IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Case No. 13-60614

HANCOCK COUNTY BOARD OF SUPERVISORS,

Plaintiff

v.

KAREN LADNER RUHR, in her official capacity as Hancock County Circuit Clerk and Hancock County Registrar; ET AL,

Defendants

JIM HOOD, Attorney General for the State of Mississippi, ex rel. the State of Mississippi.

Intervenor Defendant - Appellee

HAZLEHURST, MISSISSIPPI BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, on behalf of themselves and all others similarly situated; NANETTE THURMOND-SMITH,

Plaintiffs - Appellants

BRIEF FOR APPELLANTS

Submitted by:

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PAMELA JEFFERSON; ROBERT CATCHINGS,

Movants - Appellees

v.

COPIAH COUNTY, MISSISSIPPI BOARD OF SUPERVISORS; COPIAH COUNTY, MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE COMMITTEE; COPIAH COUNTY, MISSISSIPPI REPUBLICAN PARTY EXECUTIVE COMMITTEE; COPIAH COUNTY, MISSISSIPPI BOARD OF ELECTION COMMISSIONERS; EDNA STEVENS, in her official capacity as
Circuit Clerk,

Defendants - Appellees

JIM HOOD,

Intervenor Defendant - Appellee

REVEREND FRANK LEE, on behalf of himself and all others similarly
situated; PIKE COUNTY, MISSISSIPPI BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, on behalf of themselves and all others similarly situated,

Plaintiffs - Appellants

GREGORY PARTMAN,

Movant - Appellee

v.

PIKE COUNTY, MISSISSIPPI BOARD OF SUPERVISORS; PIKE COUNTY, MISSISSIPPI REPUBLICAN PARTY EXECUTIVE COMMITTEE; PIKE COUNTY, MISSISSIPPI BOARD OF ELECTION COMMISSIONERS; ROGER GRAVES, in his official capacity as Circuit Clerk; PIKE COUNTY,
MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE COMMITTEE,

Defendants - Appellees

JIM HOOD,

Intervenor Defendant - Appellee

SIMPSON COUNTY, MISSISSIPPI BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, on behalf of themselves and all others similarly situated; L. J. CAMPER, on behalf of themselves and all others similarly situated,

Plaintiffs - Appellants

LASTER SMITH,

Movant - Appellant

v.

SIMPSON COUNTY, MISSISSIPPI BOARD OF SUPERVISORS; SIMPSON COUNTY, MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE COMMITTEE; SIMPSON COUNTY, MISSISSIPPI REPUBLICAN PARTY EXECUTIVE COMMITTEE; SIMPSON COUNTY, MISSISSIPPI BOARD OF ELECTION COMMISSIONERS; CINDY JENSEN, in her official capacity as Circuit Clerk,

Defendants - Appellees

JIM HOOD,

Intervenor Defendant - Appellee

AMITE COUNTY, MISSISSIPPI BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, on Behalf of Themselves and all others Similarly Situated; GLENN WILSON, on Behalf of Themselves and all others Similarly Situated,

Plaintiffs - Appellants

HUGH MCGEE,

Movant - Appellant

v.

AMITE COUNTY, MISSISSIPPI BOARD OF SUPERVISORS; AMITE COUNTY, MISSISSIPPI DEMOCRATIC EXECUTIVE COMMITTEE; AMITE COUNTY, MISSISSIPPI REPUBLICAN EXECUTIVE COMMITTEE; AMITE COUNTY, MISSISSIPPI BOARD OF ELECTION COMMISSIONERS; SHARON WALSH, in Her Official Capacity as Circuit Clerk,

Defendants - Appellees

JIM HOOD,

Intervenor Defendant - Appellee

WAYNE COUNTY, MISSISSIPPI BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, on behalf of themselves and all others similarly situated; LEAH PARSON, on behalf of themselves and all others similarly situated,

Plaintiffs - Appellants

JIMMIE GREEN; DAVID JONES,

Movants - Appellants

v.

WAYNE COUNTY, MISSISSIPPI BOARD OF SUPERVISORS; WAYNE COUNTY, MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE COMMITTEE; WAYNE COUNTY, MISSISSIPPI REPUBLICAN PARTY EXECUTIVE COMMITTEE; WAYNE COUNTY, MISSISSIPPI BOARD OF ELECTION COMMISSIONERS; ROSE BINGHAM, in her official capacity as Circuit Clerk,

Defendants - Appellees

JIM HOOD,

Intervenor Defendant - Appellee

VICKSBURG, MISSISSIPPI BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, on behalf of itself and all others similarly situated,

Plaintiffs - Appellants

FANNIE TONTH,

Movant - Appellant

v.

WARREN COUNTY, MISSISSIPPI BOARD OF SUPERVISORS; WARREN COUNTY, MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE COMMITTEE; WARREN COUNTY, MISSISSIPPI REPUBLICAN PARTY EXECUTIVE COMMITTEE; WARREN COUNTY, MISSISSIPPI BOARD OF ELECTION COMMISSIONERS; SHELLY ASHLEY-PALMERTREE, in his official Capacity as Circuit Clerk,

Defendants - Appellees

JIM HOOD,

Intervenor Defendant - Appellee

ADAMS COUNTY, MISSISSIPPI BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, on behalf of themselves and all others similarly situated; JACQUELINE MARSAW, on behalf of themselves and all others similarly situated,

Plaintiffs - Appellants

BRENDA PROBY,

Movant - Appellant

v.

ADAMS COUNTY, MISSISSIPPI BOARD OF SUPERVISORS; ADAMS COUNTY, MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE COMMITTEE; ADAMS COUNTY, MISSISSIPPI REPUBLICAN PARTY EXECUTIVE COMMITTEE; ADAMS COUNTY, MISSISSIPPI BOARD OF ELECTION COMMISSIONERS; EDWARD WALKER, in his official capacity as Circuit Clerk,

Defendants - Appellees

JIM HOOD,

Intervenor Defendant - Appellee

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Case No. 13-60614

HANCOCK COUNTY BOARD OF SUPERVISORS, ET AL,

Plaintiff

v.

KAREN LADNER RUHR, in her official capacity as Hancock County Circuit Clerk and Hancock County Registrar; ET AL,

Defendants

JIM HOOD, Attorney General for the State of Mississippi, ex rel. the State of Mississippi, ex rel.
the State of Mississippi

Intervenor Defendant - Appellee

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

1. Hazlehurst, Mississippi Branch of the NAACP and Nanette Thurmond-Smith, on behalf of themselves and all others similarly situated - plaintiffs-appellants.

