IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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

HAZELHURST, 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 OF INTERVENOR DEFENDANT-APPELLEE ATTORNEY GENERAL JIM HOOD

HAROLD E. PIZZETTA, III (Bar# 99867)
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PAMELA JEFFERSON; ROBERT CATCHINGS,

Movants - Appellants

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 - Appellant

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,

Plaintiff - Appellant

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

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

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 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 National Association for the Advancement of Colored People; Nannette Thurmond-Smith; Pike County, Mississippi Branch of the National Association for the Advancement of Colored People; Frank Lee; Simpson County, Mississippi Branch of the National Association for the Advancement of Colored People; L.J. Camper; Amite County, Mississippi Branch of the National Association for the Advancement of Colored People; Glenn Wilson; Wayne County, Mississippi Branch of the National Association for the Advancement of Colored People; Leah Parson; Vicksburg, Mississippi Branch of the National Association for the Advancement of Colored People; Adams County, Mississippi Branch of the National Association for the

Advancement of Colored People; and Jacqueline Marsaw, Appellants.

2. Carroll Rhodes and Deborah McDonald, Counsel for Appellants.

3. 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 Copiah County Circuit Clerk; 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; Roger Graves, in his official capacity as Pike County Circuit Clerk; 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 Simpson County Circuit Clerk; 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; Debbie Kirkland, in her official capacity as Amite County Circuit Clerk; 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 Wayne County Circuit Clerk; 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 her official capacity as Warren County Circuit Clerk; 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 Adams County Circuit Clerk, Appellees.

4. Elise Munn, Berry & Munn, PA, Counsel for Appellees Copiah County, Mississippi Board of Supervisors; Copiah County, Mississippi Board of Election Commissioners; and Edna Stevens.

5. James D. Shannon, Shannon Law Firm, Counsel for Appellees Copiah County, Mississippi Democratic Executive Committee and Copiah County, Mississippi Republican Executive Committee.

6. Wayne Dowdy and Dowdy & Cockerham, Counsel for Appellee Pike County, Mississippi Board of Supervisors.

7. Alfred Lee Felder, Counsel for Appellee Pike County, Mississippi Democratic Executive Committee.

8. Benjamin E. Griffith, Daniel J. Griffith, Michael S. Carr, Griffith & Griffith, Counsel for Appellees Simpson County, Mississippi Board of Supervisors; Simpson County, Mississippi Board of Election Commissioners; Cindy Jensen; Wayne County, Mississippi Board of Supervisors; Rose Bingham; Warren County, Mississippi Board of Supervisors; Warren County, Mississippi Board of Election Commissioners; and Shelley-Ashley Palmertree.

9. Robert Daniel Welch, Counsel for Appellees Simpson County, Mississippi Board of Supervisors; Simpson County, Mississippi Board of Election Commissioners; and Cindy Jensen.

10. Cooper Martin Leggett and Leggett Law Office, PLLC, Counsel for Appellees Wayne County, Mississippi Board of Supervisors and Rose Bingham.

11. James R. Sherard, Counsel for Appellees Warren County, Mississippi Board of Supervisors; Warren County, Mississippi Board of Election Commissioners; and Shelley-Ashley Palmertree.

12. Tommie Cardin, John H. Dollarhide and Butler Snow O'mara Stevens & Cannada, Counsel for Appellee Amite County, Mississippi Board of Supervisors.

13. Jeremy P. Diamond, Counsel for Appellees Adams County, Mississippi Board of Supervisors; Adams County, Mississippi Board of Election Commissioners; and Edward Walker.

14. Appellee-Intervenor Defendant Jim Hood, Attorney General for the State of Mississippi *ex rel.* State of Mississippi.

15. Harold E. Pizzetta, III and Justin L. Matheny, Office of the Mississippi Attorney General, Counsel for Appellee-Intervenor Defendant Jim Hood, Attorney General for the State of Mississippi *ex rel.* State of Mississippi.

S/Justin L. Matheny
Justin L. Matheny, Counsel for
Jim Hood, Attorney General for the State of
Mississippi *ex rel.* State of Mississippi

STATEMENT REGARDING ORAL ARGUMENT

The issues on this appeal are straightforward questions of law and fully addressed by the parties' briefs. Furthermore, even though these consolidated cases involve many parties and the litigation has a long and detailed procedural history, the relevant facts are not complicated or disputed. The Attorney General therefore respectfully submits that oral argument is not necessary to aid the Court in evaluating the issues presented, and this appeal should be placed on the Court's summary calendar for disposition.

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STATEMENT REGARDING JURISDICTION

Pursuant to 28 U.S.C. § 1291, this Court has appellate jurisdiction to review the District Court's August 20, 2013 Final Judgment dismissing the claims asserted below as moot. Appellants timely filed their Notice of Appeal on August 27, 2013. The complaints filed in the District Court below relied upon 28 U.S.C. §§ 1331 and 1343 as the basis for federal jurisdiction.

STATEMENT OF THE ISSUES

1. Whether the District Court correctly held Appellants' lawsuits targeting the County Appellees' 2011 Board of Supervisors elections and election deadlines are moot in light of the undisputed facts that those elections have been held and deadlines have passed.

2. Whether the District Court correctly held the "capable of repetition, yet evading review" exception to mootness does not apply to Appellants' lawsuits, given that they speculatively contend the same claims will accrue again under identical facts and circumstances twenty years from now when the election cycle for Mississippi supervisors may again coincide with the release of decennial census data.

STATEMENT OF THE CASE AND RELEVANT FACTS

This is the second appeal from a dismissal of consolidated cases each asserting Fourteenth Amendment "one person, one vote" claims against certain Mississippi counties. The first appeal resulted in an unpublished opinion, ***Hancock County Bd. of Supervisors v. Rhur***, Cause No. 11-60466, 487 Fed. Appx. 189 (5th Cir. Aug. 31, 2012), that instructed the District Court as to how it

must proceed in evaluating the mootness issues presented on this second appeal.

Background

Each county in Mississippi maintains five supervisor voting districts as required by the Mississippi Constitution and statute. MISS. CONST., Art. 6, § 170; MISS. CODE ANN. § 19-3-1. The district boundaries are established by each county's Board of Supervisors. MISS. CODE ANN. §§ 23-15-281 & -283. The district boundaries utilized in the 2011 elections in each county at issue here were adopted by their respective Boards following the 2000 decennial census and subsequently precleared by Department of Justice. It was undisputed in the District Court below that, when the 2011 elections occurred, those respective supervisor districts in each county were less than ten years old and never previously adjudged to violate constitutional, or state or federal law.

The 2011 election cycle for county supervisors in every county in Mississippi began with qualifying between January 1, 2011 and the March 1, 2011 qualifying deadline. MISS. CODE ANN. § 23-15-299(2). The qualifying deadline was established by the Mississippi Legislature, and pre-cleared by the Department of Justice in 2007. In each county at issue here, candidates for 2011 Board of Supervisors elections qualified in the January 1 to March 1, 2011 window. On February 4, 2011, in the middle of the qualification period for candidates, the

United States Census Bureau released 2010 Mississippi county population data. The counties, through their respective Boards of Supervisors, began the process of redrawing voting district lines in response to the census data.

Original District Court Proceedings

On February 28, 2011, the Appellants[1] filed seven separate lawsuits in the United States District Court for the Southern District of Mississippi against the county Boards of Supervisors, the county Clerk/Registrars, the county Republican Executive Committees, the county Democratic Executive Committees, and the county Boards of Election Commissioners in Adams, Amite, Copiah, Pike, Simpson, Wayne and Warren counties[2] requesting that the District Court declare

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[1] The plaintiffs in the seven separate lawsuits filed and consolidated in the District Court below include: Hazlehurst, Mississippi Branch of the National Association for the Advancement of Colored People; Nannette Thurmond-Smith; Pike County, Mississippi Branch of the National Association for the Advancement of Colored People; Frank Lee; Simpson County, Mississippi Branch of the National Association for the Advancement of Colored People; L.J. Camper; Amite County, Mississippi Branch of the National Association for the Advancement of Colored People; Glenn Wilson; Wayne County, Mississippi Branch of the National Association for the Advancement of Colored People; Leah Parson; Vicksburg, Mississippi Branch of the National Association for the Advancement of Colored People; Adams County, Mississippi Branch of the National Association for the Advancement of Colored People; and Jacqueline Marsaw. In this brief, the plaintiffs below are collectively referred to as "Appellants" unless otherwise indicated.

