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

REPLY BRIEF FOR APPELLANTS

Submitted by:
*Carroll Rhodes, Esq. MSB # 5314
Law Offices of Carroll Rhodes
Post Office Box 588
Hazlehurst, Mississippi 39083
Telephone: (601) 894-4323
Facsimile: (601) 894-1464
E-Mail: crhode@bellsouth.net
*Counsel of Record

Deborah McDonald, Esq. MSB #2384
Post Office Box 2038
Natchez, Mississippi 39121-2038
Telephone: (601) 445-5599
Facsimile: (601) 442-5400
E-Mail: attorneydmc@bellsouth.net

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

TABLE OF AUTHORITIES

CASE(S) **PAGE(S)**

Statutes and Other Authorities:

ARGUMENT IN REPLY

Plaintiffs[1] submit this reply to the argument raised by the defendants.[2] The

[1]The plaintiffs/appellants ("plaintiffs") are the Hazlehurst, Mississippi Branch of the NAACP and Nanette Thurmond-Smith, on behalf of themselves and all others similarly situated ("Copiah County plaintiffs"); Pike County, Mississippi Branch of the NAACP and Rev. Frank Lee, on behalf of themselves and all others similarly situated ("Pike County plaintiffs"); Simpson County, Mississippi Branch of the NAACP and L. J. Camper, on behalf of themselves and all others similarly situated ("Simpson County plaintiffs"); Amite County, Mississippi Branch of the NAACP and Glenn Wilson, on behalf of themselves and all others similarly situated ("Amite County plaintiffs"); Wayne County, Mississippi Branch of the NAACP and Leah Parson, on behalf of themselves and all others similarly situated (Wayne County plaintiffs"); Vicksburg, Mississippi Branch of the NAACP, on behalf of itself and all others similarly situated ("Warren County plaintiff"); Adams County, Mississippi Branch of the NAACP and Jacqueline Marsaw, on behalf of themselves and all others similarly situated ("Adams County plaintiffs").

[2]The defendants/appellees ("defendants) who filed a Brief or Letter Brief in opposition to the plaintiffs' Brief are Jim Hood, Attorney General for the State of Mississippi, ex rel. the State of Mississippi ("the Attorney General"); 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 ("Amite County defendants"); 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 ("Copiah County defendants"); Pike County, Mississippi Board of Supervisors, Pike County, Mississippi Board of Election Commissioners, Roger Graves, in his official capacity as Circuit Clerk of Pike County, Mississippi (Pike County defendants"); 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

Attorney General, Amite County defendants, Copiah County defendants, Pike County defendants, Simpson County defendants, Wayne County defendants, and Warren County defendants make several assertions of facts and legal arguments that are incorrect. Those erroneous factual assertions and legal arguments are addressed below.

1. The erroneous assertions of facts made by the defendants.

The Attorney General argues that "[i]t 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…" [Brief, Attorney General, p. 2]. That is incorrect. The plaintiffs did not allege that the existing districts were less than 10 years old.[3] To the contrary, the plaintiffs alleged that the defendants failed to redistrict

---

capacity as Circuit Clerk ("Simpson County defendants"); 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 ("Wayne County defendants"); and 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 ("Warren County defendants").

[3]The plaintiffs argued in their motion to set aside the 2011 elections filed on July 25, 2013 that "[e]ven if a county redistricting plan had been in place less than 10 years when suit was filed, the plan was still unconstitutionally malapportioned in 2011 when elections were held, and [the district court] should have enjoined those elections," [ROA 13-60614 2382, fn. 3, R. E. 148a, fn. 3, Tab 22], *citing*

to comply with the one-person one-vote mandate, the supervisor districts were malapportioned, and the plaintiffs "would be aggrieved if elections [were] held under the grossly malapportioned existing apportionment scheme with the candidates elected being allowed to hold office for the next four years." [ROA 13-60614 238-239; ROA 13-60614 238-308 and 320-337]. On a motion to dismiss, the allegations of the complaint must be construed as true with all reasonable inferences drawn in plaintiff's favor. *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). Therefore, the Attorney General's argument of a non-existent fact should not be considered. *Rankin v. City of Wichita Falls, Texas*, supra; *Causey v. Sewell Cadillac-Chevrolet, Inc.*, supra.