2. Pike County, Mississippi Branch of the NAACP and Rev. Frank Lee, on behalf of themselves and all others similarly situated - plaintiffs-appellants.

3. Simpson County, Mississippi Branch of the NAACP and L. J. Camper, on behalf of themselves and all others similarly situated - plaintiffs-appellants.

4. Amite County, Mississippi Branch of the NAACP and Glenn Wilson, on behalf of themselves and all others similarly situated - plaintiffs-appellants.

5. Wayne County, Mississippi Branch of the NAACP and Leah Parson, on behalf of themselves and all others similarly situated - plaintiffs-appellants.

6. Vicksburg, Mississippi Branch of the NAACP, on behalf of itself and all others similarly situated - plaintiff-appellant.

7. Adams County, Mississippi Branch of the NAACP and Jacqueline Marsaw, on behalf of themselves and all others similarly situated - plaintiffs-appellants.

8. Jim Hood, Attorney General for the State of Mississippi, ex rel. the State of Mississippi - defendant-intervenor.

9. Carroll Rhodes, Esq., and Deborah McDonald, Esq., counsel for plaintiffs-appellants - Hazlehurst, Mississippi Branch of the NAACP and Nanette Thurmond-Smith, on behalf of themselves and all others similarly situated; Pike County, Mississippi Branch of the NAACP and Rev. Frank Lee, on behalf of themselves and all others similarly situated; Simpson County, Mississippi Branch of the NAACP and L. J. Camper, on behalf of themselves and all others similarly situated; Amite County, Mississippi Branch of the NAACP and Glenn Wilson, on behalf of themselves and all others similarly situated; Wayne County, Mississippi

Branch of the NAACP and Leah Parson, on behalf of themselves and all others similarly situated; Vicksburg, Mississippi Branch of the NAACP, on behalf of itself and all others similarly situated; and Adams County, Mississippi Branch of the NAACP and Jacqueline Marsaw, on behalf of themselves and all others similarly situated.

10. Copiah County, Mississippi Board of Supervisors, Copiah County, Mississippi Democratic Party Executive Committee, Copiah County, Mississippi Republican Party Executive Committee, Copiah County, Mississippi Board of Election Commissioners, and Edna Stevens, in her official capacity as Circuit Clerk - defendants-appellees.

11. Pike County, Mississippi Board of Supervisors, Pike County, Mississippi Democratic Party Executive Committee, Pike County, Mississippi Republican Party Executive Committee, Pike County, Mississippi Board of Election Commissioners, and Roger Graves, in his official capacity as Circuit Clerk - defendants-appellees.

12. Simpson County, Mississippi Board of Supervisors, Simpson County, Mississippi Democratic Party Executive Committee, Simpson County, Mississippi Republican Party Executive Committee, Simpson County, Mississippi Board of Election Commissioners, and Cindy Jensen, in her official capacity as Circuit Clerk - defendants-appellees.

13. Amite County, Mississippi Board of Supervisors, Amite County, Mississippi Democratic Party Executive Committee, Amite County, Mississippi Republican Party Executive Committee, Amite County, Mississippi Board of Election Commissioners, and Sharon Walsh, in her official capacity as Circuit Clerk - defendants-appellees.

14. Wayne County, Mississippi Board of Supervisors, Wayne County, Mississippi Democratic Party Executive Committee, Wayne County, Mississippi Republican Party Executive Committee, Wayne County, Mississippi Board of Election Commissioners, and Rose Bingham, in her official capacity as Circuit Clerk - defendants-appellees.

15. Warren County, Mississippi Board of Supervisors, Warren County, Mississippi Democratic Party Executive Committee, Warren County, Mississippi Republican Party Executive Committee, Warren County, Mississippi Board of Election Commissioners, and Shelly Ashley-Palmertree, in his official capacity as Circuit Clerk - defendants-appellees.

16. Adams County, Mississippi Board of Supervisors, Adams County, Mississippi Democratic Party Executive Committee, Adams County, Mississippi Republican Party Executive Committee, Adams County, Mississippi Board of Election Commissioners, and Edward Walker, in his official capacity as Circuit Clerk - defendants-appellees.

17. Elise Berry Munn, Esq., Michael G. Berry, Esq., and Berry & Munn, P.A. - counsel for defendants-appellees - Copiah County, Mississippi Board of Supervisors, Copiah County, Mississippi Democratic Party Executive Committee, Copiah County, Mississippi Republican Party Executive Committee, Copiah County, Mississippi Board of Election Commissioners, and Edna Stevens, in her official capacity as Circuit Clerk.

18. Wayne Dowdy, Esq., and Dowdy & Cockerham - counsel for defendant-appellee - Pike County, Mississippi Board of Supervisors.

19. Alfred Lee Felder, Esq. - counsel for defendant-appellee - Pike County, Mississippi Democratic Party Executive Committee.

20. Benjamin E. Griffith, Esq., Daniel J. Griffith, Esq., Michael S. Carr, Esq., Griffith & Griffith, and Robert Daniel Welch, Esq. - counsel for defendant-appellee - Simpson County, Mississippi Board of Supervisors, Simpson County, Mississippi Board of Election Commissioners, and Cindy Jensen, in her official capacity as Circuit Clerk.

21. Benjamin E. Griffith, Esq., Griffith & Griffith, Charles Martin Leggett, Esq., Cooper Martin Leggett, Esq., and Leggett Law Office, PLLC - counsel for defendant-appellee - Wayne County, Mississippi Board of Supervisors and Rose Bingham, in her official capacity as Circuit Clerk.

22. Benjamin E. Griffith, Esq., Daniel J. Griffith, Esq., Michael S. Carr, Esq., Griffith & Griffith, and James R. Sherard, Esq. - counsel for defendant-appellee - Warren County, Mississippi Board of Supervisors, Warren County, Mississippi Board of Election Commissioners, and Shelly Ashley-Palmertree.

23. Tommie S. Cardin, Esq., Leslie Scott, Esq., John H. Dollarhide, Esq., and Butler, Snow, O'Mara, Stevens & Cannada - counsel for defendants-appellees - Amite County, Mississippi Board of Supervisors.