Additionally, Appellants' Brief lists Pamela Jefferson, Robert Catchings, Gregory Partman, Laster Smith, Hugh McGee, Jimmie Green, David Jones, Fannie Tonth, and Brenda Proby as "Movant-Appellants." Those persons were listed as new plaintiffs in proposed amended complaints that the District Court never authorized Appellants to file and, thus, were never actually parties to the District Court proceedings below.

[2] The defendants in the seven separate lawsuits filed and consolidated in the District Court below, and who are Appellees on this appeal, include: Copiah County, Mississippi Board of Supervisors; Copiah County, Mississippi Democratic Party Executive Committee; Copiah

the then-existing, precleared district lines established by the respective Boards of Supervisors following the 2000 census unconstitutional for use in the 2011 election cycle. The claims were entirely premised upon release of 2010 census data on February 4, 2011, less than one month prior to the qualifying deadline for Board of Supervisors candidates.

Specifically, Appellants alleged the 2010 census figures demonstrated a population change in each county at issue as shown by a comparison of the 2010 data to 2000 data. [*See* Original Complaints, ROA. 13-60614.2647-57, .2842-51,

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County, Mississippi Republican Party Executive Committee; Copiah County, Mississippi Board of Election Commissioners; Edna Stevens, in her official capacity as Copiah County Circuit Clerk; 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; Roger Graves, in his official capacity as Pike County Circuit Clerk; 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 Simpson County Circuit Clerk; 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; Debbie Kirkland, in her official capacity as Amite County Circuit Clerk; 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 Wayne County Circuit Clerk; 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 her official capacity as Warren County Circuit Clerk; 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 Adams County Circuit Clerk. In this brief, the foregoing defendants below are collectively referred to as the "County Appellees" unless otherwise indicated.

.3017-27, .3235-45, .3379-89, .3583-92, .3783-93]. According to the Appellants, for each county, comparing the current population figures to the then-current district lines demonstrated a deviation from the average (total population divided by five) in each voting district. [*Id.*]. Appellants' complaints alleged the ideal number of people for an average supervisor voting district under the census figures in each respective county, was as follows:

Adams	6,459
Amite	2,624
Copiah	5,890
Pike	8,081
Simpson	5,501
Warren	9,755
Wayne	4,149.

[*Id.*]. Based on the unverified 2011 census figures as reported by Appellants, an analysis of their data compared to the then-existing districts in each county showed a percentage deviation (*i.e.*, the difference between the highest deviation from the average and the lowest deviation from the average) as follows:

Adams	39.46 %
Amite	49.05 %
Copiah	40.36 %
Pike	18.86 %
Simpson	26.70 %
Warren	52.74 %
Wayne	30.20 %.

[*Id.*]. Further, according to Appellants, their deviation calculations required new

district boundaries before the 2011 elections.[3] The Appellants further complained that the Board Appellees did not re-draw their lines to comply with "one person, one vote" in time for the March 1, 2011 candidate qualifying deadline, in spite of the indisputable fact that the 2010 census data was not published until February 2011, after the 2011 county election cycles began. [Original Complaints, ROA. 13-60614.2647-57, .2842-51, .3017-27, .3235-45, .3379-89, .3583-92, .3783-93].

Appellants requested that the District Court enjoin the statutorily mandated March 1 qualifying deadline, and require the respective Boards to revise all of the targeted counties' voting districts on a fast-track timetable prior to the August 2, 2011 primary elections. Each complaint expressly requested the following identical relief:

> a. A declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202, that the present apportionment scheme and the actions and inactions of the defendants violate rights secured to plaintiffs by the 14th amendment to the United States Constitution;

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[3] In a more common "one person, one vote" case – where timing of release of census data in relation to impending elections is not at issue – the deviation figures may be significant because a prima facie case of denial of equal protection under the "one person, one vote" principle generally exists where the maximum deviation between the most and least populated districts is greater than 10% and the deviation is not based on legitimate considerations incident to a rational state policy. *See*, *e.g.*, ***Mahan v. Howell***, 410 U.S. 315, 325 (1973). In the past (almost) three years of litigating these cases, Appellants have often misconstrued such prima facie evidence of malapportionment as a per se rule of strict liability that invalidates any elections held after decennial census data is released, and automatically entitles any voter in an under-represented district to injunctive relief no matter what the circumstances.

b. A temporary restraining order, preliminary injunction, and/or a permanent injunction enjoining the defendants from conducting elections under the existing redistricting plans for supervisor in [each respective] county;

c. A temporary restraining order and a preliminary injunction, enjoining the candidate qualification deadline for March 1, 2011 for the office of supervisor in [each respective] County, Mississippi for a short period of time in order to give the [each respective] County, Mississippi Board of Supervisors an opportunity to redistrict the supervisor districts and obtain preclearance of the redistricting plan;

d. A temporary restraining order, preliminary injunction, and/or a permanent injunction requiring that any new redistricting plan for supervisors in [each respective] County, Mississippi comply with the 14th and 15th amendments to the United States Constitution, 42 U.S.C. § 1983, and §§ 2 and 5 of the Voting Rights Act of 1965, as amended and extended, 42 U.S.C. §§ 1973(e) and 1973c;

e. Award plaintiffs court costs and a reasonable attorneys fee pursuant to 42 U.S.C. § 1973(e), and 1988; and

f. Grant plaintiffs general relief.

[*Id.*].

In early March 2011, the Attorney General moved to intervene in the lawsuits because the complaints each challenged the constitutionality of the March 1 candidate qualifying deadline prescribed by state law, and other established election deadlines, as applied to the respective county supervisors races and use of the current supervisor lines in the 2011 election cycle. [Motions to Intervene,

ROA. 13-60614.2692-2703, .2868-78, .3047-58, .3251-63, .3405-15, .3598-3608, .3819-31].

On March 23, 2011, the District Court consolidated all seven lawsuits with Civil Action No. 1:10cv564-LG-RHW, and two other similar cases, pending in the Southern District based on common questions of law. [Consolidation Order, ROA. 13-60614.386-88].[4] On March 25, 2011, the Attorney General moved to dismiss all of the Appellants' complaints pursuant to Rules 12(b)(1) and 12(b)(6). [Motion to Dismiss, ROA. 13-60614.434-38].

On April 5, 2011, the District Court held a status conference and established briefing schedules for outstanding motions. [Text Order, ROA. 13-60614.26]. On May 13, 2011, the District Court held a hearing. [May 13, 2011 Hearing Transcript, ROA. 13-60614.2549-2640].

On May 16, 2011, the District Court dismissed the Appellants' claims, as well as all the claims in all the other consolidated cases. [Memorandum Opinion

[4] The District Court consolidated Appellants' cases with two separate challenges to the Mississippi Legislature's qualifying deadline filed by Boards of Supervisors in Hancock County and Madison County asserting similar legal claims. The Hancock and Madison County plaintiffs, defendants, and intervenors did not appeal from the District Court's May 16, 2011 decision in the first appeal involving these consolidated cases. The consolidated lawsuits also initially included another case filed by Appellants' counsel against county defendants in Claiborne County, Mississippi. Following the 2011 elections, the Claiborne County Board of Supervisors hired one of Appellants' counsel as Board Attorney. Appellants' counsel subsequently withdrew from representing the Claiborne County plaintiff. The Claiborne County plaintiff did not appeal from the District Court's August 20, 2013 Final Judgment, therefore, the Claiborne County case is not included in this appeal.

and Order of Dismissal, ROA. 13-60614.1724-42]. The District Court reasoned that none of the Appellants had standing to assert a "one person, one vote" claim on several grounds. [*Id.* at pp. 3-11, ROA. 13-60614.1726-34].

Alternatively, assuming standing, the District Court held the complaints failed to state a claim on the merits. After reviewing prior decisions in the Southern District of Mississippi, and other federal courts around the country, the District Court concluded that

> [t]he parties do not dispute the need for the counties to redistrict based on 2010 census data. But each county's board of supervisors must have adequate time to formulate a redistricting plan and obtain preclearance from the Department of Justice before its failure to do so results in a declaration that elections held using the existing plans are unconstitutional.

