

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

HANCOCK COUNTY BOARD OF SUPERVISORS	§	
	§	
v.	§	1:10CV564 LG-RHW
RUHR	§	

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

NAACP, et al	§	
v.	§	4:11CV33 HTW-LRA
WAYNE COUNTY BOARD OF SUPERVISORS	§	
	§	

**RESPONSE OF WAYNE COUNTY DEFENDANTS TO PLAINTIFFS' MOTION TO
SET ASIDE THE 2011 ELECTIONS FOR MEMBERS OF THE BOARDS OF
SUPERVISORS AND ORDER SPECIAL ELECTIONS**

NOW COME DEFENDANTS, Wayne County, Mississippi, by and through the Wayne County, Mississippi, Board of Supervisors and Rose Bingham, in her official capacity as Circuit Clerk of Wayne County, Mississippi (hereinafter "Wayne County"), by counsel, and respectfully submit their Response in Opposition to Plaintiffs' MOTION TO SET ASIDE THE 2011 ELECTIONS FOR MEMBERS OF THE BOARDS OF SUPERVISORS AND ORDER SPECIAL ELECTIONS [**Doc. 221**], and request that the Court deny said Motion with prejudice on these grounds:

1. Plaintiffs' Motion is tantamount to a motion for judgment as a matter of law and seeks relief from the Wayne County Defendants without regard to Defendants' pending Motion to Dismiss based on mootness, Defendants' Supplemental Brief addressing the impact of

*Shelby County v. Holder*¹ on that motion, redistricting efforts undertaken and now completed, unique factual circumstances facing Defendants as they sought in good faith to comply with statutory requirements and deadlines under state law as well as statutory and regulatory requirements under then-existing Section 5 of the Voting Rights Act, and convergence of a unique set of circumstances facing many counties immediately before the 2011 quadrennial election cycle.²

2. Plaintiffs have failed to make any showing of the kind of egregious violation of the law or invidious discrimination that would make invalidation of the 2011 election an appropriate remedy.³
3. Plaintiffs' Motion is necessarily predicated upon a fact-intensive showing that Defendants have egregiously violated the Voting Rights Act or the one person, one vote requirement under the Fourteenth Amendment of the United States Constitution, notwithstanding the absence of essential discovery related to the basis for such a demand for relief.
4. Plaintiffs never asked for such post-election relief or relief in the form of new elections, up until the filing of the instant Motion, and now at this late stage in the proceedings after

¹ 2013 WL 3184629 (U.S. June 25, 2013).

² *Hancock County Bd. of Supervisors v. Ruhr*, et al, 2012 U.S. App. LEXIS 18521, at 21 (5th Cir., August 31, 2012) (Doc. 166) (vacating District Court's Order of Dismissal and remanding the action for further proceedings, with instructions to determine if Plaintiffs' "one person, one vote" cause of action is moot, and if so, dismiss the case. If not, then proceed to adjudicate the merits of Plaintiffs' cause of action. *Id.* at 21).

³ *Wilson v. Birnberg*, 667 F.3d 591 (5th Cir. 2012). See *Lopez v. City of Houston*, 617 F.3d 336 (5th Cir. 2010) (where plaintiffs failed to allege the kind of egregious or invidious discrimination that would have made invalidation of an election an appropriate remedy, their claim was properly adjudicated moot after the election passed).

quite a bit of water has gone under the bridge, such relief is neither justified nor appropriate halfway through the terms of office of the duly elected members of the Board of Supervisors of Wayne County.

5. At the heart of Plaintiffs' Motion is the assumption that mal-apportionment of county supervisor districts and population disparities existing shortly before the 2011 qualification deadline are somehow the equivalent of an egregious violation of the Voting Rights Act or the Equal Protection Clause of the Fourteenth Amendment. They are not.
6. Before the merits of Plaintiffs' Motion can be addressed, moreover, Plaintiffs' must clear the hurdle presented by the Wayne County Defendants' pending Motion to Dismiss based on Mootness [**Doc. 195**], which has been thoroughly briefed and is now ripe for decision. In the event this case is adjudicated to be moot, as this Court and the Fifth Circuit have recognized, that ends the litigation. If not, at a minimum, a scheduling order should be entered providing for a reasonable period of fact-based discovery which all Defendants should have an opportunity to conduct, designation of experts, deadlines for filing deadlines for dispositive motions, and a principled framework through which Defendants can take any necessary steps to address the merits of any remaining claims asserted in the Plaintiffs' cause of action, as noted in the Attorney General's Response in Opposition to the instant motion, ¶5 at 3 [**Doc. 237**].
7. Alternatively, Plaintiffs' claim should be dismissed because the Plaintiffs have not argued or contended that there is any immediacy to the judgment they seek. Plaintiffs filed their civil action in February 2011, over 18 months ago, on the eve of the filing deadline for candidates for county office. A claim for declaratory judgment should only proceed when "the facts alleged, under all the circumstances, show that there is a substantial

controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826 (1941); *Milwaukee Police Ass'n v. Board of Fire & Police Com'rs of City of Milwaukee*, 708 F.3d 921, 930 (7th Cir. 2013). Thus, Plaintiffs’ claims are moot, but even aside from mootness, given the casual and unhurried approach that Plaintiffs have elected to take to those claims, we submit that they lack the essential element of a substantial, active, concrete controversy of sufficient immediacy and reality to warrant the declaratory relief Plaintiffs now demand in the instant Motion.

8. These Defendants join in and incorporate by reference the Attorney General’s Response in Opposition to Plaintiffs’ Motion filed August 7, 2013 [**Doc. 237**].

CONCLUSION

For the above reasons, the Wayne County Defendants respectfully submit that Plaintiffs’ Motion to Set Aside Elections is without merit and should be denied.

FILED, this the 9th day of August, 2013.

GRIFFITH & GRIFFITH

By: /s/ *Benjamin E. Griffith*

Benjamin E. Griffith, MSB #5026
**Attorney filing on behalf of Wayne
County, MS, Board of Supervisors and
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CERTIFICATE OF SERVICE

I, Benjamin E. Griffith, counsel for **DEFENDANTS, WAYNE COUNTY, MISSISSIPPI, BOARD OF SUPERVISORS and ROSE BINGHAM** in her official capacity as **CIRCUIT CLERK OF WAYNE COUNTY, MISSISSIPPI**, in the above case, do hereby certify that I have this day caused a true and correct copy of the above and foregoing *Wayne County Defendants' Response in Opposition to Plaintiffs' Motion To Set Aside The 2011 Elections For Members Of The Boards Of Supervisors And Order Special Elections* to be delivered by the federal ECF filing system to all counsel of record who have appeared in this case.

FILED, this 9th day of August, 2013.

Benjamin E. Griffith
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