24. Jeremy P. Diamond, Esq., - counsel for defendants-appellees - Adams County, Mississippi Board of Supervisors, Adams County, Mississippi Board of Election Commissioners, and Edward Walker, in his official capacity as Circuit Clerk.

25. Bobby L. Cox, Esq., and Truly, Smith & Latham - counsel for defendant-appellee - Adams County, Mississippi Democratic Party Executive Committee.

26. Honorable Jim Hood, Harold Edward Pizetta, III, Esq., and Justin L. Matheny, Esq., - counsel for defendant-intervenor - JIM HOOD, Attorney General for the State of Mississippi, ex rel. the State of Mississippi.

/s/ Carroll Rhodes
CARROLL RHODES
COUNSEL OF RECORD FOR
PLAINTIFFS-APPELLANTS

STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs-Appellants, Hazlehurst, Mississippi Branch of the NAACP and Nanette Thurmond-Smith, on behalf of themselves and all others similarly situated; Pike County, Mississippi Branch of the NAACP and Rev. Frank Lee, on behalf of themselves and all others similarly situated; Simpson County, Mississippi Branch of the NAACP and L. J. Camper, on behalf of themselves and all others similarly situated; Amite County, Mississippi Branch of the NAACP and Glenn Wilson, on behalf of themselves and all others similarly situated; Wayne County, Mississippi Branch of the NAACP and Leah Parson, on behalf of themselves and all others similarly situated; Vicksburg, Mississippi Branch of the NAACP, on behalf of itself and all others similarly situated; and Adams County, Mississippi Branch of the NAACP and Jacqueline Marsaw, on behalf of themselves and all others similarly situated , (hereinafter referred to as "plaintiffs"), submit that oral argument would be helpful inasmuch as the issues are complex and intertwined with the facts.

/s/ Carroll Rhodes
CARROLL RHODES
COUNSEL OF RECORD FOR
PLAINTIFFS-APPELLANTS

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JURISDICTIONAL STATEMENT

This appeal is from a Judgment and an Order Granting Motions to Dismiss. [ROA[1] 13-60614 2536-2537; ROA 13-60614 2526-2535; R. E[2]. 95a[3]-106a; Tabs 9 and 10]. The Judgment and Order were entered by the United States District Court for the Southern District of Mississippi on August 20, 2013. [ROA 13-60614 2536-2537; ROA 13-60614 2526-2535; R. E. 95a-106a; Tabs 9 and 10]. Plaintiffs-appellants[4] filed their Notice of Appeal on August 27, 2013. [ROA 13-60614 2538-2547; R. E. 107a-116a; Tab 11]. Appellate jurisdiction is based on 28 U. S. C. § 1291. The district court exercised federal question jurisdiction pursuant to 28 U. S. C. §§ 1331 and 1343.

STATEMENT OF THE ISSUES IN THE CONSOLIDATED CASE

The issues on appeal are:

1. Whether the district court erred in dismissing plaintiffs' claims as

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[1]The initial "R." refers to the original record followed by the case number followed by the page numbers. The Record page numbers are in the lower right corner of each page. This is a consolidated or multiple record case.

[2]The initials "R. E." refer to the original record excerpts followed by page numbers. The Record Excerpts page numbers are in the lower left corner of each page.

[3]The letter "a" following the page numbers indicate that these pages are contained in the Record Excerpts.

[4]The plaintiffs-appellants will hereinafter be referred to as "plaintiffs."

moot and failing to grant injunctive relief since an active controversy still exists for which relief can be granted.

2. Whether the district court erred in dismissing plaintiffs' claims as moot and failing to grant injunctive relief since the case is capable of repetition but yet evading review.

STATEMENT OF THE CASE

a. Nature of the Case.

This is an equal population and equal representation vote dilution case based on the one-person one-vote principle of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the appropriate remedy for violation of that principle under 42 U. S. C. § 1983.

b. Course of Proceedings and Disposition Below.

The Hancock County Board of Supervisors ("Hancock County") filed its complaint on December 14, 2010 asserting an equal population vote dilution claim[5] and seeking declaratory and injunctive relief against the Republican Party Executive Committee, the Democratic Party Executive Committee, and Karen Ruhr - the Circuit

[5] An equal population vote dilution claim is one brought under the equal population principle, which is commonly referred to as the one-person one-vote principle of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. See, *Reynolds v. Sims*, 377 U. S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

Clerk and Registrar. [ROA 13-60614 53-61]. The plaintiffs[6] filed separate complaints on February 28, 2011 asserting equal population and equal representation[7] vote dilution claims and seeking declaratory and injunctive relief against the defendants.[8] [ROA 13-60614 2647-2657; ROA 13-60614 2842-2851; ROA 13-60614 3017-3027; ROA 13-60614 3235-3245; ROA 13-60614 3379-4489; ROA 13-60614 3583-3592; ROA 13-60614 3783-3793]. Then, on March 1, 2011, the plaintiffs filed motions seeking temporary restraining orders and preliminary injunctions. [ROA 13-60614 2663-2681; ROA 13-60614 2857-2867; ROA 13-60614 3033-3046; ROA

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[6]The plaintiffs are NAACP Branches and individual voters in the following Mississippi Counties - Adams, Amite, Copiah, Pike, Simpson, Warren, and Wayne.

[7]The equal representation principle "ensures that every person receives equal representation by his or her elected officials." *Daly v. Hunt*, 93 F. 3d 1212, 1216 (4th Cir. 1996). See also, *Garza v. County of Los Angeles*, 918 F. 2d 763 (9th Cir. 1990), *cert. denied*, 498 U. S. 1028, 111 S. Ct. 681, 112 L. Ed. 2d 673 (1991). After all, "representational equality is at least as important as electoral equality in a representative democracy." *Daly v. Hunt*, supra, at 1226-27; *NAACP-Greensboro Branch v. Guilford County Board of Elections*, 858 F. Supp. 2d 516, at 523 (M. D. N. C. 2012). The Supreme Court held in *Reynolds*, that "[t]he Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races." *Reynolds v. Sims*, supra, 377 U. S. at 568, 84 S. Ct. at 1385.

[8]The defendants, who are the appellees herein, are primarily boards of supervisors and election officials, including political party executive committees, for Adams, Amite, Copiah, Pike, Simpson, Warren, and Wayne Counties in Mississippi.