[*Id.* at p. 16, ROA. 13-60614.1739]. The dispositive factors included whether the timing of release of census data in the middle of the election cycle warranted dismissal because

> [c]ourts have generally accepted that some lag-time between release of census data and redistricting is both necessary and constitutionally acceptable, even when it results in elections based on malapportioned districts in the years that census data is released.

[*Id.*]. The District Court held that

> [t]here is simply an insufficient amount of time for the County Boards of Supervisors to receive and evaluate the 2010 decennial census data, to redistrict each County in order to remedy any malapportionment, and to comply with State election statutes. Under

> the circumstances, and absent Justice Department preclearance of the submitted plans, the 2011 elections in the affected Counties must be conducted as they are presently configured.

[*Id.* at p. 17, ROA. 13-60614.1740].

On June 28, 2011, Appellants filed a Notice of Appeal, followed by an Amended Notice of Appeal on June 29, 2011. [Amended Notice of Appeal, ROA. 13-60614.1864-73]. Appellants did not petition this Court for a Stay Pending Appeal pursuant to Fed. R. App. P. 8(a)(2), or seek expedited review, in conjunction with their appeal.

Appellants' First Appeal

Appellants' consolidated appeal was further consolidated with two other appeals in similar lawsuits dismissed by the United States District Court for Northern District of Mississippi in September 2011.[5] The parties filed briefs, two

[5] The Northern District cases were two of eight similar cases filed by the same counsel for Appellants, and in which the Attorney General has intervened. The two appealed cases involved similar "one person, one vote" claims, and were taken from September 2011 dismissals on the merits for the same reasons as the Southern District Court's alternative grounds. *See* ***Tunica County, Mississippi Branch of the NAACP v. Tunica County, Mississippi Board of Supervisors*** (5th Cir. Cause No. 11-60674); ***Tallahatchie County, Mississippi Branch of the NAACP v. Tallahatchie County*** (5th Cir. Cause No. 11-60676). The Tunica County Appellants voluntarily dismissed their appeal because they were satisfied with the outcome of the 2011 elections. The Tallahatchie County case was subject to this Court's August 31, 2012 opinion, discussed below, and the District Court's judgment was vacated and remanded. As of this writing, the Tallahatchie County case and the now only remaining four other similar cases pending in the United States District Court for the Northern District of Mississippi have been consolidated and stayed pending the outcome of this appeal. *See* Consolidation Order in ***Winston County NAACP v. Winston County Bd. of Supervisors***, ND Civil Action 1:11cv59-MPM-JMV (Nov. 20, 2013).

sets of supplemental briefs, and presented oral argument on June 4, 2012.

On August 31, 2012, in an unpublished opinion, this Court vacated the District Court's May 16, 2011 opinion and remanded the cases with specific instructions for the District Court to address whether the cases were moot. ***Hancock County***, 487 Fed. Appx. 189.

After reciting the cases' procedural history, this Court analyzed the District Court's dismissal for lack of Article III standing. First, as to redressability, which the District Court found lacking, "appellants were not required to show their requested relief would *certainly* redress their injuries; rather, they were required to show that their requested relief would *likely* (or substantially likely) redress their injuries." ***Id***. at 197 (emphasis in original). Consequently, this Court held that

> Appellees do not dispute that appellants' complaints sought broad relief; appellees concede that appellants sued to declare the current supervisor district lines invalid, enjoin the qualifying deadlines, enjoin the elections, and enjoin the establishment of invalid lines. But this relief, had it been provided, would have very likely, if not unquestionably, redressed the plaintiffs' claimed injuries. If the district court had enjoined the election deadlines and the elections, and the counties had redistricted to generate constitutionally proportional districts, and the elections were then held pursuant to these constitutional districts, the plaintiffs' "one person, one vote" injuries would very likely have been redressed.

Id. Second, with regard to associational standing that the District Court found absent, this Court determined that, to demonstrate a sufficient injury-in-fact, the

organizational Appellants were not required to identify any voters from an overpopulated, under-represented, district "*at the pleading stage*." ***Id***. at 198 (emphasis in original). The standing holdings were summarized as:

> [o]verall, we hold that the NAACP plaintiffs and any individual plaintiff who is alleged to be a voter in an overpopulated, under-represented district has adequately alleged facts supporting standing. We disagree with those portions of the district court orders dismissing the complaints for lack of standing.

Id. at 199.

Next, this Court did not address the District Court's alternative determination that Appellants failed to state a claim on the merits. Instead, it questioned whether the cases were moot, and explained that the issue could not be conclusively determined at that time:

> [b]ased on the record before us, however, we are unable to determine whether this controversy is live. To illustrate, because the district court has not evaluated mootness in the first instance, we lack access to factual findings with which to determine whether the "capable of repetition, yet evading review" exception to mootness is applicable to this case. Although we could assume this controversy will reoccur every twenty years when the election cycle and census publication coincide, we decline the invitation to engage in such speculation.

Id. at 200 (citations omitted). Consequently, this Court's specific instructions for evaluating mootness on remand included that:

> [i]n an abundance of caution, and because more factual development is needed, we remand the consolidated cases to the district court so that it can determine whether this controversy is moot or live.

> If the district court determines this controversy is moot, the court must dismiss the case.

Id. at 200-01. Only after making the initial mootness determination, and if the District Court determined any live claims remain, the District Court was instructed to allow Appellants to pursue new potential claims:

> [i]f the district court determines that this controversy is live, the court must proceed to determine whether appellants' complaints – after allowing for proper amendments – adequately state a claim upon which *post-election* relief can be granted. Of course, new pleadings will be necessary; we do not forbid new counts. But if the district court determines that the appellants' complaints have failed to state a claim for post-election relief, the court must dismiss the case.

Id. at 201 (emphasis in original).

In short, this Court did not reverse the District Court's determination that Appellants' original complaints failed to state a claim on the merits. Rather, its opinion specifically postponed any determination in that regard: "[a]t this time, then, we do not address those portions of the district court orders dismissing the complaints based on their failure to state a claim. We cannot leapfrog the justiciability inquiry to reach the merits of this case." ***Id***. at 201. Accordingly, the District Court's May 16, 2011 Opinion and Order was vacated, and the cases remanded for consideration of mootness in accordance with this Court's instructions. ***Id***.

Intervening 2011 Elections

While the original District Court and appeal proceedings took place in 2011-12, the subject counties' 2011 supervisor elections proceeded on the then-existing district lines. Party primary elections were held in each county on August 2, 2011, with party run-offs completed (where necessary) on August 23, 2011. The general election was held in each county – and all other counties in Mississippi – on November 8, 2011. Between the beginning of the election cycle and the 2011 elections, several other deadlines and election requirements also had to be met by candidates and officials in each of the respective counties in the time leading up to the 2011 elections. *See*, *e.g.*, MISS. CODE ANN. § 23-15-296 (certified candidate lists due to Secretary of State by March 3); MISS. CODE ANN. §§ 23-15-805, -807 (periodic campaign finance reports filed with circuit clerks with deadlines of May 10, June 10, July 8, July 24, July 26, August 14, August 16, October 10, October 30, November 1); MISS. CODE ANN. § 23-15-285 (any new supervisor district lines must be in place by June 2); MISS. CODE ANN. §23-15-625 (absentee ballot applications made available by Circuit Clerks by June 3); MISS. CODE ANN. § 23-15-715 (absentee ballots made available for primary voting by June 18); MISS. CODE ANN. § 23-15-629(4) (circuit clerks to mail absentee ballots to voters on permanent physically disabled lists by June 23); MISS. CODE ANN. §

23-15-265 (county executive committee to appoint pollworkers for primary by July 19); MISS. CODE ANN. § 23-15-653 (absentee balloting for run-off elections by August 13); MISS. CODE ANN. § 23-15-629 (absentee ballot applications for general election by September 9); MISS. CODE ANN. § 23-15-715 (absentee ballots available for general election by September 24); 42 U.S.C. § 1973ff-1 (absentee ballots for military and overseas voters transmitted by September 24). In January 2012, the newly-elected, and now current, supervisors in each county took office.

