

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

**MISSISSIPPI STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, THOMAS PLUNKETT, ROD
WOULLARD, and HOLLIS WATKINS, on behalf of themselves
and all others similarly situated**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:11-cv-159TSL-EGJ-LG-MTP

**HALEY BARBOUR, in his official capacity as
Governor of the State of Mississippi, JIM HOOD,
in his official capacity as Attorney General of the
State of Mississippi, and DELBERT HOSEMANN,
in his official capacity as Secretary of State of the
State of Mississippi, as members of the State Board
of Election Commissioners; THE MISSISSIPPI
REPUBLICAN PARTY EXECUTIVE COMMITTEE;
THE MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE
COMMITTEE; and CONNIE COCHRAN, in her official
capacity as Chairman of the Hinds County, Mississippi
Board of Election Commissioners, on behalf of herself
and all others similarly situated**

DEFENDANTS

AND

**APPORTIONMENT AND ELECTIONS COMMITTEE
OF THE MISSISSIPPI HOUSE OF REPRESENTATIVES;
MISSISSIPPI STATE SENATE DEMOCRATIC CAUCUS
AND STATE DEMOCRATIC SENATORS, in their individual
capacities; TERRY C. BURTON, SIDNEY BONDURANT,
BECKY CURRIE, and MARY ANN STEVENS**

INTERVENORS

**PLAINTIFFS' MOTION TO SET ASIDE THE 2011 LEGISLATIVE
ELECTION RESULTS AND ORDER SPECIAL LEGISLATIVE
ELECTIONS FOR ALL LEGISLATIVE DISTRICTS IN 2013**

COME NOW the plaintiffs, the Mississippi State Conference of the National Association for the Advancement of Colored People ("NAACP"), Thomas Plunkett, Rod Woullard, and Hollis

Watkins, on behalf of themselves and all others similarly situated,¹ pursuant to the Memorandum Opinion and Order [Doc. 124] entered by the Court on May 16, 2011, and move the Court to enter an Order setting aside the 2011 legislative election results and scheduling special legislative elections for all legislative districts in 2013 on the following grounds:

1. This Court noted and all parties agreed that the legislative apportionment scheme under the Benchmark plans for the Mississippi Senate and the Mississippi House of Representatives when the instant case was filed were malapportioned.

2. Legislative elections for members of the Mississippi Senate and the Mississippi House of Representatives were held in 2011 using the malapportioned Benchmark plans in existence when the elections were held.

3. This Court followed Supreme Court precedent² and held that since the Legislature was reapportioned in 2002 and the Mississippi Constitution did not require reapportionment until the regular session of the Legislature in the second year following the decennial census, legislative redistricting would not be required until 2012. *Mississippi State Conference of N.A.A.C.P. v. Barbour*, 2011 WL 1870222 (S. D. Miss. 2011) (three-judge court), *aff'd*, ___ U. S. ___, 132 S. Ct. 542, 181 L. Ed. 2d 343 (2011).

4. Legislative elections were held using grossly malapportioned districts in 2011. The overall deviation percentage for districts in the Mississippi Senate is 69.08%, and the overall deviation percentage for districts in the Mississippi House of Representatives is 134.35%.

¹Plaintiffs filed the case as a class action. However, plaintiffs have not filed a formal motion for class certification yet.

²This Court followed the holding of the Supreme Court in *Reynolds v. Sims*, 377 U. S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

5. Members of the Mississippi Senate and Mississippi House of Representatives who were elected in 2011 took office in January, 2012, and another regular legislative election will not occur under state law until 2015 with persons elected taking office in January, 2016.

6. Plaintiffs will be injured and suffer dilution of their vote and voting strength if Legislators who were elected to office in grossly malapportioned districts serve for a full four-year term in those grossly malapportioned districts.

7. The Mississippi Senate reapportioned itself in 2012 and obtained preclearance of its plan from the United States Department of Justice on September 14, 2012.³

8. The Mississippi House of Representatives reapportioned itself in 2012 and obtained preclearance of its plan from the United States Department of Justice on September 14, 2012. The Mississippi Attorney General has filed a copy of the preclearance letter in this case.

9. The Mississippi Attorney General was notified of the preclearance of the reapportionment plans for the Mississippi Senate and Mississippi House of Representatives on September 17, 2012.⁴ [Doc. 139].

10. Although the legislatively enacted 2012 Senate Plan complies with the one-person, one-vote principle,⁵ that Plan⁶ dilutes African-American voting strength⁷ and results in

³The Mississippi Attorney General has filed a copy of the preclearance letter in this case.

⁴The Mississippi Attorney General filed notice of the preclearance on September 17, 2012. [Doc. 139].

⁵The total range of deviation in the 2012 Senate Plan is 9.30%.

⁶A copy of the 2012 Senate Plan is attached hereto as Exhibit A3 and incorporated herein.

⁷The 2012 Plan contains 12 majority black districts and 12 majority black voting age population districts when compared to the Benchmark Plan that contains 14 black majority

discrimination against African-American voters in violation of § 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973. Therefore, the 2012 Senate Plan should not be used for special elections.

11. Although the legislatively enacted 2012 House Plan complies with the one-person, one-vote principle,⁸ that Plan⁹ dilutes African-American voting strength¹⁰ and results in discrimination against African-American voters in violation of § 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973. Therefore, the 2012 House Plan should not be used for special elections.

12. The Court should draw a plan that complies with the one-person, one-vote principle of the 14th Amendment's Equal Protection Clause and § 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973.

13. The Court should not allow Legislators elected under a districting scheme that is grossly malapportioned to remain in office a full four-year term.

14. Plaintiffs request the Court to void and set aside the 2011 legislative election results and order special legislative elections for 2013¹¹ under a Court drawn plan that complies with the

districts and 13 black voting age majority districts and the 2011 Interim Plan offered by plaintiffs that contained 15 black majority districts and 15 black voting age majority districts.

⁸The total range of deviation in the 2012 House Plan is 9.98%.

⁹A copy of the 2012 House Plan is attached hereto as Exhibit A4 and incorporated herein.

¹⁰The 2012 Plan contains 39 majority black districts and 39 majority black voting age population districts when compared to the Benchmark Plan that contains 41 black majority districts and 41 black voting age majority districts and the 2011 Interim Plan offered by plaintiffs that contained 44 black majority districts and 44 black voting age majority districts.

¹¹Generally, special elections are held in November. See, § 23-15-833, Miss. Code Ann.

one-person, one-vote principle of the 14th Amendment's Equal Protection Clause and § 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973.

WHEREFORE, PREMISES CONSIDERED, plaintiffs request the Court to void and set aside the 2011 legislative election results and order special legislative elections for 2013¹² under a Court drawn plan that complies with the one-person, one-vote principle of the 14th Amendment's Equal Protection Clause and § 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973.

This the 14th day of October, 2012.

Respectfully submitted,
MISSISSIPPI STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
THOMAS PLUNKETT, ROD WOULLARD,
and HOLLIS WATKINS, on behalf of
themselves and all others similarly situated

/s/ Carroll Rhodes

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¹²Generally, special elections are held in November. See, § 23-15-833, Miss. Code Ann.

CERTIFICATE OF SERVICE

I, Carroll Rhodes, do hereby certify that I have this date electronically filed the foregoing Motion with the Clerk of Court using the ECF system which sent notification of such filing to the following:

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This the 14th day of October, 2012.

/s/ Carroll Rhodes

CARROLL RHODES