13-60614 3395-3404]. Mississippi Attorney General Jim Hood filed motions to intervene in the cases between March 2, 2011 and March 4, 2011. [ROA 13-60614 2692-2703; ROA 13-60614 2868-2878; ROA 13-60614 3047-3058; ROA 13-60614 3251-3263; ROA 13-60614 3405-3415; ROA 13-60614 3598-3608; ROA 13-60614 3819-3831]. The district court entered orders on March 4, 2011 allowing Attorney General Hood to intervene. [ROA 13-60614 3076-3077; ROA 13-60614 3834-3836; ROA 13-60614 3867-3868].

Attorney General Hood filed motions on March 1, 2011 seeking to consolidate the plaintiffs' cases with the Hancock County case. [ROA 13-60614 208-337]. The district court entered orders consolidating the cases on March 23, 2011. [ROA 13-60614 386-388; ROA 13-60614 2737-2739; ROA 13-60614 2904-2906; ROA 13-60614 3123-3125; ROA 13-3276-3278; ROA 13-60614 3467-3469; ROA 13-60614 3674-3676; ROA 13-60614 3947-3949].

Then on March 4, 16, and 17, 2011, Attorney General Hood, joined by the defendants, filed motions to dismiss plaintiffs' cases allegedly for a lack of standing. [ROA 13-60614 434-459; ROA 3086-3109; ROA 3844-3866]. The district court held a hearing on the defendants' motions to dismiss and the plaintiffs' motions for injunctive relief on April 5, 2011, [ROA 13-60614 2549-2635; R. E. 117a-122a; Tab 12], and entered a memorandum opinion and order on May 16, 2011 denying

plaintiffs' request for injunctive relief and granting the defendant-intervenor's motion to dismiss for a lack of standing. [ROA 13-60614 1724-1742].

The plaintiffs appealed the dismissal of their cases to this Court. [ROA 13-60614 1855-1873]. This Court issued its opinion and judgment on August 31, 2012 reversing the district court's dismissal[9] and remanding the cases to the district court for a determination of whether or not the cases are moot. [ROA 13-60614 1880; ROA 13-60614 1874-1901]. After remand, the plaintiffs filed a discovery motion seeking information from the defendants related to the issue of mootness. [ROA 13-60614 1982-2007]. However, this motion was never granted.

Attorney General Hood and the defendants filed motions to dismiss the cases as moot on December 4, 7, and 21, 2012. [ROA 13-60614 2140-2235; ROA 13-60614 2244-2257; ROA 13-60614 2330-2333]. The plaintiffs filed their responses to these dismissal motions on December 17, 2012.[10] [ROA 13-60614 2273-2327].

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[9]"The complaints were dismissed on the grounds of lack of standing and failure to state a claim upon which relief could be granted." [ROA 13-60614 1880].

[10]The plaintiffs' response included an objection to the defendants' motions to dismiss on mootness grounds because they refused to respond to plaintiffs' mootness related discovery. [ROA 13-60614 2273-2277]. On November 14, 2012, the plaintiffs filed two motions: (1) a motion to amend their complaint to allege more detailed facts concerning the issue of capable of repetition but yet evading review, and (2) a motion to conduct discovery on the mootness issue. [ROA 13-60614 1902-2007]. However, the district court never granted either of these

The district court entered an order on June 25, 2013 requesting the parties to submit supplemental briefs in light of the United States Supreme Court's decisions in *Shelby County, Alabama v. Holder*, ___ U. S. ____, 133 S. Ct. 2612 (2013), and *Miss. State Conf. of N.A.A.C.P. v. Bryant*, ___ U. S. ____, 133 S. Ct. 2389 (2013). [ROA 13-60614 2367-2368]. On July 25, 2013, the plaintiffs filed their supplemental brief in response to the district court's order. On the same date, July 25, 2013, the plaintiffs filed a motion to set aside the 2011 elections for supervisor in the challenged counties and to order special elections. [ROA 13-60614 2369-2387; R. E. 147a-151a; Tab 22]. Attorney General Hood and the defendants filed their supplemental briefs in response to the district court's order on July 25 and 26, 2013.[11] [ROA 13-60614 2388-2466].

The district court entered its order granting the defendants' motion to dismiss on grounds of mootness and its final judgment on August 20, 2013. [ROA 13-60614

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motions.

[11]The district court, in its Order Granting Motions to Dismiss, noted that "[t]he Supreme Court recently affirmed a three-judge panel decision denying post-election relief in the form of new state-wide elections. *Miss. State Conf. of N.A.A.C.P. v. Bryant*..." [ROA 13-60614 2531, n. 1; R. E. 102a; Tab 10]. However, the Supreme Court affirmed a three-judge panel decision in 1991 granting post-election relief in the form of new state-wide elections. *Watkins v. Mabus*, 771 F. Supp. 789 (S. D. Miss.) (three-judge court), *aff'd in part and vacated in part*, 502 U. S. 954, 112 S. Ct. 412, 116 L. Ed. 2d 433 (1991).

2526-2537; R. E. 95a-106a; Tabs 9 and 10]. Plaintiffs timely filed their notice of appeal on August 27, 2013. [ROA 13-60614 2538-2547; R. E. 107a-116a; Tab 11].

STATEMENT OF FACTS

This appeal concerns redistricting for seven counties in Southern Mississippi. [ROA 13-60614 1880]. The seven counties are "Adams, Amite, ..., Copiah, Pike, Simpson, Warren, [and] Wayne...[12] [ROA 13-60614 1880]. Each county is governed by a five member board of supervisors whose members are elected by popular vote every four years. [ROA 13-60614 1880]. The 2011 election cycle for county supervisor began on January 1, 2011 and culminated with a general election on November 8, 2011. [ROA 13-60614 1881]."The 2011 elections for supervisor were conducted using redistricting schemes that were grossly malapportioned."[13] [ROA

[12]Claiborne and Tallahatchie Counties were involved in the previous appeal, but those counties are not involved in the instant appeal.

[13]Each of the challenged counties had a total population deviation above 10% as shown below:

County	Total Deviation Percentage
Adams	39.46%
Amite	49.05%
Copiah	40.36%
Pike	18.86%
Simpson	26.70%
Warren	52.74%

13-60614 2328; ROA 13-60614 2528; R. E. 99a, 148a; Tabs 10 and 22].