Meanwhile, none of the subject counties had sufficient time to complete the redistricting process and obtain Department of Justice pre-clearance approval in time for use in the 2011 elections, much less in time for the qualifying deadlines. New lines had to be drawn, submitted to the public for comment, voted upon, and put through the potentially lengthy process of submission and approval by the Department of Justice or declaratory judgment from the United States District Court for the District of Columbia. *See* 42 U.S.C. § 1973c (voting changes by covered jurisdictions may not take effect without preclearance or declaratory judgment); 28 C.F.R. §§ 51.33-51.50 (procedures for processing preclearance submissions). The subject counties that needed to redraw supervisor lines based upon 2010 census data implemented new lines either during the 2011 election cycle or after the newly-elected supervisors took office.

District Court Proceedings on Remand

Nearly a year to the day after the 2011 general elections, on November 7, 2012, the District Court conducted a status conference and established deadlines for filing motions addressing mootness and requests for mootness-related discovery. On November 14, 2012, Appellants filed motions to amend their complaints and for mootness-related discovery. [Motion to Amend Complaints, ROA. 13-60614.1902-81; Motion for Discovery, ROA. 13-60614.1982-2007]. In December 2012, the Attorney General and County Appellees filed motions to dismiss on account of mootness pursuant to Fed. R. Civ. P. 12(b)(1) and 12(h)(3). [Motions to Dismiss, ROA. 13-60614.2140-43, .2160-63, .2180-83, .2200-03, .2222-24, .2244-47]. The parties fully briefed all the motions.

On June 25, 2013, the District Court requested supplemental briefs addressing the impact, if any, of the United States Supreme Court's decisions in ***Shelby County, Alabama v. Holder***, 133 S.Ct. 2612 (2013) (invalidating the Voting Rights Act's Section 4(b) coverage formula for Section 5 preclearance) and ***Mississippi State Conf. of NAACP v. Barbour***, 2011 WL 1870222 (S.D. Miss. May 16, 2011), *aff'd*, 132 S.Ct. 532 (2011), *and aff'd sub. nom.*, ***Mississippi State Conf. of NAACP v. Bryant***, 133 S.Ct. 2389 (2013) (affirming three-judge district court's denial of special elections relief in 2011 "one person, one vote"

Mississippi legislative redistricting case) on the District Court's mootness inquiry. [Order, ROA. 13-60614.2367-68]. In July 2013, the parties filed supplemental briefs in response to the Order. [Supplemental Briefs, ROA. 13-60614.2369-80, .2388-93, .2394-2403, .2404-14, .2426-36, .2447-57, .2458-66].

On August 20, 2013, the District Court dismissed Appellants' lawsuits as moot. [Order Granting Motion to Dismiss, ROA. 13-60614.2526-35]. After reciting the contentions presented by the parties in their briefing and a prior hearing, the District Court found that the 2011 election cycle and elections had long since taken place, and elected supervisors in the counties took office in January 2012. [*Id.* at p. 6, ROA. 13-60614.2531]. Further, it found the relief sought in Appellants' complaints included:

> (1) a declaratory judgment that the counties' supervisor apportionment schemes (as existing when the complaints were filed) violate the "one person, one vote" principle, (2) an injunction barring the counties from conducting their 2011 elections on the then existing supervisor lines, (3) an injunction extending the 2011 statutory candidate qualification deadline indefinitely and until new district lines are implemented, (4) an injunction requiring that any new district lines conform with applicable law[], (5) an attorney's fee award, and (6) general (but unspecified) relief. There is no request for special elections or any other post election relief.

[*Id.* (internal footnote omitted)].

Based on those facts, the District Court held Appellants' claims became moot when all the events they sought to enjoin occurred. [*Id.* at p. 10, ROA. 13-

60614.2535]. Moreover, the "capable of repetition, yet evading review" exception did not apply to their claims. [*Id.*]. Specifically, Appellants' claims did not satisfy the exception's requirement for a "demonstrated probability" or a "reasonable expectation" that they would be subject to the same unlawful governmental action again. [*Id.* at p. 8, ROA. 13-60614.2533]. No evidence demonstrated the county defendants

> deliberately defied or in the future intend to defy the requirements of the Voting Rights Act. Instead, the evidence is to the contrary. Despite the time constraints imposed by Mississippi statute, the Defendants made every effort to comply with their redistricting responsibilities. Plaintiffs have merely shown that the Defendants may be presented with an opportunity to act in the same allegedly unlawful manner in the future. This is not enough. To satisfy the second prong of the exception Plaintiffs must demonstrate a reasonable expectation that the government *will* act in that manner.

[*Id.* (emphasis in original)]. Furthermore, the Supreme Court's intervening decision in ***Shelby County*** demonstrated that Section 5 preclearance requirements – which were "the primary impediment to the counties' ability to redistrict in time for the 2011 elections" – do not currently apply to the County Appellees, and may not exist twenty years from now when the release of 2030 census figures and the counties' four-year election cycles may again coincide. [*Id.* at p. 9, ROA. 13-60614.2534]. The District Court summarized its holding as follows:

> [i]n this case, when the qualifying deadline passed, and the elections were held, plaintiffs' claims seeking to enjoin those events became

> moot. The Court finds that the plaintiffs have not demonstrated a reasonable expectation that the same circumstances would arise again. Thus, the capable-of-repetition, yet evading-review exception to mootness is not applicable to the claims in this case. The claims alleged in plaintiffs' complaints are moot and must be dismissed.

[*Id.* at p. 10, ROA. 13-60614.2535].

The District Court simultaneously entered a separate Judgment dismissing Appellants' cases as moot. [Final Judgment, ROA. 13-60614.2536-37]. On August 27, 2013, Appellants filed their Notice of Appeal. [Notice of Appeal, ROA. 13-60614.2538-2547].

SUMMARY OF THE ARGUMENT

This Court's prior opinion in these consolidated lawsuits provided precise instructions for the District Court to evaluate whether or not Appellants' lawsuits are moot. The District Court properly followed those instructions, and then correctly concluded Appellants' lawsuits are moot, and not subject to the "capable of repetition, yet evading review" exception. Its decision should be affirmed.

Appellants' lawsuits were mooted by the 2011 elections. A case or controversy must exist at all stages of the litigation, not just when a lawsuit is filed. And, most important here, requests for injunctive relief are moot when the events sought to be enjoined occur.

As the District Court correctly recognized, in these consolidated lawsuits,

Appellants' complaints filed in February 2011 seek: (1) a declaratory judgment that the counties' supervisor apportionment schemes (as existing when the complaints were filed) violate the "one person, one vote" principle, (2) an injunction barring the counties from conducting their 2011 elections on the then existing supervisor lines, (3) an injunction extending the 2011 statutory candidate qualification deadline indefinitely and until new district lines are implemented, (4) an injunction requiring that any new district lines conform with applicable law, (5) an attorney's fee award, and (6) general (but unspecified) relief. There is no request for special elections or any other post-election relief.

Meanwhile, in all the counties involved here, and all other counties in Mississippi, the 2011 Board of Supervisors election deadlines passed long ago. The counties' primary and general elections have been held. Those elections all took place pursuant to statewide timetables established by statute and using district lines approved prior to the 2010 census. Elected supervisors took office in January 2012. Those events mooted Appellants' claims.

Appellants' arguments relating to purported claims for "post-election" relief do not save their claims from mootness. They do not have any implied claims for "post-election" relief. As this Court has repeatedly recognized, in voting cases the extraordinary remedy of "post-election" relief is only appropriate when an

egregious or deliberate violation of law is involved. And, as the District Court correctly determined here, appellants have never alleged or proven the County Appellees egregiously or deliberately defied their redistricting responsibilities in connection with the 2011 elections. Indeed, the evidence is to the contrary. An implied claim for "post-election" relief does not make these lawsuits non-moot.

Unpled claims for "post-election" relief likewise do not rescue Appellants' moot claims. The District Court's evaluation of Appellants' lawsuits, before allowing for any amendments, was consistent with this Court's prior instructions. Moreover, it was consistent with the law. When lawsuits like these are moot, federal courts should dismiss them rather than extending their jurisdiction by permitting amended claims.

