

**IN THE UNITED STATES DISTRICT Court  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

**HANCOCK COUNTY BOARD OF §  
SUPERVISORS §  
V. § NO. 1:10CV564 LG-RHW  
RUHR §**

**[CONSOLIDATED WITH]**

**NAACP, *et al.* §  
V. § NO. 3:11CV121 LG-RHW  
COPIAH COUNTY BD. OF SUPERVISOR'S §**

**NAACP, *et al.* §  
V. § NO. 3:11CV122 LG-RHW  
PIKE COUNTY BD. OF SUPERVISOR'S §**

**NAACP, *et al.* §  
V. § NO. 3:11CV123 LG-RHW  
SIMPSON COUNTY BD. OF SUPERVISOR'S §**

**NAACP, *et al.* §  
V. § NO. 3:11CV124 LG-RHW  
AMITE COUNTY BD. OF SUPERVISOR'S §**

**NAACP, *et al.* §  
V. § NO. 4:11CV33 LG-RHW  
WAYNE COUNTY BD. OF SUPERVISOR'S §**

**NAACP, *et al.* §  
V. § NO. 5:11CV28 LG-RHW  
WARREN COUNTY BD. OF SUPERVISOR'S §**

**NAACP, *et al.* §  
V. § NO. 5:11CV30 LG-RHW  
ADAMS COUNTY BD. OF SUPERVISOR'S §**

**PLAINTIFFS' REPLY TO THE DEFENDANTS' RESPONSES TO PLAINTIFFS'  
MOTION TO SET ASIDE THE 2011 ELECTIONS FOR MEMBERS  
OF THE BOARDS OF SUPERVISORS AND ORDER SPECIAL ELECTIONS**

COME NOW the plaintiffs in the NAACP cases<sup>1</sup> and file this their reply to the defendants' responses to plaintiffs' motion to set aside the 2011 elections for members of the boards of supervisors and order special elections. The defendants argue that plaintiffs' claims are moot, and if not moot, their claims are not legally and factually insufficient to support special elections. As discussed in more detail below, the defendants arguments are without merit and should be summarily dismissed.

**I. Plaintiffs' claims are not moot.**

The defendants argue that plaintiffs' claims for post-election relief are moot because the elections were held in 2011. However, the defendants ignore several salient facts. First, plaintiffs requested pre-election judicial relief, but that relief was wrongly denied. "Courts often require plaintiffs to seek pre-election judicial relief as a prerequisite to voiding an election and ordering a special election due to constitutional violations." *Tucker v. Buford*, 603 F. Supp. 276, at 277 (N. D. Miss. 1985). The courts require plaintiffs to seek pre-election relief to encourage plaintiffs to raise constitutional claims before an election rather than waiting until an unfavorable outcome and then requesting such relief. *Id.*, at 278, *quoting Toney v. White*, 488 F.2d 310, at 314 (5<sup>th</sup> Cir. 1973), *quoting Toney v. White*, 476 F.2d 204, 309 (5<sup>th</sup> Cir. 1973). In the present case, plaintiffs requested pre-election judicial relief, but that request was not granted. When pre-election judicial relief is

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<sup>1</sup>This motion is not submitted on behalf of plaintiff in *Claiborne County, Mississippi Branch of the NAACP v. Claiborne County, Mississippi Board of Supervisors, et al.*, Civil Action No. 5:11cv29 LG-RHW, because all counsel for the Claiborne County, Mississippi Branch of the NAACP have withdrawn from representing that party.

requested and officials are elected in malapportioned districts, the court should promptly set the elections aside and order new elections. The United States District Court for the Northern District of Mississippi held:

The November 6, 1984 election stands on different footing from the 1983 election, inasmuch as the plaintiffs sought pre-election relief. In this case, wherein officials were elected from admittedly malapportioned districts, and pre-election relief was sought, the paramount fact is that all persons in Panola County are currently represented by unconstitutionally elected officials. Thus, this court has no difficulty in determining that the terms of the officials elected in the November 6, 1984 election should be shortened and a special election held to fill the remainder of these terms.