The federal decennial census for the year 2010 was released on February 4, 2011, [ROA 13-60614 1881], showing that the counties were malapportioned.[14] Plaintiffs filed suit against county election officials on February 28, 2011 "asserting Fourteenth Amendment 'one person, one vote' claims..." [ROA 13-60614 1880-1881]. The plaintiffs alleged that the elections schemes were malapportioned and they "would be aggrieved if elections [were] held under the grossly malapportioned existing apportionment scheme[s] with the candidates elected being allowed to hold office for the next four years." [ROA 13-60614 3788; ROA 13-60614 3240; ROA 13-60614 2652; ROA 13-60614 2860; ROA 13-60614 3022; ROA 13-60614 3587-3588; ROA 13-60614 3384; ROA 13-60614 2846; R. E. 131a, 123a, 133a, 138a, 140a, 142a-143a, 145a; Tabs 13, 14, 15, 16, 19, 20, and 21]. The plaintiffs also requested, in their complaints, that temporary restraining orders, preliminary injunctions, and permanent injunctions be issued "enjoining the defendants from conducting elections under the existing redistricting plans..." [ROA 13-60614 3789; ROA 13-60614 3241; ROA 13-60614 2653; ROA 13-60614 2860; ROA 13-60614

Wayne 30.20%

[ROA 13-60614 2328; R. E. 148a; Tab 22].

[14]See footnote 13.

3023; ROA 13-60614 3589; ROA 13-60614 3385; ROA 13-60614 2847; R. E. 132a, 124a, 134a, 139a, 141a, 144a, 146a; Tabs 13, 14, 15, 16, 18, 19, 20, and 21]. On March 1, 2011, the plaintiffs filed separate motions requesting the district court to grant temporary restraining orders and preliminary injunctions to "shorten the terms of office and set aside elections held under the malapportioned scheme." [ROA 13-60614 3804-3805; ROA 13-60614 2668-2669; R. E. 128a, 136a-137a; Tabs 14, 17]. The district court denied plaintiffs' requests on May 16, 2011. [ROA 13-60614 1724-1742]. The plaintiffs appealed this denial, and this Court reversed the district court's decision and remanded the case[15] on August 31, 2012. [ROA 13-60614 1874-1901].

The elections were held as scheduled in 2011 and members of the boards of supervisors in the challenged counties were elected to four year terms of office in the malapportioned districts. [ROA 13-60614 2521; ROA 13-60614 1880; ROA 13-60614 23852; R. E. 102a, 148a; Tabs 10 and 22]. "Elected supervisors took office in January 2012." [ROA 13-60614 2521; R. E. 102a; Tab 10].

After the case was remanded, the plaintiffs filed another motion requesting the district court to set aside the 2011 elections for supervisor and order special elections. [ROA 13-60614 2369-2387; R. E. 147a-151a; Tab 22]. The district court entered an

[15]The case was a consolidated case on appeal.

order on August 20, 2013 essentially denying this request. [ROA 13-60614 2526-2535; R. E. 97a-106a; Tab 10]. The district court held that the cases were moot. [ROA 13-60614 2526-2535; R. E. 97a-106a; Tab 10]. The lower court relied on "plaintiffs' counsel statement that the remedy they were seeking was that they 'want the current districts enjoined, elections not to be held under the existing benchmark districts because they are grossly malapportioned."[16] [ROA 13-60614 2529-2530; R. E. 97a-106a; Tab 10]. However, the district court ignored the following statements and argument of counsel made during that same hearing:[17]

> As far as when the Court should act, *Tucker versus Buford*, it is cited in our supplemental response, it was a 1985 case out of the Northern District of Mississippi, 603 Federal Supplement at 276. The Court there said that when the plaintiffs seek pre-election relief, then elections could be set aside. The plaintiffs in this case sought pre-election relief before the primaries, before the general, and even before the qualification deadline. The districts are malapportioned, and the plaintiffs are either entitled to have the qualification deadline moved back and give the counties a chance to remedy, and if there's not sufficient time for the counties to remedy, then run under the old plan for one year, come back next year.

[ROA 13-60614 2634; R. E. 121a; Tab 12]. These statements and arguments were

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[16]The statement was made during argument at the Status Hearing held on April 5, 2011.

[17]These statements were made during argument at the Status Hearing held on April 5, 2011.

consistent with the allegations and relief requested in plaintiffs' complaints and motions seeking temporary restraining orders and preliminary injunctions. [ROA 13-60614 3788-3789; ROA 13-60614 3240-3241; ROA 13-60614 2652-2653; ROA 13-60614 2860; ROA 13-60614 3022-3023; ROA 13-60614 3587-3589; ROA 13-60614 3384-3385; ROA 13-60614 2846-2847; R. E. 131a, 123a, 133a, 138a, 140a, 142a-143a, 145a; Tabs 13, 14, 15, 16, 19, 20, and 21]. The district court erroneously held that "it is clear from the complaints that plaintiffs did not seek new elections. [ROA 13-60614 2531, fn. 1; R. E. 102a; Tab 10]. The district court failed to recognize that plaintiffs requested general relief and alleged that they "would be aggrieved if elections [were] held under the grossly malapportioned existing scheme[s] with the candidates elected being allowed to hold office for the next four years. " [ROA 13-60614 3788; ROA 13-60614 3240; ROA 13-60614 2652; ROA 13-60614 2860; ROA 13-60614 3022; ROA 13-60614 3587-3588; ROA 13-60614 3384; ROA 13-60614 2846; R. E. 131a, 123a, 133a, 138a, 140a, 142a-143a, 145a; Tabs 13, 14, 15, 16, 19, 20, and 21]. The district court also failed to recognize the fact that plaintiffs contemporaneously filed motions for temporary restraining orders and preliminary injunctions the day after their complaints were filed specifically requesting the district court to "shorten the terms of office and set aside any elections under the malapportioned scheme" if the district court did not grant pre-election relief. [ROA

13-60614 3804; ROA 13-60614 2668; R. E. 128a, 136a; Tabs 14 and 17]. Moreover, the district court failed to take judicial notice of the fact that when a plaintiff requests pre-election relief and there is insufficient time to grant that relief, then new elections should be ordered. *Watkins v. Mabus*, supra; *Tucker v. Buford*, infra.