Appellants also incorrectly assert that they are automatically entitled to "post-election" relief because they requested "pre-election" relief. When the appropriate circumstances exist, and requisite facts have been proven, but a court is unable to feasibly grant "pre-election" relief, that might justify awarding "post-election" relief. However, these consolidated cases present no such facts or circumstances. Appellants' "pre-election" relief claims did not fail in 2011 because they had merit while the courts could not feasibly grant the relief. They failed because they were dismissed by the District Court prior to the 2011

elections for lack of merit. No automatic entitlement to "post-election" relief revives their moot claims now.

The "capable of repetition, yet evading review" exception to mootness does not preserve Appellants' lawsuits. The exception only applies when the party asserting it proves (1) the challenged actions are too short in duration 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. Appellants cannot prove either element here.

Appellants cannot meet the first prong because they had adequate time to fully litigate their claims in 2011 prior to all the events they sought to enjoin. The District Court originally dismissed their claims in May 2011. They appealed to this Court, but never asked it for injunctive relief pending appeal or even expedited review. While their cases were on appeal, the elections took place. All the events they sought to enjoin occurred before this Court's August 30, 2012 decision to remand the cases for a mootness determination by the District Court. Since Appellants did not take advantage of all their options to fully litigate the claims in 2011, now, in 2013, they cannot assert there was not originally enough time to fully litigate their claims.

Furthermore, even assuming Appellants could meet the first element

required for "capable of repetition, yet evading review," they have not proven the second element. The exception's second prong requires proof of a demonstrated probability or a reasonable expectation that Appellants will be subject to the same allegedly unlawful governmental action again.

Appellants contend that every twenty years, the counties' supervisor election cycles will coincide with the release of decennial census data. Their speculative "twenty year recurrence" theory has many flaws. At most, Appellants' contention shows redistricting timing issues attendant to the release of census data in the middle of an election cycle might occur in 2031. But that does not prove the County Appellees will act in an unlawful manner in connection with 2031 elections for numerous reasons.

For example, as the District Court aptly recognized, achieving preclearance under the Voting Rights Act was a key timing factor in the County Appellees' inability to complete redistricting prior to the 2011 elections. In June 2013, the Supreme Court invalidated the Act's coverage formula in ***Shelby County, Alabama v. Holder***. Consequently, and at least for the time being, the preclearance requirements applicable to the County Appellees have been eliminated. There is no way to accurately predict whether or how preclearance requirements, if any, will exist in 2031. There is no way to predict how any such

requirements would impact 2031 redistricting or 2031 elections.

Additionally, as this Court already underscored the first time these cases were before it, guessing how the facts will play out in 2031 is entirely too speculative to satisfy "capable of repetition, yet evading review." There is no certainty when census data will be published in 2031 or what impact it might have on the 2031 election schedule. The 2030 census may or may not reveal population shifts that would require the counties involved here to redistrict. There is no way to know what the election schedule will be in 2031. The statutorily mandated deadlines and requirements may be different. All of those sorts of uncertain events would impact whether the subject counties must redistrict and when they may be able to accomplish it.

The District Court correctly dismissed Appellants' lawsuits as moot, and not within the "capable of repetition, yet evading review" exception. This Court should affirm the District Court's holding.

ARGUMENT

I. Standard of Review.

The jurisdictional issue of mootness is a legal question. ***Harris v. City of Houston***, 151 F.3d 186, 189 (5th Cir. 1998). Accordingly, this Court evaluates the District Court's grant of Appellees' Rule 12(b)(1) motions for dismissal *de novo*

while applying the same standard as the District Court. ***Herbert v. United States***, 53 F.3d 720, 722 (5th Cir. 1995).[6]

Motions filed under Rule 12(b)(1) of the Federal Rules of Civil Procedure challenge the subject matter jurisdiction of the District Court to hear the case. Fed. R. Civ. P. 12(b)(1). The burden of proof on a Rule 12(b)(1) motion is on the party asserting jurisdiction. ***Ramming v. United States***, 281 F.3d 158, 161 (5th Cir. 2001) (citing ***McDaniel v. United States***, 899 F.Supp. 305, 307 (E.D. Tex. 1995)). Therefore, the Appellants "constantly bear[] the burden of proof that jurisdiction does in fact exist." ***Id***. (citing ***Menchaca v. Chrysler Credit Corp***., 613 F.2d 507, 511 (5th Cir. 1980)). "Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the district court's resolution of disputed facts." ***Id***. (citing ***Barrera-Montenegro v. United States***, 74 F.3d 657, 659 (5th Cir. 1996)).

When the District Court does not resolve any disputed facts, this Court "'consider[s] the allegations in the complaint as true.'" ***Spotts v. United States***,

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[6] Appellants' Brief incorrectly asserts that the District Court dismissed their lawsuits by applying Rule 12(b)(6) and devotes several pages to a discussion of Rule 12(b)(6) standards. Appellants' Brief at pp. 12, 14-17. Although Rule 12(b)(6) also warrants *de novo* review, those standards are inapplicable to this appeal from the District Court's dismissal based on Rule 12(b)(1).

613 F.3d 559, 566 (5th Cir. 2010) (quoting ***St. Tammany Parish, ex rel. Davis v. Fed. Emergency Mgmt. Agency***, 556 F.3d 307, 315 (5th Cir. 2007)). Appellate review is "'limited to determining whether the district court's application of the law is correct . . .,'" and if its decision was based on undisputed facts – for example, in this case, the fact that the County Appellees's 2011 elections have taken place – "'whether those facts are indeed disputed.'" ***Id.*** (quoting ***St. Tammany Parish***, 556 F.3d at 315). This Court then determines the appropriateness of the District Court's dismissal. ***Id.***

II. The District Court Correctly Held Appellants' Lawsuits are Moot.

A. The 2011 Elections Mooted Appellants' Claims.

Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies. ***DeFunis v. Odegaard***, 416 U.S. 312, 316 (1974). A case or controversy "must exist at all stages of the litigation, not just at the time the suit was filed." ***Bayou Liberty Ass'n v. U.S. Army Corps of Eng'rs***, 217 F.3d 393, 396 (5th Cir. 2000). And, generally, in cases involving injunctive relief, a controversy is moot "once the action that the plaintiff sought to have enjoined has occurred . . .." ***Seafarers Int'l Union of N. Am. v. National Marine Servs., Inc.***, 820 F.2d 148, 151-52 (5th Cir. 1987).

Although these cases presented a live controversy in 2011, now they are moot because the events Appellants sought to enjoin have occurred. As the District Court correctly explained, Appellants' complaints seek:

> (1) a declaratory judgment that the counties' supervisor apportionment schemes (as existing when the complaints were filed) violate the "one person, one vote" principle, (2) an injunction barring the counties from conducting their 2011 elections on the then-existing supervisor lines, (3) an injunction extending the 2011 statutory candidate qualification deadline indefinitely and until new district lines are implemented, (4) an injunction requiring that any "new" district lines conform with applicable law, (5) an attorneys fees award, and (6) general (but unspecified) relief. There is no request for special elections or any other post election relief.

[Order Granting Motion to Dismiss at pp. 6-7, ROA. 13-60614.2531-32; *see also* Original Complaints, ROA. 13-60614.2647-57, .2842-51, .3017-27, .3235-45, .3379-89, .3583-92, .3783-93]. The targeted elections and election deadlines have occurred. In each county at issue here (and every county in Mississippi), the 2011 supervisor statutory qualifying deadline passed long ago. Board of Supervisors primary elections were held on August 2, 2011, and general elections were held on November 8, 2011. The elections were held on statewide time tables established by Mississippi statutes (previously pre-cleared by Department of Justice) and using district lines devised prior to the 2010 census (also previously pre-cleared by the Department of Justice). Elected supervisors took office in January 2012. Over two years ago, when the qualifying deadline passed and the elections were held,

plaintiffs' claims to enjoin those events became moot.

Moreover, as the District Court further correctly held, Appellants' other tangential claims for relief related to the 2011 elections are now also moot, or at most, incapable of effective relief. For example, Appellants' request for injunctive relief compelling the County Appellees to comply with the law whenever they redraw lines is inappropriate. General injunctive commands to "obey the law" in the future are improper. ***Payne v. Travenol Labs, Inc.***, 565 F.2d 895, 897 (5th Cir. 1978), *cert. denied*, 99 S.Ct. 118 (recognizing injunctive relief requiring defendants to "obey the law" cannot be sustained).

