

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

NAACP, *et al.* §  
 V. § NO. 5:11CV28 LG-RHW  
 WARREN COUNTY BOARD OF §  
 SUPERVISORS §

NAACP, *et al.* §  
 V. § NO. 5:11CV29 LG-RHW  
 CLAIBORNE COUNTY BOARD OF §  
 SUPERVISORS §

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

**PLAINTIFFS’ RESPONSE TO THE DEFENDANTS’  
 MOTIONS TO DISMISS ON GROUNDS OF MOOTNESS**

COME NOW the individually named plaintiffs and local branches of the National Association for the Advancement of Colored People (“NAACP”) in the following civil action numbers involving the following counties: 5:11cv30-LG-RHW (Adams County); 3:11cv124-LG-RHW (Amite County); 3:11cv121-LG-RHW (Copiah County); 3:11cv122-LG-RHW (Pike County); 3:11cv123-LG-RHW (Simpson County); 5:11cv28-LG-RHW (Warren County); and 4:11cv33-LG-RHW (Wayne County); and file this their response to the motions to dismiss on grounds of mootness filed by the defendants, (1) the Adams County defendants [the Adams County, Mississippi Board of Supervisors; Adams County, Mississippi Board of Election Commissioners; and Edward Walker], (2) the Amite County defendants [the Amite County, Mississippi Board of Supervisors], (3) the Copiah County defendants [the Copiah County, Mississippi Board of Supervisors; Copiah County, Mississippi Board of Election Commissioners; and Edna Stevens], (4) the Pike County defendants [the Pike County, Mississippi Board of Supervisors], (5) the Simpson County defendants [the

Simpson County, Mississippi Board of Supervisors; Simpson County, Mississippi Board of Election Commissioners; and Cindy Jensen], (6) the Warren County defendants [ the Warren County, Mississippi Board of Supervisors; Warren County, Mississippi Board of Election Commissioners; and Shelly Ashley-Palmetree], and (7) the Wayne County defendants [the Wayne County, Mississippi Board of Supervisors; Wayne County, Mississippi Board of Election Commissioners; and Rose Bingham], and the intervenor, Mississippi Attorney General Jim Hood (“Hood”), and would show the Court the following, to-wit:

1. The individual cases are not moot because a live controversy exists in each of the challenged counties as set forth below:

a. Plaintiffs allege that the NAACP Branches in the challenged counties have members who are voters in over populated and under represented districts in each of the challenged counties,<sup>1</sup> and each county is unconstitutionally malapportioned.<sup>2</sup>

b. Plaintiffs also allege that Rev. Frank Lee is a voter in an over populated and under represented district in Pike County, Mississippi.

c. Plaintiffs also alleged that the candidate qualification deadline was March 1, 2011, with primary elections held on August 2, 2011, run-off elections held on August 23, 2011, and a general election held on November 8, 2011.

---

<sup>1</sup>The Claiborne County, Mississippi Branch of the NAACP and the defendants in that case do not have counsel representing them. Counsel for all parties in the Claiborne County case withdrew while the case was on appeal. Therefore, only the plaintiffs in the Adams, Amite, Copiah, Pike, Simpson, Warren, and Wayne Counties cases are continuing to prosecute their cases.

<sup>2</sup>Plaintiffs allege the total range of deviation in each of the counties is as follows: Adams County (39.46% ), Amite County (49.05%), Copiah County (40.36%), Pike (18.86%), Simpson (26.70%), Warren (52.74%), and Wayne (30.20%).

d. Plaintiffs allege that members of the boards of supervisors serve four year terms of office with current supervisors elected in 2011 to take office January 1, 2012.

e. The vote of NAACP members who were voters in over populated and under represented districts in the challenged counties was diluted in the 2011 elections., and those voters, as well as Rev. Frank Lee, are aggrieved by that under representation.

f. Plaintiffs alleged that they “ 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.**”

g. Plaintiffs requested a temporary restraining order, preliminary injunction, and a permanent injunction enjoining the March 1, 2011 candidate qualification deadline, the August 2, 2011 primaries, the August 23, 2011 run-off elections, and the November 8, 2011 general election.

h. The court refused to enjoin the candidate qualification deadline or elections, and the 2011 elections were held as scheduled.

I. Plaintiffs also requested “ **[a] temporary restraining order, preliminary injunction, and/or a permanent injunction enjoining the defendants from conducting elections under the existing redistricting plans.**<sup>3</sup>

j. Plaintiffs also requested “**[a] temporary restraining order, preliminary injunction, and/or a permanent injunction requiring that any new redistricting plan for supervisors for [each county] 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**

---

<sup>3</sup>All of the challenged counties have not redistricted. The malapportioned plans are still in place in most of the counties. Any special election or the next regular election will be held under the existing malapportioned schemes in most of the counties.