SUMMARY OF THE ARGUMENT

The district court granted the defendants' 12(b)(6)[18] motions to dismiss on grounds of mootness. The standard of review on a 12(b)(6) motion is de novo. *Walch v. Adjutant General's Department of Texas*, infra. This Court employs the same standard as the district court when deciding a 12(b)(6) motion - accepting all well plead allegations in the pleadings as true and drawing all reasonable inferences in favor of the opposing party. *Rankin v. City of Wichita Falls, Texas*, infra; *Causey v. Sewell Cadillac-Chevrolet, Inc.*, infra. The court will not dismiss a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Causey v. Sewell Cadillac-Chevrolet, Inc.*, infra, at 288. As discussed in more detail below, it is clear from plaintiffs' well pleaded factual allegations and the relief they requested, that the cases are not moot. Therefore, this case should be reversed.

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[18]Fed. R. Civ. P. 12(b)(6).

The district court also denied plaintiffs' motions for preliminary and permanent injunctions. The Court employs an abuse of discretion standard of review when considering the denial of a preliminary or permanent injunction, and the Court reviews underlying questions of law *de novo*. *Qureshi v. United States*, infra. The record reveals that the district court abused its discretion by denying plaintiffs pre-election and post-election relief. Therefore, the case should be reversed.

The district court erred in dismissing plaintiffs' claims as moot and failing to grant injunctive relief since an active controversy still exists for which relief can be granted. The plaintiffs alleged that the existing supervisor districts were malapportioned and they would be aggrieved if supervisors were elected in those districts to serve a full four year term of office. They requested pre-election and general relief in their complaints and pre-election and post-election relief in motions for temporary restraining orders and preliminary injunctions filed the day after their complaints were filed. There are facts that the plaintiffs can prove to support a claim for relief. See *Causey v. Sewell Cadillac-Chevrolet, Inc.*,infra, at 288. The plaintiffs can prove the facts they are being denied equal representation rights by being represented by supervisors elected from and serving in malapportioned districts. *Daly v. Hunt*, infra, at 1216; *Garza v. County of Los Angeles*, infra; *NAACP-Greensboro Branch v. Guilford County Board of Elections*, infra, at 523. Therefore, the cases are

not moot because an active controversy exists.

Federal district courts generally automatically grant post-election relief when pre-election relief has been requested but denied. *Watkins v. Mabus*, supra; *Tucker v. Buford*, infra; *Taylor v. Monroe County Bd. of Supervisors*, infra; *Keller v. Gilliam*, infra; *Moore v. Leflore County Board of Election Commissioners*, infra. Therefore, the district court's dismissal should be reversed.

The district court erred in dismissing plaintiffs' claims as moot and failing to grant injunctive relief since the case is capable of repetition but yet evading review. The same scenario presents itself every 20 year election cycle - there is insufficient time to fully litigate the matter between the time the census is released, the boards of supervisors redistrict, and the election date. The NAACP Branches and boards of supervisors will face this dilemma every 20 years. Since there is insufficient time to fully litigate the matter and since the same parties will be involved in this dilemma every 20 years, the case is not moot because it is capable of repetition but yet evading review. *Moore v. Hosemann*, infra, at 744.

ARGUMENT

1. The standard of review.

The district court granted Attorney General Hood's and the defendants' motions to dismiss on grounds of mootness, and denied plaintiffs' request for

injunctive relief. [ROA 13-60614 2526-2537; R. E. 97a-108a; Tabs 9 and 10]. The motions to dismiss were considered under Fed. R. Civ. P. 12(b)(6). The standard of review of a dismissal under Fed. R. Civ. P. 12(b)(6) is de novo. *Walch v. Adjutant General's Department of Texas*, 533 F. 3d 289, 293 (5th Cir. 2008). On a Rule 12(b)(6) motion, the court "must accept all well pleaded averments as true and view them in the light most favorable to the plaintiff." *Rankin v. City of Wichita Falls, Texas*, 762 F. 2d 444, 446 (5th Cir. 1985); *Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F. 3d 285, 288 (5th Cir. 2004). The court must also draw all reasonable inferences from the facts pled "in the light most favorable to the plaintiff." *Causey v. Sewell Cadillac-Chevrolet, Inc.*, supra, at 288. Importantly, this Court "cannot uphold the dismissal 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Rankin v. City of Wichita Falls, Texas*, supra, at 446.

As discussed below, the plaintiffs alleged that supervisor districts were malapportioned and they "would be aggrieved if elections [were] held under the grossly malapportioned existing apportionment scheme[s] with the candidates elected being allowed to hold office for the next four years." [ROA 13-60614 3788; ROA 13-60614 3240; ROA 13-60614 2652; ROA 13-60614 2860; ROA 13-60614 3022; ROA 13-60614 3587-3588; ROA 13-60614 3384; ROA 13-60614 2846; R. E. 131a,

123a, 133a, 138a, 140a, 142a-143a, 145a; Tabs 13, 14, 15, 16, 19, 20, and 21]. These allegations were sufficient to entitle plaintiffs to relief. See *Reynolds v. Sims*, supra; *Watkins v. Mabus,* supra; *Tucker v. Buford*, 603 F. Supp. 276 (N. D. Miss. 1985); *Taylor v. Monroe County Bd. of Supervisors*, 394 F. 2d. 333 (5th Cir. 1972); *Keller v. Gilliam*, 454 F. 2d 55 (5th Cir. 1972); *Moore v. Leflore County Board of Election Commissioners*, 351 F. Supp. 848 (N. D. Miss. 1971) (three-judge court); *Chargois v. Vermillion Parish School Board*, 348 F. Supp. 498 (W. D. La. 1972); *Fain v. Caddo Parish Police Jury*, 312 F. Supp. 54 (W. D. La. 1970); *Chavis v. Whitcomb*, 307 F. Supp. 1362, 1367 (Ind. D. 1969) (three-judge court) (per curiam). The requested relief included injunctions enjoining the 2011 elections, or, alternatively, the setting aside of those elections, shortening the terms of office, and scheduling special elections after constitutional apportionment schemes had been implemented. [ROA 13-60614 3804-3805; ROA 13-60614 3789; ROA 13-60614 3241;ROA 13-60614 2668-2669; ROA 13-60614 2653; ROA 13-60614 2860; ROA 13-60614 3023; ROA 13-60614 3589; ROA 13-60614 3385; ROA 13-60614 2847; ROA 13-60614 2369-2387; R. E. 132a, 124a, 128a, 136a-137a; 134a, 139a, 141a, 144a, 146a-151a; Tabs 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22]. Although the 2011 elections have been held, the terms of office for supervisors elected in those elections do not expire until December 31, 2015. The plaintiffs can still be granted the relief

of shortening the terms of office and holding special elections. *Watkins v. Mabus*, supra; *Tucker v. Buford*, supra; *Taylor v. Monroe County Bd. of Supervisors*, supra; *Keller v. Gilliam*, supra; *Moore v. Leflore County Board of Election Commissioners*, supra; *Chargois v. Vermillion Parish School Board*, supra; *Fain v. Caddo Parish Police Jury*, supra; *Chavis v. Whitcomb*, supra. It does not appear "beyond doubt that [the] plaintiff[s] can prove no set of facts in support of [their] claim which would entitle [them] to relief." *Rankin v. City of Wichita Falls, Texas*, supra, at 446. Therefore, the district court's dismissal should be reversed.