Appellants' claims focus on the 2011 elections and election deadlines. The elections took place. The District Court correctly held Appellants' claims against the County Appellees are moot, and that holding should be affirmed.

B. "Post-Election" Relief does not Save Appellants from Mootness.

Instead of citing any relevant authority or identifying any live claims spelled out in their complaints, Appellants assert three different "post-election" relief arguments rescue their lawsuits. The District Court appropriately rejected their arguments. This Court should likewise find they have no merit.

1. No Implicit Claims for "Post-Election" Relief.

Appellants first contend they should be permitted to assert new, non-moot,

claims for "post-election" relief that could be implied from their original complaints. The District Court did not accept that argument, and this Court should not either.

This Court has previously rejected Appellants' precise argument in the context of a similar local redistricting dispute. In ***Lopez v. City of Houston***, 617 F.3d 336 (5th Cir. 2010), a group of voters in Houston brought a challenge to the city's assessment of its population and alleged improper failure to redistrict and add new city council seats on Fourteenth Amendment and other grounds. ***Id.*** at 339. The ***Lopez*** voters sought to enjoin the November 2009 elections until the city redistricted and two new seats were added. ***Id.*** The district court denied their relief, the elections were held, and then the voters appealed. ***Id.***

On appeal, the ***Lopez*** voters argued their election claims were live because federal courts have authority to invalidate the election and require a new election after adding two new council seats. ***Id.*** at 340. This Court recognized that "[i]nvalidation of a past election can, in some instances, be a viable remedy that will save a claim from mootness even if the election has passed." ***Id.*** (citing ***NAACP v. Hampton Cnty. Election Comm'n***, 470 U.S. 166, 181-82 (1985)). However, "invalidation is a extraordinary remedy that can only be employed in exceptional circumstances, usually when there has been an egregious defiance of

the Voting Rights Act on the part of the covered entity." ***Id***. (collecting authorities). Since the ***Lopez*** voters had not demonstrated any "egregious defiance" of any voting rights, their claims were moot even though special elections arguably might have been a potential remedy. ***Id***. *See also* ***Wilson v. Birnberg***, 667 F.3d 591, 595-97 (5th Cir. 2012), *cert. denied*, 133 S.Ct. 32 (holding requested injunctive relief affecting local election mooted by election taking place and new election was inappropriate since allegations did not warrant such an "extraordinary remedy"); ***Bayou Liberty Ass'n***, 217 F.3d at 398 (holding no implied claim for relief exempted lawsuit from mootness); ***Harris***, 151 F.3d at 190-91 (holding appellants lacked any implied claim for post-election relief following election that mooted original claims).

In these consolidated and now nearly three-year-old cases – like the ***Lopez*** voters – Appellants have never asserted or proven any factual allegations justifying a special elections remedy. These are not cases of "egregious defiance" of law. The District Court expressly, and correctly, found as much:

> [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. Instead, the evidence is to the contrary. Despite the time constraints imposed by Mississippi statute, the Defendants made every effort to comply with their redistricting responsibilities.

[Order Granting Motions to Dismiss at p. 8, ROA. 13-60614.2533]. Moreover,

this Court also recognized that point the first time Appellants' cases were before it: "[a]lthough the VRA is not at issue in this case, the point remains that appellants have not alleged that appellees have acted egregiously or in bad faith." ***Hancock County***, 487 Fed. Appx. at 200.

At most, these cases demonstrate that the 2010 census data was released at a time when the defendant counties could not complete their reapportionment processes, obtain the then-federally mandated preclearance, and meanwhile comply with the legislatively established 2011 supervisor election requirements and deadlines. The District Court correctly recognized there was no "egregious defiance" of the law attendant to the counties' actions or inactions here, and the record demonstrates Appellants have not properly asserted any such claim.[7]

[7] Appellants' Brief contends that "[o]ne day after their complaints were filed, the plaintiffs filed separate motions seeking pre-election and post-election injunctive relief." Appellants' Brief at p. 18. Assuming those motions could be relevant, Appellants' assertions regarding them are misleading. In February 2011, Appellants filed motions for temporary restraining orders in some, but not all, of their cases. [Motions for Temporary Restraining Orders, ROA. 13-60614.2857-67, .2663-81, .3033-46, .3395-3404, .3799-3808]. The motions purportedly requested "post-election" relief, without including sufficient proof for such relief such as bad faith, by seeking "shortened terms of office" for any supervisors elected using the then-current district lines. [*Id.*]. But even somehow assuming that the motions constituted "claims" Appellants actually asserted (which they were not), the motions were administratively terminated in March 2011. [*See* March 25, 2011 Text Order, ROA. 13-60614.22-23 (terminating all motions filed prior to consolidation), and March 25, 2011 Docket Annotations, ROA. 13-60614.2645, .2840, .3014, .3233, .3377, .3580-81, .3781]. Appellants never re-filed their motions for temporary restraining order after they were terminated. Also, Appellants ignored prior instructions from the District Court regarding failure to properly submit their motions. [*See*, *e.g.*, Docket Annotations, ROA. 13-60614.2643, .3013, .3779]. They simply abandoned their February-March 2011 motions for "shortened terms of office" relief by failing to properly re-file them at any point before the District Court's May 16, 2011 dismissal. Appellants cannot rely on those stale, factually unsupported, motions nearly three years later to avoid mootness.

The extraordinary remedy of "post-election" relief is not, and never has been, properly at issue here. Appellants' suggestions that implied claims for special elections relief exist, or they could somehow be entitled to special elections relief, have no merit and do not save their claims from mootness.

2. Unauthorized Amendments do not Revive Appellants' Lawsuits.

Appellants also assert that they moved to amend their complaints on remand, and have otherwise previously sought "special elections" relief, thereby exempting their lawsuits from mootness. Those arguments failed in the District Court and equally have no merit here.

Appellants' attempts to file new pleadings on remand to avoid mootness were procedurally improper. On the first appeal, this Court remanded Appellants' lawsuits to the District Court to first determine whether Appellants' cases were moot, and if so, instructed the District Court to dismiss the cases. *See* ***Hancock County***, 487 Fed. Appx. at 200-01 (instructing the District Court to initially assess "whether this controversy is moot or is live," and "[i]f the district court determines that this controversy is moot, the court must dismiss the case."). However, if, and only if, the District Court determined the cases were not moot, then this Court instructed that Appellants should be allowed to amend their complaints. ***Id***. (instructing that if the District Court finds the cases non-moot, then "it must

proceed to determine whether appellants' complaints – after allowing for proper amendments – adequately state a claim for which *post-election* relief can be granted.") (emphasis in original). But that second contingency never occurred, and consequently, amending the complaints was never an issue for the District Court.

In November 2012, consistent with this Court's instructions, the District Court set deadlines for the parties to brief the mootness issue. [Minute Entry, ROA. 13-60614.40-41]. The District Court did not authorize any other motions. Nevertheless, Appellants attempted to submarine new claims into their lawsuits. On November 14, 2012, Appellants moved to amend all their complaints to include new claims for "post-election" relief and alleged violations of Section 2 of the Voting Rights Act. [Motion to Amend, ROA. 13-60614.1902-81].[8]

In August 2013, the District Court held Appellants' lawsuits were moot. Therefore, it appropriately never authorized Appellants to file their proposed amended complaints. That determination was consistent with this Court's instructions.

Moreover, the District Court's refusal to allow Appellants to re-plead

[8] The proposed amended complaints did not allege any new substantive facts. [*See* Proposed Amended Complaints, ROA. 13-60614.1913-81]. They simply tacked on new claims for relief in an obvious effort to circumvent mootness of the original claims.

around mootness also comported with the rule that "when the court has no jurisdiction over the *claims* in the original complaint, it must dismiss the case, and it has no jurisdiction to permit an amendment." ***Alabama v. U.S. Army Corps of Eng'rs***, 382 F.Supp.2d 1301, 1316 (N.D. Ala. 2005) (collecting authorities and emphasis in original). *See also* ***Fox v. Bd. of Trustees of the State Univ. of New York***, 148 F.R.D. 474, 482-83 (N.D. N.Y. 1993), *aff'd*, 42 F.3d 135 (2nd Cir. 1994), *cert. denied*, 515 U.S. 1169 (1995) (refusing to allow plaintiffs to amend after case became moot, because the case lacked a live controversy to address, and the court therefore lacked subject matter jurisdiction over the action); Fed. R. Civ. P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court *shall dismiss* the action.") (emphasis added). Appellants' unauthorized Motion to Amend did not revive their moot lawsuits.[9] Any such contention they now attempt to assert should be rejected.

