as follows:

Supervisor District	Total Population	Black Population	Black Pop. %
1	12,431	3,350	26.95%
2	7,286	5,609	76.98%
3	7,557	5,548	73.42%
4	10,169	4,284	42.13%
5	11,330	4,129	36.44%

\_\_\_\_\_ 23. The supervisor districts for Warren County, Mississippi have a total population variance of 5,145 persons according to the 2010 federal decennial census with a maximum deviation percentage of 52.74%.

24. The Vicksburg, Mississippi Branch of the NAACP, is a civil rights organization whose members include and which represents citizens and registered voters Supervisor Districts 1 and 5 which are overpopulated and under represented, and the plaintiff are aggrieved by that under representation.

25. Plaintiff, Fannie Tonth, is a citizen and voter in Supervisor District 1, which is overpopulated and underrepresented and which has a substantial black population, and plaintiff, Fannie Tonth, is injured by that underrepresentation and he does not want the black voting strength in Warren County, Mississippi diluted.

26. Warren 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.

27. Voting in elections in Warren County, Mississippi is racially polarized.

28. White bloc voting in Warren County, Mississippi is statistically significant.

29. The Warren 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 14<sup>th</sup> 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 nomination elections, and the November, 2011 general election.

30. The existing apportionment scheme for Simpson 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.

31. The present supervisor districts are grossly malapportioned.

32. The plaintiffs would be aggrieved if elections are held under the grossly malapportioned existing apportionment scheme with the candidates elected being allowed to hold office for the next four years.

33. African-American voters in Warren County, Mississippi are politically cohesive in Mississippi.

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

35. African-American citizens and voters in Warren 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.

\_\_\_\_\_ 36. African-American voters in Warren 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.

37. 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.

38. 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 - 14<sup>th</sup> AMENDMENT EQUAL PROTECTION ONE PERSON ONE VOTE**

38. The existing redistricting plan for Warren County, Mississippi is unconstitutionally malapportioned and violate rights secured to plaintiffs by the Equal Protection Clause of the 14<sup>th</sup> 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)**

39. The existing redistricting plan for Warren 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**

40. 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**

41. 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 14<sup>th</sup> 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.

42. And, plaintiffs request an award of court costs and attorney fees and litigation expenses pursuant to 42 U. S. C. §§ 1973[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 14<sup>th</sup> 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 Warren County, Mississippi;

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

d. A temporary restraining order, preliminary injunction, and/or a permanent injunction requiring that any new redistricting plan for supervisors for Warren County, Mississippi comply with the 14<sup>th</sup> and 15<sup>th</sup> 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. §§ 1973j(e), and 1988; and



f. Grant plaintiffs general relief.

This the 5<sup>th</sup> day of November, 2012.

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Respectfully submitted,  
VICKSBURG, MISSISSIPPI BRANCH OF THE  
NAACP and FANNIE TONTH,  
on behalf of themselves and all others similarly situated

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*/s/ Carroll Rhodes*

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**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  
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Jackson, Mississippi 39205

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

\_\_\_\_\_ This the 5<sup>th</sup> day of November, 2012.

*/s/ Carroll Rhodes*

\_\_\_\_\_  
CARROLL RHODES