The Attorney General argues that candidates qualified for supervisor elections between January and March 1, 2011. [Brief, Attorney General, p. 2]. That fact is not in the record. Plaintiffs only alleged the candidate qualification and election schedule for primary and general elections. [ROA 13-60614 238-239; ROA 13-60614 238-308 and 320-337]. The plaintiffs did not allege when candidates actually qualified for supervisor elections. The allegations of plaintiffs' complaints must be construed as true with any inferences drawn in plaintiffs' favor. *Rankin v. City of Wichita Falls,*

Perry v. Perez, 565 U. S. __, 132 S. Ct. 934, 181 L. Ed. 2d 900 (2012).

Texas, supra; *Causey v. Sewell Cadillac-Chevrolet, Inc.*, supra.

The Attorney General argues that plaintiffs used unverified census data. [Brief, Attorney General, p. 5]. However, census data is verified by the United States Bureau of the Census. *Baldridge v. Shapiro*, 455 U.S. 345, at 358, 102 S. Ct. 1103, at 1111, 71 L. Ed. 2d 199 (1982). The census data was published by the Census Bureau. Therefore, it was self-authenticating, F. R. E. 902(5), and verified. *Baldridge v. Shapiro*, supra.

The Attorney General argues that plaintiffs "challenged the constitutionality of the March 1 qualifying deadline...and other established election deadlines..." [Brief, Attorney General, p. 7]. That is incorrect. Plaintiffs challenged the constitutionality of each county's apportionment scheme. [ROA 13-60614 240-241; ROA 13-60614 240-310 and 320-339]. Plaintiffs challenged the constitutionality of conducting supervisor elections using malapportioned schemes and allowing anyone elected under those schemes to hold office for a full four-year term. [ROA 13-60614 238-241; ROA 13-60614 241-310 and 320-339]. The Attorney General's argument should not be considered because it misconstrues the allegations and relief requested in plaintiffs' complaints. See *Rankin v. City of Wichita Falls, Texas*, supra; *Causey v. Sewell Cadillac-Chevrolet, Inc.*, supra.

The Attorney General argues that none of the 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." [Brief, Attorney General, p. 15]. That is incorrect. The plaintiffs did not allege that the counties had insufficient time to complete redistricting prior to the election. To the contrary, the plaintiffs argued that each county had sufficient time to complete the redistricting process and obtain preclearance prior to the 2011 elections but failed to do so. [ROA 13-60614 2632;[4] R. E. 119a, Tab 12]. In particular, the plaintiffs argued that DeSoto County redrew plans after the 2010 census was published and submitted those plans to the United States Department of Justice and obtained preclearance prior to the 2011 elections. [ROA 13-60614 2585]. Since DeSoto County completed redistricting prior to the election, the challenged counties had sufficient time to complete redistricting prior to the election.

The Simpson, Warren, and Wayne County defendants argue that their redistricting tasks was "rendered impracticable when the census data became available only months before scheduled elections." [Brief, Simpson, Warren, and Wayne County defendants, p. 13]. That is incorrect. The plaintiffs did not allege it was

---

[4]Plaintiffs argued that "[t]he census came out in February of 2011. There was sufficient time for these candidates (sic) (defendants) to redistrict if they had taken it above (sic) (upon) themselves to carry out their responsibility." [ROA 13-60614 2682,; R. E. 119a, Tab 12].

impracticable for the defendants to redistrict prior to the November 2011 general election. To the contrary, the plaintiffs argued that the defendants had sufficient time to redistrict just as DeSoto County had sufficient time to redistrict. [ROA 13-60614 2632 and 2585; R. E. 119a, Tab 12].

The Simpson, Warren, and Wayne County defendants argue that the counties proceeded in good faith to redistrict. [Brief, Simpson, Warren, and Wayne County defendants, pp. 13, 14]. That is incorrect. The plaintiffs argued that the defendants had sufficient time to redistrict just as DeSoto County but failed to do so. [ROA 13-60614 2632 and 2585; R. E. 119a, Tab 12].