[9] Appellants also belatedly attempted, without authorization, to inject new claims for "post-election" relief in their cases by filing a "Motion to Set Aside 2011 Elections" in July 2013, long after the parties' mootness motions had first been briefed. [Motion to Set Aside 2011 Elections, ROA. 13-60614.2381-87]. For the same reasons Appellants' Motion to Amend was improper, the District Court appropriately refused to grant that eleventh hour motion that did not even identify a single piece of evidence supporting a new claim for extraordinary special elections relief.

3. Failed "Pre-Election" Relief Claims do not Automatically Entitle Appellants to "Post-Election" Relief.

Appellants' third anti-mootness argument relies on an entirely incorrect legal proposition. They erroneously believe the District Court should not have found their cases moot, and should have awarded them "post-election" relief, because "post-election" relief must "automatically" be awarded when a "plaintiff requested pre-election relief, but that relief was not granted." Appellants' Brief at p. 19. That flawed assertion simply misstates the law.

In voting cases, several federal courts have determined that when entitlement to "pre-election" injunctive relief is proven, but that relief cannot be implemented for some reason, then some form of "post-election" injunctive relief may be warranted.[10] But that result in prior cases, based on particular proven facts and circumstances, does not establish a per se rule that suing for "pre-election" relief *automatically* entitles the plaintiff to "post-election" relief.

As Appellants' own cited authorities demonstrate, to obtain "post-election"

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[10] *See*, *e.g.*, ***Keller v. Gilliam***, 454 F.2d 55, 57-58 (5th Cir. 1972) (special elections after trial court had ordered 1971 election to proceed on at-large basis for practical reasons including impending election deadlines); ***Taylor v. Monroe County Bd. of Supervisors***, 394 F.2d 333, 334 (5th Cir. 1972) (remanding for consideration of special elections after Supreme Court had made clear that "one person, one vote" principles applied in local election context while case was on appeal); ***Tucker v. Burford***, 603 F.Supp. 276, 279 (N.D. Miss. 1985) (special elections for officers elected on allegedly malapportioned lines nearly three years after release of census data); ***Moore v. Leflore County Bd. of Election Comm'rs***, 351 F.Supp. 848, 852 (N.D. Miss. 1971) (special elections following elections held pursuant to law that had never been precleared).

relief in lieu of "pre-election" relief, a plaintiff must actually be entitled to "pre-election" relief *and* that relief could not feasibly be implemented prior to the election. Furthermore, the extraordinary remedy of "post-election" relief requires proof of more than a violation of a voting right. It is reserved for egregious defiance of the law. *See* ***Wilson***, 667 F.3d at 595-97; ***Lopez***, 617 F.3d at 340-41; ***Harris***, 151 F.3d at 190-91.

None of those circumstances exist here. Appellants' claims for "pre-election" relief were not rejected due to a lack of feasibility. Rather, in May 2011, the District Court dismissed Appellants' claims for lack of standing, and alternatively, *on the merits*. [Memorandum Opinion and Order of Dismissal, ROA. 13-60614.1724-42]. Appellants did not seek any form of expedited review on appeal. Then, in August 2012, when this Court determined some original Appellants had standing, and mootness should be evaluated before considering whether the claims lacked merit, the 2011 elections had long since taken place. Appellants' claims for "pre-election" relief did not fail due to infeasibility. They failed because Appellants never proved their claims to any court before the 2011 elections, and still have never proven them to this day.[11]

[11] Additionally, as the District Court correctly noted, during the remand proceedings the United States Supreme Court affirmed a three-judge panel decision denying "post-election" relief in connection with the Mississippi Legislature's 2011 elections conducted on district lines drawn using 2000 census figures. ***Miss. State Conf. of NAACP v. Bryant***, 133 S.Ct. 2389 (2013) (appeal of Order entered Nov. 19, 2012 in ***NAACP v. Barbour***, SD No. 3:11cv159-TSL-EGJ-

In summary, the District Court correctly determined that the 2011 elections mooted Appellants' claims. Appellants have consistently failed to provide any valid reasons justifying a contrary finding. Accordingly, this Court should affirm the District Court's holding that these lawsuits are moot.

III. The District Court Correctly Held the "Capable of Repetition, Yet Evading Review" Doctrine does not Apply.

Appellants' lawsuits are moot and, as the District Court further correctly held, the "capable of repetition, yet evading review" exception does not save them from dismissal. The "capable of repetition, yet evading review" doctrine applies only in "exceptional circumstances," ***City of Los Angeles v. Lyons***, 461 U.S. 95, 109 (1983), and requires proof of two elements: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." ***Weinstein v. Bradford***, 423 U.S. 147, 149 (1975). Appellants have the burden of proving both elements. ***Illinois State Bd.***

LG). In that case, "post-election" relief claims were not moot because the three-judge panel did not initially dismiss the case, and expressly retained jurisdiction to evaluate that issue after the 2011 elections, rather than simply dismissing it after determining "pre-election" relief unwarranted. Significantly, the plaintiffs in that case (represented by the same counsel as Appellants here) made the same failed automatic entitlement to "post-election" relief argument that Appellants assert here, and lost on the merits before the three-judge panel and the Supreme Court.

of Elections v. Socialist Workers Party, 440 U.S. 173, 187-88 (1979).[12] They have failed to satisfy either of them here.

A. Appellants had Plenty of Time to Litigate.

The record proves Appellants had a full opportunity to litigate their claims before the 2011 elections when their lawsuits became moot. Their cases were filed in February 2011. Between February and June 2011, there was time for the cases to be consolidated, for the parties to brief numerous motions, and for the District Court to decide numerous procedural and dispositive motions. Appellants then had time to appeal, and could have moved for a stay pending appeal or

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[12] On remand, Appellants moved the District Court for permission to take "mootness-related" discovery consisting of interrogatories and document requests seeking public records regarding the County Appellees' prior redistricting efforts when their election cycles and census data publications coincided. [Motion for Discovery and Attached Proposed Discovery, ROA. 13-60614.1982-2007]. Appellants' Brief does not expressly contend the District Court improperly refused to allow them to take "mootness-related" discovery on remand, and thereby, Appellants have waived any such argument. ***Procter & Gamble Co. v. Amway Corp.***, 376 F.3d 496, 499 n. 1 (5th Cir. 2004).

Nevertheless, out of an abundance of caution, should Appellants' Reply Brief raise that argument for the first time and this Court does not deem it waived, the District Court did not abuse its discretion in not authorizing their requested discovery. District courts are not required to permit discovery that has no bearing on the issues at hand. *Cf.* ***Mauldin v. Fiesta Mart***, 114 F.3d 1184, 1997 WL 255640, at *2 (5th Cir. 1997) (affirming district court's denial of former Rule 56(f) request because additional discovery was speculative and unlikely to uncover relevant evidence); ***Washington v. Allstate Ins. Co.***, 901 F.2d 1281, 1285 (5th Cir. 1990) (explaining entitlement to discovery is not unlimited and may be cut off when requested discovery is not likely to produce facts needed to withstand dispositive motion). Any public records Appellants wanted through discovery relating to the County Appellees' past redistricting efforts would not make predictions about how redistricting issues will play out twenty years in the future any less speculative.

expedited review from this Court even though they failed to do so.[13]

Appellants did not successfully obtain injunctive relief in 2011, and elected not to pursue all other avenues for available injunctive relief. But that does not mean they lacked sufficient time to litigate their claims prior to the 2011 elections. *See* ***Bayou Liberty Ass'n***, 217 F.3d at 398-99 (plaintiffs had sufficient time to litigate claims since they could apply for preliminary injunction and seek stay on appeal to prevent alleged harm); ***Smith v. Winter***, 782 F.2d 508, 510 (5th Cir. 1986) (no mootness exception where plaintiffs failed to prove it was impossible to litigate their claims prior to an election).[14] Appellants have failed to satisfy the

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[13] Appellants moved for a stay pending appeal granting them injunctive relief that was denied by the District Court. [*See* June 13, 2011 Text Order, ROA. 13-60614.39]. However, they subsequently chose not to seek a stay pending appeal from this Court or move to expedite their appeal. *See* Fed. R. App. P. 8(a)(2); Fifth Circuit Local Rule 27.5.