The district court also denied plaintiffs' request for preliminary and permanent injunctions. This Court reviews the denial of a request for a preliminary or permanent injunction de for an abuse of discretion and the underlying questions of law de novo. See, *Qureshi v. United States*, 600 F. 3d 523 (5th Cir. 2010). The plaintiffs were entitled to the relief of setting aside the 2011 elections, shortening the terms of office, and ordering special elections after implementation of redistricting schemes that comply with the one person, one vote mandate. *Watkins v. Mabus*, supra; *Tucker v. Buford*, supra; *Taylor v. Monroe County Bd. of Supervisors*, supra; *Keller v. Gilliam*, supra; *Moore v. Leflore County Board of Election Commissioners*, supra; *Chargois v. Vermillion Parish School Board*, supra; *Fain v. Caddo Parish Police Jury*, supra; *Chavis v. Whitcomb*, supra. Therefore, the district court abused its discretion by

denying plaintiffs' request for injunctive relief.

2. The district court erred in dismissing plaintiffs' claims as moot and failing to grant injunctive relief since an active controversy still exists for which relief can be granted.

The plaintiffs alleged in their complaints that the election districts were malapportioned and they would be aggrieved if candidates were elected under those malapportioned districts and served a full four year term of office. [ROA 13-60614 3788; ROA 13-60614 3240; ROA 13-60614 2652; ROA 13-60614 2860; ROA 13-60614 3022; ROA 13-60614 3587-3588; ROA 13-60614 3384; ROA 13-60614 2846; R. E. 131a, 123a, 133a, 138a, 140a, 142a-143a, 145a; Tabs 13, 14, 15, 16, 19, 20, and 21]. The plaintiffs requested pre-election and general relief. [ROA 13-60614 3789; ROA 13-60614 3241; ROA 13-60614 2653; ROA 13-60614 2860; ROA 13-60614 3023; ROA 13-60614 3589; ROA 13-60614 3385; ROA 13-60614 2847; R. E. 132a, 124a, 134a, 139a, 141a, 144a, 146a; Tabs 13, 14, 15, 16, 18, 19, 20, and 21]. One day after their complaints were filed, the plaintiffs filed separate motions seeking pre-election and post-election injunctive relief. [ROA 13-60614 2663-2681; ROA 13-60614 2857-2867; ROA 13-60614 3033-3046; ROA 13-60614 3395-3404]. The Court must construe the allegations in the complaint in the light most favorable to the plaintiffs drawing all reasonable inferences in their favor. *Rankin v. City of Wichita*

Falls, Texas, supra, at 446; *Causey v. Sewell Cadillac-Chevrolet, Inc.*, supra, at 288. Importantly, this Court "cannot uphold the dismissal 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Rankin v. City of Wichita Falls, Texas*, supra, at 446. When all reasonable inferences are drawn from the allegations of plaintiffs' complaints in the light most favorable to them, then it is obvious that plaintiffs requested pre-election injunctive relief, or, if that relief was not granted, then the setting aside of elections and ordering new elections. Federal courts have automatically granted post-election relief when a plaintiff requested pre-election relief, but that relief was not granted. *Watkins v. Mabus*, supra; *Tucker v. Buford*, supra; *Taylor v. Monroe County Bd. of Supervisors*, supra; *Keller v. Gilliam*, supra; *Moore v. Leflore County Board of Election Commissioners*, supra. In *Tucker v. Buford* the court 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.

Id., at 279. The district court's refusal to automatically grant post-election relief when the court had denied pre-election relief is reversible error. *Id.*, at 279.

The district court failed to take judicial notice of the fact that plaintiffs requested pre-election relief, and federal courts have automatically granted post-election relief when a plaintiff requested pre-election relief, but that relief was not granted. See, *Watkins v. Mabus*, supra; *Tucker v. Buford*, supra; *Taylor v. Monroe County Bd. of Supervisors*, supra; *Keller v. Gilliam*, supra; *Moore v. Leflore County Board of Election Commissioners*, supra. "When reviewing a motion to dismiss, a district court "considers the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Funk v. Stryker Corporation*, 631 F. 3d 771, at 783 (5th Cir. 2011). The district court failed to take judicial notice of the fact that plaintiffs sought pre-election relief and were entitled to post-election relief since their request for pre-election relief was denied. *Keller v. Gilliam*, supra; *Tucker v. Buford*, supra, at 279; *Watkins v. Mabus*, supra. The district court's failure to take judicial notice of this salient fact is reversible error.

Furthermore, the complete relief requested by plaintiffs has not been mooted by the 2011 elections. The plaintiffs sought alternative relief, either: (1) injunctions enjoining the 2011 elections, or, alternatively, (2) injunctions setting aside the 2011 elections, shortening the terms of supervisors elected during those elections, and

special elections to fill the remainder of their terms. [ROA 13-60614 3804-3805; ROA 13-60614 2369-2387; ROA 13-60614 2668-2669; R. E. 128a, 136a-137a; 147a-151a; Tabs 14, 17, and 22]. The 2011 elections have been held. Thus, that part of the requested relief is moot. See generally, *Lopez v. City of Houston,* 617 F. 3d 336 (5th Cir. 2010); *Moore v. Hosemann*, 591 F. 3d 741 (5th Cir. 2009). However, the plaintiffs' request to set aside the 2011 elections, shorten the terms of office of current supervisors, and to hold special elections has not been granted. This requested relief is not moot. See, *Watkins v. Mabus*, supra; *Tucker v. Buford*, supra *Taylor v. Monroe County Bd. of Supervisors*, supra; *Keller v. Gilliam*, supra; *Moore v. Leflore County Board of Election Commissioners*, supra.