The Simpson, Warren, and Wayne County defendants argue that there was "no active controversy...for which relief could be granted" after the 2011. [Brief, Simpson, Warren, and Wayne County defendants, p. 15]. That is incorrect. Plaintiffs alleged they would be aggrieved if supervisors elected in malapportioned districts served a full four-year term of office. [ROA 13-60614 238-239; ROA 13-60614 238-308 and 320-337]. Furthermore, plaintiffs requested pre-election relief and general relief. [ROA 13-60614 238-337 and 3790; R. E. 125a, Tab 13].

2. The erroneous legal arguments made by the defendants.

The Attorney General asserts that plaintiffs misconstrue this Court's holding as to what facts establish a prima facie case of unconstitutional malapportionment.

[Brief, Attorney General, p. 6, fn. 3]. The Attorney General's assertion is wrong. This Court has held that "[i]f a population deviance exceeds 10%, it constitutes a *prima facie* case of invidious discrimination that requires the [legislature] to prove a legitimate reason for the discrepancy." *Fairley v. Hattiesburg, Mississippi*, 584 F. 3d 660, at 675 (5th Cir. 2009) (emphasis added). All of the counties exceeded 10% total deviation. Therefore, a prima facie case of invidious discrimination was pled and established. *Fairley v. Hattiesburg, Mississippi*, supra.

The Attorney General, Simpson, Warren, and Wayne County defendants argue that the district court correctly held that plaintiffs' cases were moot "when the qualifying deadline passed, and the elections were held..." [Brief, Attorney General, pp. 17, 18-19 and Brief of Simpson, Warren, and Wayne County defendants, p. 24]. The district court was in error and the defendants' arguments are misguided. The plaintiffs alleged that they would be aggrieved if elections were held using malapportioned districts and candidates elected under those malapportioned districts held office for a full four-year term. [ROA 13-60614 238-239; ROA 13-60614 238-308 and 320-337]. . And, plaintiffs requested pre-election relief and general relief. [ROA 13-60614 238-337 and 3790; R. E. 125a, Tab 13]. Supervisor candidates were elected in grossly malapportioned districts, and they will serve in office a full four-year term unless this Court reverses the district court. In essence, the plaintiffs

asserted an equal population claim and an equal representation claim and requested relief pertaining to those claims. A case is not moot when a plaintiff requests broad relief, and some of that relief can still be granted. *Perez v. Texas*, 2013 WL 4784195 (W. D. Tex. 2013) (three-judge court). The supervisor elections did not moot plaintiffs' claim that they would be aggrieved if candidates elected in malapportioned districts serve a full four-year term of office in those districts. This is a clear continuing violation of plaintiffs rights of equal representation. *Daly v. Hunt*, 93 F. 3d 1212 (4th Cir. 1996); *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). Additionally, plaintiffs requested that elections not be held using malapportioned districts. Nevertheless, the elections were held using malapportioned districts. The resolution of this issue is controlled by this Court's decision in *Keller v. Gilliam*, 454 F. 2d 55 (5th Cir. 1972). *Keller* involved "an appeal in a -one man-one vote' case, in which the district court fully agreed with the principle contended for by the plaintiffs, but postponed the granting of relief for the four year period of the term of office of persons who were elected some five months after the date of the trial court's order." *Id.*, at 55. The Court held "that it was clear error for the [trial] court to permit an election to be held before the reapportionment was completed at which county supervisors would be elected *to hold office for a full four-year term*." *Id.*, at 57

(emphasis original). This Court ordered the district court to order another election under a plan that complied with the one-person one-vote mandate. *Id.*, at 57-58. This case sits on all fours with *Keller*. Plaintiffs challenged the counties malapportioned districts and sought to enjoin those elections. The district court denied plaintiffs' request for pre-election relief and allowed primaries to be held six months after suit was filed and a general election to be held eight months after suit was filed with candidates elected in grossly malapportioned districts to hold office for a full four-year term. The district court denied pre-election relief three months before political party primaries and six months before the general election. Accordingly, the district court's refusal to grant the requested relief was clear error. *Keller v. Gilliam*, supra, at 55. The district court should order a new election under a plan that comports with the one-person one-vote mandate. *Keller v. Gilliam*, supra, at 55. Therefore, plaintiffs' cases are not moot.