*Tucker v. Buford*, supra, at 279. The court ordered Panola County to obtain preclearance of a redistricting plan, and then “a special election shall be held within thirty days to fill the unexpired portion of the terms of those officials elected on November 6, 1984.” *Id.* In this case, plaintiffs requested pre-election judicial relief. Plaintiffs also complain that they are not being fairly represented because they are currently represented by unconstitutionally elected officials. See *Daly v. Hunt*, 93 F. 3d 1212, at 1216-1227 (4<sup>th</sup> Cir. 1996); *Garza v. County of Los Angeles*, 918 F. 2d 763 (9<sup>th</sup> Cir. 1990), cert. denied, 498 U. S. 1028, 111 S. Ct. 681, 112 L. Ed. 2d 673 (1981); *NAACP-Greensboro Branch v. Guilford County Board of Elections*, 858 F. Supp. 2d 516, at 523 (M. D. N. C. 2012). In this respect, the instant consolidated cases sit on all fours with *Tucker v. Buford*. This court should grant the same relief to plaintiffs here that the court granted to the plaintiffs in *Tucker*.

Furthermore the controversy is live because plaintiffs alleged they are aggrieved by the malapportioned districts and by supervisors being elected and continuing to serve a full four-year term in the malapportioned districts. The United States Supreme Court has held that where the full relief plaintiffs requested has not been granted, a case is not moot. See, *Moore v. Ogilvie*, 394 U. S. 814,

at 816, 89 S. Ct. 1493, at 1494, 23 L. Ed. 2d 1 (1969) (“The need for its resolution thus reflects a continuing controversy in the federal-state area where our ‘one man, one vote’ decisions have thrust”); *Pope v. County of Albany*, 687 F. 3d 565 (2<sup>nd</sup> Cir. 2012). The plaintiffs’ have a claim for equal representation. See *Daly v. Hunt*, supra; *Garza v. County of Los Angeles*, supra; *NAACP-Greensboro Branch v. Guilford County Board of Elections*, supra. Therefore, the case is not moot.

## **II. Plaintiffs; claims are legally and factually sufficient to support special elections.**

The defendants argue that plaintiffs claims are legally and factually insufficient to support special elections because the plaintiffs asserted only one-person, one-vote claims but not racial discrimination claims. The defendants argue that racial discrimination is egregious conduct supporting special elections but violating the one-person, one-vote principle is not. However, the defendants are wrong. The United States Supreme Court held in *Reynolds v. Sims* that “the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators.” *Reynolds v. Sims*, 377 U. S. 533, at 566, 84 S. Ct. 1362, at 1384, 12 L. Ed. 2d 506 (1964). This guarantee for equal participation for all voters applies regardless of whether or not racial discrimination is alleged. The Supreme Court held that “[d]iluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discrimination based upon factors such as race.” *Ibid*. In other words, malapportionment is the equivalent of invidious racial discrimination. “To the extent that a citizen’s right to vote is debased, he is that much less a citizen.” *Reynolds v. Sims*, 377 U. S. at 567, 84 S. Ct. at 1384. The Court further stated that “[t]he fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote.” *Ibid*. The United States District Court for the Northern District of Mississippi has found that malapportionment is invidious

discrimination. *Dyer v. Rich*, 259 F. Supp. 741 (N. D. Miss. 1966). “Modern concepts of justice compel a finding that this situation presents a case of invidious discrimination within the meaning of *Baker v. Carr* and its progeny. *Id.*, at 743-744. The *Dyer* case was brought by plaintiffs “to correct malapportionment of the five districts of the county for the election of members of the board of supervisors. *Id.*, at 741-742. In other words, a case of unconstitutional malapportionment is a case involving invidious discrimination. *Id.*, at 743-744. Plaintiffs, in the instant case, alleged and have proven that the supervisor districts are unconstitutionally malapportioned. Therefore, plaintiffs’ have alleged invidious discrimination.

### CONCLUSION

On the basis of the foregoing facts and authorities and the facts and authorities contained in plaintiffs’ motion and memorandum for a preliminary injunction and plaintiffs’ motion to set the elections aside, this Court should set aside the 2011 supervisor elections and order special elections this year.

Since the authorities for this memorandum are contained herein, the plaintiff requests leave of court from the requirement of filing a separate memorandum of authorities.

This the 19<sup>th</sup> day of August, 2013.

Respectfully submitted,  
NAACP, et al.

*/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 Reply, and the Court has electronically served a copy of the motion upon the following:

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This the 19<sup>th</sup> day of August, 2013.

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