**and extended, 42 U. S. C. §§ 1973 and 1973c.**” The Amite County Board of Supervisors devised a plan and submitted it to the United States Attorney General for review under § 5 of the Voting Rights Act of 1965, 42 U. S. C. § 1973c. Plaintiffs understand that the Attorney General interposed a timely objection to Amite County’s plan.

k. Plaintiffs prayed for general relief in their complaints.

l. Finally, plaintiffs filed motions for a temporary restraining orders and preliminary injunctions requesting the court to issue: (1) an order in each case requiring the various boards of supervisors “to promptly redistrict supervisor, justice court, and constable districts and obtain preclearance of such redistricting plans by May 1, 2011” and (2) an order in each case shortening “the terms of office and set aside any elections under the malapportioned scheme.”

2. The controversy is capable of repetition but yet evading review.

a. Every 20 years the federal decennial census will be published before the candidate qualification deadline and election dates, and the counties will not redistrict and obtain preclearance<sup>4</sup> of the plans before the elections.

b. Plaintiffs object to the defendants’ motion to dismiss on grounds of mootness because the defendants’ motions to dismiss on grounds of mootness are not ripe since the defendants have failed to respond to mootness related discovery. The United States Court of Appeals for the Fifth Circuit in the appeal of this case in *Hancock County Board of Supervisors vs. Ruhr*, supra, held:

Based on the record before us, however, we are unable to determine whether this

---

<sup>4</sup>The constitutionality of the current version of § 5 is under review by the United States Supreme Court. See, *Shelby County, Ala. v. Holder.*, cert. granted November 9, 2012, Sup. Ct. No. 12-96.

controversy is live. To illustrate, because the district court has not evaluated mootness in the first instance, we lack access to factual findings with which to determine whether the ‘capable of repetition, yet evading review’ exception to mootness is applicable to this case. Although we could assume that this controversy will reoccur every twenty years when the election cycle and census publication coincide, we decline the invitation to engage in such speculation....Indeed, the district court has had no opportunity to consider this case in its post-election posture....

In an abundance of caution, and because more factual development is needed, we remand this consolidated case to the district court so that it can determine whether this controversy is moot or is live.

[Slip Opinion, pp. 18-21]. The Fifth Circuit expressly stated that “more factual development is needed” before a final determination is made on the issue of mootness. The plaintiffs, pursuant to that holding, submitted interrogatories<sup>5</sup> and requests for production of documents<sup>6</sup> to the defendants on November 14, 2012. The defendants have not responded to plaintiffs’ discovery requests. Instead, the defendants filed a motion to dismiss on grounds of mootness. This Court should stay any ruling on the defendants’ motion to dismiss on grounds of mootness until after the mootness related discovery has been completed.<sup>7</sup> See, *Association of American Physicians and Surgeons v. Clinton*, 879 F. Supp. 103 (D. D. C. 1994).

c. Without waiving their objection, the plaintiffs submit that the same parties, the NAACP Branches and the boards of supervisors, will face the same dilemma every 20 years. Every 20 years if the counties are malapportioned and the boards of supervisors fail to redistrict and

---

<sup>5</sup>A copy of the interrogatories is attached hereto as Exhibit “A” and incorporated herein.

<sup>6</sup>A copy of the requests for production is attached hereto as Exhibit “B” and incorporated herein.

<sup>7</sup>The discovery relates to the issues of when the census is published every 20 years, when the boards of supervisors adopt plans after the census is published every 20 years, when the boards of supervisors obtain preclearance of adopted plans every 20 years after the census is published; and when elections are held every 20 years after the census is published.

obtain preclearance of their redistricting plans before the election, and plaintiffs seek pre-election relief, the period of time involved will not be sufficient for plaintiffs to fully litigate the matter before the election.<sup>8</sup> In that regard, the case is capable of repetition but yet evading review.

3. Without waiving their objection, the plaintiffs submit that the defendants cannot carry their heavy burden of proving the plaintiffs' claims are moot. As discussed above, plaintiffs have requested relief which has not been mooted by the 2011 elections and the controversy is capable of repetition but yet evading review.

**WHEREFORE, PREMISES CONSIDERED**, plaintiffs pray that this Court withhold ruling on the defendants motion to dismiss on grounds of mootness until the defendants answer plaintiffs discovery, and the plaintiffs pray that this Court deny the defendants motion to dismiss on grounds of mootness. This controversy is not moot.

This the 17<sup>th</sup> day of December, 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](mailto:crhode@bellsouth.net)

DEBORAH MCDONALD, MSB #2384

---

<sup>8</sup>The plaintiffs have submitted discovery on these issues to the defendants, but the defendants refused to answer the discovery before they filed their motions to dismiss on grounds of mootness.

P.O. BOX 2038  
NATCHEZ, MS 39120  
TEL.: (601) 445-5577  
[attorneydmc@bellsouth.net](mailto: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 Response to Motion to Dismiss on Grounds of Mootness, 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](mailto: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 17<sup>th</sup> day of December, 2012.

*/s/ Carroll Rhodes*  
\_\_\_\_\_  
CARROLL RHODES