The Attorney General, Simpson, Warren, and Wayne County defendants argue that all of plaintiffs' claims and requests for relief are moot since the 2011 have occurred. That is not correct for another reason. The controversy is not moot because it is capable of repetition but yet evading review. See, *Norman v. Reed*, 502 U. S. 279, 112 S. Ct. 698, 116 L. Ed. 2d 711 (1992). In *Norman*, the Supreme Court held:

> We start with Reed's contention that we should treat the 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. at 287-288, 112 S. Ct. at 704-705. As stated above, the 2011 elections did not moot plaintiffs' claims or request for relief. Furthermore, there is every reason to expect the same parties (NAACP) to sue the same defendants (county election officials) in 20 years, provided the counties fail to redistrict and hold elections under schemes that fully satisfy the one-person one-vote mandate.[5] See, *Norman v. Reed*, supra. The Attorney General and county defendants argument that there will be sufficient time to complete redistricting and have any issues concerning redistricting fully litigated and decided prior to the 2030 elections is misguided. They predicate this argument on the Supreme Court's *Shelby County v. Holder* decision handed down on June 25, 2011 invalidating §4(b) of the Voting Rights Act of 1965.[6] *Id.*, 570 U. S. ___, 133 S. Ct. 2612, 186 L. Ed. 2d 651 (2013). The Attorney General

---

[5]The plaintiffs propounded interrogatories and requests for production of documents on the defendants seeking evidence of when prior redistricting plans were adopted and implemented in prior election schedules for the years 1991 and 1971. However, the district court did not require the defendants to provide that proof. That proof would have established a pattern of not redistricting malapportioned schemes prior to elections every 20 years.

[6]42 U.S.C. §1973b.

and county defendants argue that they will be able to complete redistricting because they will not have to obtain preclearance of any redistricting plans in 2030. However, this argument is misplaced for several reasons. First, as stated above, DeSoto County redistricted and obtained preclearance between the date the 2010 census was published in February, 2011 and the primary election in August, 2011.[7] The preclearance requirement was not an impediment to DeSoto County redistricting in time for the 2011 election and it should not have been an impediment to the counties involved in this case. Second, the Attorney General and county defendants did not submit any evidence that they redistricted prior to the elections in 1971 or 1991. The plaintiffs requested such evidence in mootness related discovery. [8] Third, even if the counties redistrict prior to the 2030 elections, there is no proof that any controversy could be fully litigated and decided prior to those elections.[9] Therefore, this prong of the

---

[7]DeSoto County obtained preclearance of its redistricting plan prior to the hearing held in this case in the Spring of 2011.

[8]However, the district court did not allow the discovery.

[9]The Attorney General argues that plaintiffs had plenty of time to litigate the case prior to the election. [Brief, Attorney General, pp. 30-32]. However, the Attorney General is in error. The plaintiffs did not have sufficient time to fully litigate this matter in the district court, this Court, and the United States Supreme Court between February 28, 2011, the date the cases were filed, and the November 8, 2011 general election. The district court did not issue an opinion denying plaintiffs' request for pre-election relief until May 16, 2011. The plaintiffs filed a motion to amend the opinion and judgment on May 20, 2011. Plaintiffs filed a motion for stay pending appeal in the district court on June 1, 2011. The district

mootness issue weighs in plaintiffs' favor.

