

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

HANCOCK COUNTY BOARD OF  
SUPERVISORS

V.

No. 1:10-cv-564-LG-RHW

RUHR

*This document pertains to the following civil action consolidated with the above lead case:*

AMITE COUNTY, MISSISSIPPI BRANCH  
OF THE NAACP, *et al.*

PLAINTIFFS

VS.

No. 3:11cv124-LG-RHW

AMITE COUNTY, MISSISSIPPI  
BOARD OF SUPERVISORS; *et al.*

DEFENDANTS

and

JIM HOOD, ATTORNEY GENERAL FOR THE  
STATE OF MISSISSIPPI, *EX REL.* THE STATE  
OF MISSISSIPPI

INTERVENOR

**AMITE COUNTY BOARD OF SUPERVISORS' SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF MOTION TO DISMISS COMPLAINT AS MOOT**

Defendant Amite County, Mississippi Board of Supervisors, by and through counsel, submits this supplemental memorandum in response to the Court's June 25, 2013 Order [219].

**I. Introduction**

This memorandum addresses the impact on this case of two recent court opinions: *Shelby County, Alabama v. Holder*, No. 12-96, 2013 U.S. LEXIS 4917 (June 25, 2013), and *Mississippi State Conference of N.A.A.C.P. v. Barbour*, No. 3:11cv159-TSL-EGJ-LG-MTP, 2011 WL 1870222 (S.D. Miss. May 16, 2011) *aff'd*, 132 S. Ct. 542 (2011) and *aff'd sub nom. Miss. State Conference of N.A.A.C.P. v. Bryant*, 133 S. Ct. 2389 (2013). As explained below, these cases

support Amite County's motion to dismiss.

## II. *Shelby County, Alabama v. Holder*

In *Shelby County*, the Alabama county sued U.S. Attorney General Eric Holder seeking a declaratory judgment that sections 4(b) and 5 of the VRA are unconstitutional. 2013 U.S. LEXIS 4917 at \*18. The U.S. District Court for the District of Columbia upheld the VRA, ruling against the county. *Id.* The U.S. Court of Appeals for the D.C. Circuit affirmed. *Id.* at \*19. The Supreme Court reversed and declared §4(b) unconstitutional. *Id.* at \*44-45. The Court held that while §4(b)'s coverage formula made sense and passed constitutional muster in prior years, *id.* at \*27, that legislation no longer spoke to current conditions, and thus "such an 'extraordinary departure from the traditional course of relations between the States and the Federal Government'" could "no longer be used as a basis for subjecting jurisdictions to preclearance," *id.* at \*45 (quoting *Presley v. Etowah County Comm'n*, 502 U.S. 491, 500-01 (1992)). The Court left §5's preclearance requirements alone, and noted that "Congress may draft another formula based on current conditions." *Id.* at 45.

This decision impacts this case by making it even less certain that Plaintiffs will find themselves in the same position at any point in the future as they found themselves in during the 2011 election cycle. At the time the Supreme Court examined the VRA in *Shelby County*, the preclearance requirement was scheduled to persist until 2031. *Id.* at \*10. This length of effect would certainly have impacted, to some degree, the next round of quadrennial elections. Now, §4(b) having been struck down, Mississippi political subdivisions are no longer subject to having voting changes precleared by the Department of Justice. Now, election law and procedural changes can be effected immediately. Thus, as the law stands now, when the counties receive the 2030 census data, each county can implement new lines as soon as they are adopted by the

respective boards of supervisors. It may be possible that the counties could receive the census data and adopt proper district lines all before the supervisor candidate qualifying deadline, currently set as March 1. But again, no one can predict what the situation may be in 2031.

Furthermore, there is now *even more* uncertainty about whether Plaintiffs' situation is "capable of repetition, yet evading review." No one can reasonably expect when the counties will receive the 2030 (and later years') census data, no one can reasonably expect that the populations within Amite County will shift to such a degree as to require the lines to be redrawn, no one can reasonably expect how long it will take to redraw and adopt new lines if that action is needed, no one can reasonably expect Congress to adopt a proper preclearance formula, and no one can reasonably expect that Amite County will fall under any preclearance formula that Congress may adopt. There are simply too many variables for this case to fall under the "capable of repetition, yet evading review" exception to the mootness doctrine.