[14] *See also* ***Newdow v. Roberts***, 603 F.3d 1002, 1008-09 (D.C. Cir. 2010), *cert. denied*, 131 S.Ct. 2441 (2011) (a plaintiff "must make a full attempt to prevent his case from becoming moot, an obligation that includes filing for a preliminary injunction and appealing denials of preliminary injunctions."); ***DiMaio v. Democratic National Committee***, 555 F.3d 1343, 1345 (11th Cir. 2009) (finding case not "capable of repetition, yet evading review" where inability to fully litigate it prior to the event sought to be enjoined was due in part to delay on account of how plaintiffs pursued their claims); ***County of Morris v. Nationalist Movement***, 273 F.3d 527, 534 (3rd Cir. 2001) (exception did not apply, and mootness precluded review on appeal, because if new dispute over future events arose, then parties "would have ample opportunity to bring a new lawsuit and to develop a record reflective of the particular circumstances attendant to that dispute."); ***Minnesota Humane Society v. Clark***, 184 F.3d 795, 797 (8th Cir. 1999) ("[w]hen a party has these legal avenues [for injunctive relief] available, but does not utilize them, the action is not one that evades review."); ***Headwaters, Inc. v. Bureau of Land Management, Medford Dist.***, 893 F.2d 1012, 1016 (9th Cir. 1989) (fact that plaintiff was unable to secure a stay pending appeal did not control whether it had sufficient time to litigate claims); ***Matter of Kulp Foundry, Inc.***, 691 F.2d 1125, 1130 (3rd Cir. 1982) (mootness exception not applicable where lack of prompt and diligent action in seeking a stay defeated review).

"too short to be fully litigated" element necessary for "capable of repetition, yet evading review."

B. Appellants Failed to Prove a Reasonable Expectation of Being Subject to the Same Conduct Again.

Even assuming Appellants could meet the first element of the "capable of repetition, yet evading review" exception, to satisfy the exception's second element, they must prove a "demonstrated probability" or "reasonable expectation," not merely a "theoretical possibility," that they will be subject to the same unlawful government action again. ***Murphy v. Hunt***, 455 U.S. 478, 482 (1982); ***Libertarian Party v. Dardenne***, 595 F.3d 215, 217 (5th Cir. 2010). In the District Court below, Appellants speculatively argued that census data will be released in the same year as supervisor elections every twenty years, therefore, the same type of controversy will repeat itself in 2031, and that purportedly excepts their claims from mootness. They make the exact same flawed argument again on this appeal.

As the District Court correctly held, a "twenty year recurrence" argument does not satisfy Appellants' burden of proof for numerous reasons. For example, the District Court properly found

> [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. Instead, the evidence

> is to the contrary. Despite the time constraints imposed by Mississippi statute, the Defendants made every effort to comply with their redistricting responsibilities. Plaintiffs have merely shown that the Defendants may be presented with an opportunity to act in the same allegedly unlawful manner in the future. This is not enough. To satisfy the second prong of the exception Plaintiffs must demonstrate a reasonable expectation that the government *will* act in that manner.

[Order Granting Motions to Dismiss at p. 8, ROA. 13-60614.2533]. The District Court also correctly recognized that it was

> apparent from the evidence and arguments at hearing that Department of Justice preclearance was the primary impediment to the counties' ability to redistrict in time for the 2011 elections. This step in the redistricting process has been removed. After the United States Supreme Court's decision in ***Shelby County, Alabama v. Holder***, 133 S.Ct. 2612 (2013), no county in Mississippi is required to obtain preclearance from the Department of Justice for changes to voting procedures, including new supervisor district lines. The court held that the formula in section 4(b) of the Voting Rights Act may no longer be used as a basis for subjecting jurisdictions to preclearance. ***Shelby Cnty.***, 133 S.Ct. at 2631.

[*Id.* at pp. 8-9, ROA. 13-60614.2533-34].

In addition to all the valid reasons the District Court explained that Appellants failed to prove any "reasonable expectation of recurrence," there are numerous others Appellants have never effectively rebutted. It is entirely uncertain when census data will be published in 2031. Since it is impossible to know when census data will be published in 2031, it is impossible to know what impact it might have on any election schedule in 2031.

Furthermore, Appellants never identified any proof demonstrating they "will be subjected to the same action again" in 2031. The 2030 census may not reveal population shifts requiring reapportionment to comply with the "one person, one vote" principle in the counties involved here. There is also no reasonable basis to conclude the particular voters here will reside in "under-represented" supervisor districts in 2031. Likewise, there is no way to determine what will be the election schedule in 2031. The candidate qualifying deadline, or other statutory mandated deadlines and requirements, may be different.[15] In turn, a different schedule might have an impact on when county reapportionment could reasonably be accomplished in advance of the 2031 elections.

And last, but not least, this Court has already underscored all of these points. On Appellants' first appeal, it explained that speculating about a similar controversy twenty years in the future, similar to Appellants' here would be entirely inappropriate. ***Hancock County***, 487 Fed. Appx. at 200 (stating "[a]lthough we could assume that this controversy will reoccur every twenty years when the election cycle and census publication coincide, we decline the invitation

[15] For instance, the qualifying deadline and filing requirements for the 2011 supervisor elections were established by Mississippi Code Section 23-15-299(2). That statute has been amended by the Legislature numerous times, and most recently in 2000, 2003, 2006, and 2007.

to engage in such speculation.").[16] That type of speculation is all Appellants have ever employed to support their "capable of repetition" argument. It does not satisfy their burden of proving the second required element of a "reasonable expectation" of recurrence.

The "capable of repetition, yet evading review" doctrine does not save Appellants claims from mootness. The District Court's findings were correct, and its dismissal of Appellants' claims should be affirmed.

CONCLUSION

The District Court explicitly followed this Court's instructions issued on Appellants' first appeal and correctly applied the law. It appropriately determined Appellants' claims are moot in light of the 2011 supervisor elections, and the "capable of repetition, yet evading review" exception does not save Appellants' claims from mootness. This Court should accordingly affirm the District Court's

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[16] *See also* ***Hall v. Beals***, 396 U.S. 45, 49-50 (1969) (declining to assume speculative contingencies to satisfy "capable of repetition, yet evading review" exception); ***McCarthy v. Ozark School Dist.***, 359 F.3d 1029, 1036 (8th Cir. 2004) (explaining "[a] speculative possibility is not a basis for retaining jurisdiction over a moot case."); ***Vivian Tankships Corp. v. State of Louisiana***, 254 F.3d 1080, 2001 WL 563773, at *3 (5th Cir. 2001) (finding speculative chain of events necessary for claims for injunctive and declaratory relief to recur insufficient to satisfy mootness exception); ***Tobin for Governor v. Illinois State Bd. of Elections***, 268 F.3d 517, 528-29 (7th Cir. 2001) (finding case moot where only pure speculation could be used to conclude political organization would find itself in same situation in future); ***New Jersey Turnpike Authority v. Jersey Cent. Power and Light***, 772 F.2d 25, 33 (3rd Cir. 1985) (recognizing "'[c]apable of repetition' is not a synonym for 'mere speculation;' it is a substantive term on which the moving party must provide a reasonable quantity of proof - perhaps even by preponderance of the evidence.").

Final Judgment dismissing these consolidated lawsuits as moot.

This the 5th day of December, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Respectfully submitted, this the 5th day of December, 2013.

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USDC No. 1:10-CV-564
USDC No. 3:11-CV-121
USDC No. 3:11-CV-122
USDC No. 3:11-CV-123
USDC No. 3:11-CV-124
USDC No. 4:11-CV-33
USDC No. 5:11-CV-28
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Sincerely,

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