The plaintiffs are not barred from arguing that post-election relief is automatic when pre-election relief is requested but not granted. This Court has held that post-election relief should be granted in a one-person one-vote case when pre-election relief is denied. *Keller v. Gilliam*, supra. Three-judge courts in Mississippi have made similar rulings. *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); *Moore v. Leflore County Board of Election Commissioners*, 351 F. Supp. 848 (N. D. Miss. 1971) (three-judge court). And, other district courts have made similar rulings. *Tucker v. Buford*, 603 F. Supp. 276 (N. D. Miss. 1985); *Fain v. Caddo Parish Police Jury*, 312 F. Supp. 54 (W. D. La. 1970); *Chargois v. Vermillion Parish School Board*, 348 F. Supp. 498 (W. D. La. 1972). Furthermore, the United States Supreme Court has held that "once a State's legislative apportionment scheme has been found

---

court entered an order on June 13, 2011 denying plaintiffs' motion to amend or alter judgment and a text order on June 13, 2011 denying their request for a stay pending appeal. Plaintiffs filed their notice of appeal on June 28 2011 and their amended notice of appeal on June 29, 2011. The plaintiffs had to order the record on appeal. There was insufficient time to file the record, brief the issues, argue the case, obtain an opinion from this Court reversing the district court, and any possible appeal to the United States Supreme Court prior to the November 8, 2011 general election. The Attorney General's arguments to the contrary are misguided. Likewise, it is highly unlikely that any malapportionment case can be fully litigated in the district court, court of appeals, and supreme court in eight months time.

to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." *Reynolds v. Sims*, 377 U.S. 533, at 585, 84 S. Ct. 1362, at 1393, 12 L. Ed. 2d 506 (1964). The Supreme Court has also held that after release of a decennial census, "no districting plan is likely to be legally enforceable if challenged, given the shifts and changes in a population over 10 years." *Georgia v. Ashcroft*, 539 U. S. 461, at 488, fn. 2, 123 S. Ct. 2498, at 2515-2516, fn. 2, 156 L. Ed. 2d 428 (2003). In the instant case, the 2010 decennial census was released on February 4, 2011. Plaintiffs challenged the existing malapportioned districting plans that indicated changes and shifts in a population for over 10 years. Accordingly, the 2011 elections should have been enjoined and post-election relief is automatic since pre-election relief is requested but not granted.

The Attorney General and county defendants argue that post-election relief is used only in the case of invidious discrimination. They limit their definition of invidious discrimination to claims of racial discrimination. That limitation is too narrow. Although, "[t]he decisions in this Circuit that have voided a state election have involved either: 1)egregious conduct striking at the very heart of the fairness of an election, *Bell v. Southwell*, 376 F. 2d 659 (5th Cir. 1967); 2) an improper refusal by a district court to enjoin an election prior to its occurrence, *Hamer v. Campbell*, 358

F. 2d 215 (5th Cir. 1966); or 3) constitutionally suspect racially discriminatory practices and a strong showing that the results of the election had possibly been affected, *Toney v. White*, 488 F. 2d 310, 315 (5th Cir. 1973) (en banc)," *Saxon v. Fielding*, 614 F. 2d 78 (5th Cir. 1980), this Court has also voided an election based on the one-person one-vote principle. *Keller v. Gilliam*, supra. Although *Bell, Hamer*, and *Toney* involved claims of racial discrimination, this Court has ordered new elections involving a claim of malapportionment. *Keller v. Gilliam*, supra. The *Keller* decision is still good law because it did not seek to overturn a prior panel's decision[10], but only sought to expand the circumstances under which a new election could be ordered. In short, this Court has essentially held that violation of the one-person one-vote rule is invidious discrimination that is egregious discrimination striking at the heart of electoral fairness. *Keller v. Gilliam*, supra. "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. at 555, 84 S. Ct. at 1378. Malapportionment "is constitutionally impermissible

[10]The plaintiffs recognize that a subsequent panel cannot overturn a prior panel's ruling. *Broussard v. Southern Pacific Transportation*, 665 F. 2d 1387, at 1389 (5th Cir. 1982). However, the *Keller* panel did not overturn any prior panel's decision. The *Keller* panel essentially held that violation of the one-person one-vote principle amounts to egregious conduct striking at the heart of electoral fairness.

under the Equal Protection Clause," *Id.*, 377 U. S. at 568, 84 S. Ct. at 1385, and constitutes invidious discrimination. *Id.*, 377 U. S. at 561-562, 84 S. Ct. at 1382. Therefore, racial discrimination is not the only basis for voiding the results of an election and requiring a new election.