Plaintiffs argue in their Supplemental Brief that *Shelby County* can be read one of two ways: either no jurisdiction is subject to preclearance or all jurisdictions are subject to preclearance. (Pls.' Supp. Brief [220], pp. 5-10.) This Court does not have to decide the answer to that question; the requirement of the boards of supervisors to obtain preclearance is certainly not before the Court. Regardless of how the Court reads *Shelby County*, the uncertainty of the 2031 election cycle (and those beyond it) is still present. We still cannot predict whether Congress will adopt a new coverage formula, and we still cannot predict whether Amite County will either be subject to or excluded from the preclearance requirement under such a formula.

### **III. *Mississippi State Conference of N.A.A.C.P. v. Barbour***

In *Barbour*, the Mississippi State Conference of the NAACP and several individuals sued various government officials and entities, asking the district court to declare that the then-current

legislative district boundary lines resulted in a violation of plaintiffs' one-person, one-vote right under the Equal Protection Clause of the Fourteenth Amendment. 2011 U.S. Dist. LEXIS 52822, at \*3. The three-judge panel, examining Article 13, Section 254 of the Mississippi Constitution,<sup>1</sup> held that the Mississippi Legislature was not required to conduct redistricting in the year following receipt of census data that revealed malapportionment violative of the one-person, one-vote guarantee. *Id.* at 23-24. The panel went on to note that "courts generally have accepted that some lag-time between the release of census data and the reapportionment of a state's legislative districts is both necessary and constitutionally acceptable, even when it results in elections based on malapportioned districts in the years that census data are released." *Id.* at 23. The U.S. Supreme Court twice affirmed the three-judge panel's decision. *Barbour*, 132 S. Ct. 542 (2011) and *aff'd sub nom. Miss. State Conference of N.A.A.C.P. v. Bryant*, 133 S. Ct. 2389 (2013).

Although the consolidated cases here deal with county supervisor, justice court judge, and constable district lines, and although there is no state constitutional provision akin to § 254 that applies to counties, the reasoning carries over. Just as the U.S. Constitution permits state legislative elections to be held based on malapportioned districts in the year census data are released, so too should this Court permit the respective counties to conduct quadrennial elections based on then-current district boundary lines in the years that census data are released.

#### **IV. Conclusion**

Plaintiffs' complaints no longer present a live controversy, and thus the mootness doctrine compels this Court to dismiss this case with prejudice. The elections that Plaintiffs sought to enjoin have already occurred. The associated relief that Plaintiffs' requested can no

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<sup>1</sup> This section declares that the Mississippi Legislature is required to reapportion its district boundaries only every ten years. *Barbour*, 2011 U.S. Dist. LEXIS 52822, at \*7-8.

longer be awarded. In essence, this Court is powerless to remedy Plaintiffs' claims. The "capable of repetition, yet evading review" exception to the mootness requirement simply does not apply. There are too many variables that could change and put voters like Plaintiffs in an entirely different situation in 2031 and years beyond than existed in 2011. The Supreme Court's decision in *Shelby County v. Holder*, effectively removing the DOJ preclearance requirement, creates even more likelihood that voters like Plaintiffs will not be subjected to the same situation in the future as they were in 2011. Therefore, the Amite County Board of Supervisors moves the Court to dismiss Plaintiffs' Complaint and requests any other relief the Court deems proper.

DATED this the 25th day of July, 2013.

Respectfully submitted,

AMITE COUNTY, MISSISSIPPI  
BOARD OF SUPERVISORS

By: s/ John Dollarhide  
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**CERTIFICATE OF SERVICE**

I, John H. Dollarhide, one of the attorneys for Defendant Amite County, Mississippi Board of Supervisors, certify that I have this day electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notification to all registered

attorneys of record.

This the 25th day of July, 2013.

s/ John H. Dollarhide  
JOHN H. DOLLARHIDE