

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

HANCOCK COUNTY BOARD OF  
SUPERVISORS

PLAINTIFF

VS.

CIVIL ACTION NO. 1:10cv564-LG-RHW

KAREN LADNER RUHR, in her official  
Capacity, ET AL.

DEFENDANTS

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

NAACP, ET AL.

VS.

CIVIL ACTION NO. 3:11-cv-121-LG-RHW

COPIAH COUNTY BOARD OF  
SUPERVISORS, ET AL.

**RESPONSE OF DEFENDANTS, COPIAH COUNTY, MISSISSIPPI BOARD OF  
SUPERVISORS, COPIAH COUNTY, MISSISSIPPI BOARD OF ELECTION  
COMMISSIONERS AND EDNA STEVENS, IN HER OFFICIAL CAPACITY AS  
CIRCUIT CLERK, TO PLAINTIFFS' MOTION TO SET ASIDE THE 2011  
ELECTIONS FOR MEMBERS OF THE BOARDS OF SUPERVISORS  
AND ORDER SPECIAL ELECTIONS**

COMES NOW, the Defendants, Copiah County, Mississippi Board of Supervisors, Copiah County, Mississippi Board of Election Commissioners and Edna Stevens, in her official capacity as Circuit Clerk, (hereinafter at times "the Copiah County Defendants") by and through counsel, and files this Response to Plaintiffs' Motion to Set Aside the 2011 Elections for Members of the Boards of Supervisors and Order Special Elections, and in support thereof would state as follows:

1. On August 31, 2012, a Fifth Circuit panel vacated the Order of Dismissal previously entered by this Court and remanded this matter for further proceedings making it very clear that the initial determination was to be whether the controversy is moot or live. Clearly, the

threshold question to be answered in this case is whether this matter is moot or live. Therefore, Plaintiffs' motion is premature. Defendants herein would ask the Court to deny the motion as untimely and afford Plaintiffs the right to file same at the appropriate time later, if the Court's ruling on mootness so provides.

2. The Plaintiffs' motion is also an attempt to amend. Plaintiffs have already filed a motion to amend [168] which is pending. For all of the reasons raised in the responses to the motion to amend, Plaintiffs should not be allowed to do an "end around" amendment with a motion and the Motion to Set Aside the 2011 Elections for Members of the Boards of Supervisors and Order Special Elections should be denied.

3. The Covich County Defendants would show that the number listed in footnote 2 of Plaintiffs' motion as the population deviation for Covich County is incorrect<sup>1</sup>. Furthermore, Covich County's deviation arises from a primarily non-minority district being overpopulated and a primarily minority district being underpopulated. Therefore, it would be impossible to characterize this scenario as "egregious defiance of the Voting Rights Act"<sup>2</sup> required by law to invalidate an election due to the minority district being overrepresented as to the one-person one vote rule. Furthermore, the failure to re-district before the elections is clearly a function of timing and not an attempt to violate the Act. It should also be noted that "invalidation is an extraordinary remedy that can only be employed in exceptional circumstances". *Lopez v. City of Houston*, 617 F.3d 336, 340 (5<sup>th</sup> Cir. 2010) (citing 25 AM.JUR.2D *Elections* § 133 (2010)).

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<sup>1</sup> The calculations used by Plaintiffs are based on lines which fail to take into account the redistricting by Covich County after the 2000 census. The actual number is 22.6%, calculated based on the +10.27% deviation of predominantly white district 2 and -12.33% deviation of predominantly black district 4. The calculations are attached hereto as Exhibit A.

<sup>2</sup> See *Watkins v. Mabus*, 502 U.S. 954, 112 S.Ct. 412, 116 L.Ed.2d 433 (1991) (mem.), *aff'g in part, vacating as moot in part* 771 F.Supp. 789 (S.D.Miss.1991).

4. The Copiah County Defendants would show that Plaintiffs should be estopped from waiting one year and eight months *into the term* of these Boards of Supervisors before raising this issue when Plaintiffs were fully aware of all facts pertaining to this matter in February 2011. Copiah County Defendants would evoke all of the doctrines and defenses related to timeliness of claims and failure to act, such as laches, estoppel, and waiver as a basis for denial of Plaintiffs' motion.

5. Copiah County Defendants would incorporate by reference and join in the Response to the Plaintiffs' Motion to Motion to Set Aside the 2011 Elections for Members of the Boards of Supervisors and Order Special Elections filed by the Attorney General of the State of Mississippi [237] filed on August 7, 2013.

WHEREFORE, PREMISES CONSIDERED, Defendants herein pray that this Response be received and filed and that upon a proper hearing herein the Court will deny Plaintiffs the relief requested.

Respectfully submitted,

**COPIAH COUNTY, MISSISSIPPI BOARD OF SUPERVISORS; COPIAH COUNTY, MISSISSIPPI BOARD OF ELECTION COMMISSIONERS; and EDNA STEVENS, in her official capacity as Circuit Clerk**

BY: /s/ Elise B. Munn  
ELISE B. MUNN, MSB #9654  
COPIAH COUNTY BOARD ATTORNEY

BERRY & MUNN, P.A.  
336 W. Gallatin Street  
P.O. Drawer 768  
Hazlehurst, MS 39083  
Telephone: 601-894-4150  
Facsimile: 601-894-4717

**CERTIFICATE OF SERVICE**

I, Elise B. Munn, Covich County Board Attorney, do hereby certify that I have on this day electronically filed a true and correct copy of the above and foregoing with the clerk of the Court using the ECF System, which sent notification of such filing to all counsel of record.

This the 9th day of August, 2013.

/s/ Elise B. Munn

ELISE B. MUNN