Some of the county defendants imply in their argument that the plaintiffs in *Tucker v. Buford* requested post-election relief in their complaint. [Brief of Simpson, Warren, and Wayne County defendants, 29-31]. That is incorrect. The ruling in *Tucker* indicates that plaintiffs only requested pre-election relief. *Tucker v. Buford*, supra. Furthermore, the plaintiffs in *Watkins v. Mabus* only requested pre-election relief. In that case, the three-judge district court held that "although the legislative districts under the 1982 plan are doubtless unconstitutionally malapportioned for a full four-year term of office, this court, exercising its equitable powers, holds that under the facts in this case, including the imminent elections, they may be constitutionally utilized for interim relief." *Watkins v. Mabus*, supra, at 807. In *Watkins* the plaintiffs only requested pre-election relief. The three-judge district court held that elections were imminent and the state's election machinery was in process when the request was made to enjoin the upcoming elections. The court held that it would cause voter confusion and impede the election process that had already engaged if the elections were enjoined. The court also held that the existing apportionment scheme was

malapportioned and the plaintiffs would be aggrieved if candidates elected under that scheme were allowed to hold office for a full four-year term. The court, recognizing the dilemma, held that the existing apportionment scheme could be used on an interim basis only and elections would be set aside and new elections ordered prior to completion of the four-year term. *Watkins v. Mabus*, supra. Plaintiffs in the instant case presented similar facts and issues as the plaintiffs in *Watkins* and *Tucker*. Consequently, the defendants' argument that the instant case is distinguishable from *Tucker* is inapposite.

Finally, the Simpson, Warren, and Wayne County defendants cite *Miss. State Conf. of N.A.A.C.P. v. Barbour*, 2011 WL 1870222 (S. D. Miss. 2011) (three-judge court), *aff'd* 132 S. Ct. 542 (2011), and *aff'd sub nom., Miss. State Conf. of N.A.A.C.P. v. Bryant* 133 S. Ct. 2389 (2013), as support for their argue that the plaintiffs were not entitled to post-election relief. However, that case is distinguishable from the instant case primarily because a state constitutional provision required re-districting every 10 years by the end of the legislative session in the second year after a decennial census was released. *Miss. State Conf. of N.A.A.C.P. v. Barbour*, 2011 WL 1870222 , slip op. at 2-7. The Court specifically held that "Mississippi's reapportionment policy is spelled out in Article 13, Section 254 of the Mississippi Constitution [which] requires the Legislature to reapportion its electoral districts by the end of its regular session in

the second year following the 2010 decennial census." *Id.*, at p. 7. The plaintiffs in that case did not allege or argue that the state constitutional provision for re-districting was unconstitutional. *Id.*, at p. 2, 7. The three-judge district court relied on the Supreme Court's pronouncement in *Reynolds v. Sims*. In *Reynolds*, the Supreme Court held that "so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation," and the State plan requires decennial reapportionment, then "compliance with such an approach would clearly meet the minimal requirements fro maintaining a reasonably current scheme of legislative representation." *Reynolds v. Sims*, supra, 377 U.S. at 583-584, 84 S. Ct. at 1393. The three-judge district court found that Art. 13, § 254 MISS. CONST. that required legislative reapportionment every 10 years by the end of the legislative session in the second year after release of a census was a reasonably conceived plan for periodic redistricting. *Miss. State Conf. of N.A.A.C.P. v. Barbour*, supra. The *Barbour* case is inapposite to the instant case because here there is no state constitutional reasonably conceived plan for periodic redistricting. Mississippi does not have a state constitutional provision pertaining to redistricting of county supervisor districts. However, state statutory law provides that the board of supervisors, "by a three-fifths (3/5) vote of all members elected, *may at any time*, change or alter the districts..." MISS. CODE ANN. § 19-3-1. Boards of supervisors are not required to redistrict by

the second year after a decennial census is released. Supervisors may redistrict immediately after release of a census. MISS. CODE ANN. § 19-3-1. Therefore, *Miss. State Conf. of N.A.A.C.P. v. Barbour*, supra, *aff'd sub nom., Miss. State Conf. of N.A.A.C.P. v. Bryant*, supra, is inapposite to the instant case.