The plaintiffs alleged that they would be aggrieved if elections were held using malapportioned schemes and candidates elected under those schemes allowed to hold office for full four year terms. [ROA 13-60614 3788; ROA 13-60614 3240; ROA 13-60614 2652; ROA 13-60614 2860; ROA 13-60614 3022; ROA 13-60614 3587-3588; ROA 13-60614 3384; ROA 13-60614 2846; R. E. 131a, 123a, 133a, 138a, 140a, 142a-143a, 145a; Tabs 13, 14, 15, 16, 19, 20, and 21]. In essence, plaintiffs alleged a violation of their equal representation rights under the one-person, one-vote principle. See *Daly v. Hunt*, supra, at 1216; *Garza v. County of Los Angeles*, supra; *Tucker v. Buford*, supra, at 279; *NAACP-Greensboro Branch v. Guilford County*

Board of Elections, supra, at 523. The United States Supreme Court has held that a voter's equal representation rights are protected by the Equal Protection Clause.[19] *Moore v. Ogilvie*, 394 U.S. 814, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1969). The Supreme Court specifically held:

> When we struck down the Georgia county-unit system in statewide primary elections, we said:
>
> > How then can one person be given twice or 10 times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote – whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. *Gray v. Sanders*, 372 U.S. 368, 379, 83 S. Ct. 801, 809, 9 L. Ed. 2d 821.

Id., 394 U.S. at 817, 89 S. Ct. at 1495. See also, *Reynolds v. Sims*, supra, 377 U. S. at 568, 84 S. Ct. at 1385 ("[t]he Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races"). The relief plaintiffs requested for violation of their equal representation rights has not been granted. Importantly, that relief can still be

[19]U.S. Const. Amend XIV.

granted. *Watkins v. Mabus, supra; Tucker v. Buford*, supra;. *Taylor v. Monroe County Bd. of Supervisors*, supra; *Keller v. Gilliam*, supra; *Moore v. Leflore County Board of Election Commissioners*, supra; *Chargois v. Vermillion Parish School Board*, supra; *Fain v. Caddo Parish Police Jury*, supra; *Chavis v. Whitcomb*, supra. In this regards, the case is still an active controversy. Therefore, the district court erred in dismissing all of plaintiffs' claims as moot and failing to grant injunctive relief.

3. The district court erred in dismissing plaintiffs' claims as moot and failing to grant injunctive relief since the case is capable of repetition but yet evading review.

This case is not moot because it is capable of repetition but yet evading review. A case that is capable of repetition but yet evading review doctrine is an exception to the mootness doctrine. *Moore v. Hosemann*, supra, at 744. "To invoke that exception, a party must show that '(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Ibid.* The plaintiffs maintain "that the same situation giving rise to this action will occur ever twenty years, and they will not have time to fully litigate the matter before the election that will occur in 2031." [ROA 13-60614 2530; R. E. 101a; Tab 10].

However, the district court held that the plaintiffs failed to demonstrate that the defendants will act in the same manner.[20] [ROA 13-60614 2533; R. E. 104a; Tab 10].

This holding was in error. As discussed in footnote 20, "(1) the challenged action is in its duration is too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Moore v. Hosemann*, supra, at 744. In *Norman v. Reed*, the Supreme Court held:

> We start with Reed's contention that we should treat the

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[20]The district court held that "[t]here has been no evidence or even a suggestion that the Mississippi county election officials deliberately defied or in the future intend to defy the requirements of the Voting Rights Act." [ROA 13-60614 2533; R. E. 104a; Tab 10]. The plaintiffs did argue that the defendants intentionally failed to comply with the Voting Rights Act, 42 U.S.C. § 1971, *et seq*. Instead, the plaintiffs argued there is insufficient time to fully litigate the matter of malapportionment between the time of the publication of the census and the election date every 20 years. In order to prove that an election practice is capable of repetition but yet evading review, the plaintiffs only need to show that "(1) the challenged action in its duration [is] too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Moore v. Hosemann*, supra, at 744. The plaintiffs did not have to prove that the defendants intentionally did not redistrict in time, only that there was insufficient time to redistrict and have any litigation surrounding this issue fully litigated before the election. See *Moore v. Hosemann*, supra, at 744. The NAACP Branches have members who are votes in each supervisor district, and the boards of supervisors, given their past history, will not have sufficient time to redistrict in this 20 year cycle. In this regard, the same parties will face the same dilemma every 20 years. The capable of repetition but yet evading review exception applies. The district court committed reversible error by holding that it does not apply.

> controversy as moot because the election is over. We should not. Even if the issue before us were limited to petitioners' Eligibility to use the Party name on the 1990 ballot, that issue would be worthy of resolution as 'capable of repetition, yet evading review... There would be every reason to expect the same parties to generate a similar, future controversy subject to identical time constraints if we should fail to resolve the constitutional issues that arose in 1990.

Norman v. Reed, 502 U. S. 279, at 287-288, 112 S. Ct. 698, at 704-605,116 L. Ed. 2d 711 (1992). There is "every reason to expect" the plaintiffs and defendants, like those in *Norman*, "to generate a similar future controversy subject to identical time constraints if this Court fails to resolve the constitutional issue." *Norman v. Reed*, 502 U. S. at 287-288, 112 S. Ct. at 704-605. Therefore, the action is not moot because it is capable of repetition but yet evading review. *Id.*

CONCLUSION

On the basis of the foregoing facts and authorities, the Court should reverse the decision of the district court and remand the case to the district court with instructions to set the election results aside, enjoin future elections using the malapportioned districts, and order new remedial elections in 2014.

This the 6th day of November, 2013.

Respectfully submitted,
NAACP, et. al., on behalf of themselves
and all others similarly situated

/s/ Carroll Rhodes

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CERTIFICATE OF SERVICE

I, CARROLL RHODES, hereby certify that I have this day filed and electronically filed using the Court's ECF filing system a true and correct copy of the above and foregoing Brief for Appellants, and the Court electronically served a copy of the Record Excerpts upon the following:

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This the 6th day of November, 2013.

/s/ Carroll Rhodes
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Attorney for Plaintiffs-Appellants
Dated: November 6, 2013