CONCLUSION

On the basis of the foregoing facts and authorities and the facts and authorities contained in plaintiffs' original Brief, 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 16th day of January, 2014.

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

/s/ Carroll Rhodes

*CARROLL RHODES, ESQ., MSB # 5314
LAW OFFICES OF CARROLL RHODES
POST OFFICE BOX 588
HAZLEHURST, MS 39083
TEL.: (601) 894-4323
FAX: (601) 894-1464
e-mail: crhode@bellsouth.net
*COUNSEL OF RECORD

DEBORAH MCDONALD, MSB #2384
P.O. BOX 2038

NATCHEZ, MS 39120
TEL.: (601) 445-5577
attorneydmc@bellsouth.net

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 Reply Brief for Appellants, and the Court electronically served a copy of the Record Excerpts upon the following:

Justin L. Matheny, Esq.
Special Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205
jmath@ago.state.ms.us

Harold Edward Pizette, III, Esq.
Special Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205
hpizz@ago.state.ms.us

Counsel for Intervenor Mississippi Attorney General Jim Hood

Jeremy P. Diamond, Esq.
Diamond Law Firm
Post Office Box 691
Natchez, Mississippi 39121-0691
jpdiamond@diamondlawpllc.com

Counsel for Adams County Defendants

Tommie Cardin, Esq.
Butler, Snow, O'Mara, Stevens & Cannada
Post Office Box 6010
Ridgeland, Mississippi 39157-6010

tommie.cardin@butlersnow.com

John H. Dollarhide, Esq.
Butler, Snow, O'Mara, Stevens & Cannada
Post Office Box 6010
Ridgeland, Mississippi 39157-6010
john.dollarhide@butlersnow.com

Counsel for Amite County Defendants

Elise B. Munn, Esq.
Berry & Munn, P. A.
Post Office Drawer 768
Hazlehurst, Mississippi 39083
emunn@berrymunnpa.com

Michael Garner Berry, Esq.
Markow Walker
Post Office Box 13669
Jackson, Mississippi 39236-3669
gberry@markowwalker.com

Counsel for Copiah County Defendants

Wayne Dowdy, Esq.
Dowdy & Cockerham
215 East Bay Street
Magnolia, Mississippi 39652
waynedowdy@waynedowdy.com

Alfred Lee Felder, Esq.
Felder Law Firm
Post Office Box 1261
McComb, Mississippi 39649-1261
alfelder1@bellsouth.net

Counsel for Pike County Defendants

Benjamin E. Griffith, Esq.
Griffith & Griffith
Post Office Drawer 1680
Cleveland, Mississippi 38732
bgriff@griffithlaw.net

Daniel J. Griffith, Esq.
Griffith & Griffith
Post Office Drawer 1680
Cleveland, Mississippi 38732
danny@griffithlaw.net

Counsel for Simpson, Warren, and Wayne County Defendants

This the 16th day of January, 2014.

/s/ Carroll Rhodes
CARROLL RHODES

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Certificate of Compliance with Type-Volume Limitation,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of **Fed. R. App. P. 32(a)(7)(B)** because:

X this brief contains 4,606 words, excluding the parts of the brief exempted by **Fed. R. App. P. 32(a)(7)(B)(iii)**, *or*

__ this brief uses a monospaced typeface and contains ____ lines of text, excluding the parts of the brief exempted by **Fed. R. App. P. 32(a)(7)(B)(iii)**.

2. This brief complies with the typeface requirements of **Fed. R. App. P. 32(a)(5)** and the type style requirements of **Fed. R. App. P. 32(a)(6)** because:

X this brief has been prepared in a proportionally spaced typeface using Word Perfect 12 Program 14 font size Times New Roman, *or*

__ this brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

/s/ Carroll Rhodes
Attorney for Plaintiffs-Appellants
Dated: January 16, 2014