

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

JOHN ROBERT SMITH, SHIRLEY HALL,
and GENE WALKER

PLAINTIFFS

VS.

Civil Action No. 3:01-cv-855-HTW-DCB

DELBERT HOSEMANN, Secretary of State of Mississippi;
JIM HOOD, Attorney General for the State
of Mississippi; HALEY BARBOUR, Governor
of Mississippi; MISSISSIPPI REPUBLICAN
EXECUTIVE COMMITTEE; and MISSISSIPPI
DEMOCRATIC EXECUTIVE COMMITTEE

DEFENDANTS

and

BEATRICE BRANCH, RIMS BARBER,
L. C. DORSEY, DAVID RULE, JAMES
WOODARD, JOSEPH P. HUDSON, and
ROBERT NORVEL

INTERVENORS

CONSOLIDATED WITH

KELVIN BUCK, ET AL.

PLAINTIFFS

vs.

Civil Action No. 3:11-cv-717 HTW-LRA

HALEY BARBOUR, ET AL.

DEFENDANTS

MEMORANDUM OPINION

1 This matter is before us on the motion of the Mississippi Republican
2 Executive Committee (“MREC”) to amend the final judgment we entered on
3 February 26, 2002. That judgment implemented the four-district congressional
4 redistricting plan we adopted in our order of February 4, 2002, and ordered use

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5 of the court-drawn plan in every succeeding congressional primary and general
6 election for the State of Mississippi until the State produced a constitutional and
7 precleared plan of its own. To date, the State of Mississippi has not produced
8 such a plan and, thus, every congressional primary and general election in
9 Mississippi since February 26, 2002, has occurred under the court-drawn plan.

10 In 2010, the federal government conducted the usual decennial census,
11 which indicated that the four districts in the court-drawn plan are now
12 malapportioned. The MREC urges us to amend our final judgment to equalize
13 the malapportioned districts in order to comply with the constitutional
14 requirement of one person, one vote.

15 At a status conference on November 22, 2011, we advised the parties that
16 we would defer ruling on this motion until after December 4, 2011, which was
17 the deadline for the Mississippi Legislature's Standing Joint Congressional
18 Redistricting Committee (the "Committee")¹ to present a reapportionment plan
19 to the Governor and the Legislature. As we have emphasized throughout this
20 litigation, the primary responsibility for reapportionment lies with the State of
21 Mississippi; if the State of Mississippi can timely reapportion the districts in a
22 constitutionally acceptable manner, the federal courts have no duties to draw the
23 district lines. Once it became clear that the State of Mississippi could not have
24 a precleared redistricting plan in place by January 13, 2012 (the deadline to
25 qualify for candidacy for the United States House of Representatives in
26 Mississippi, *see* Miss. Code Ann. § 23-15-299), we concluded that this court
27 should assert its jurisdiction and craft a plan for reapportioning Mississippi's

¹ Under Miss. Code Ann. § 5-3-123, "[t]he members of the [C]ommittee shall draw a plan to redistrict, according to constitutional standards, the United States congressional districts for the state of Mississippi no later than thirty (30) days preceding the convening of the next regular session of the legislature." Miss. Code Ann. § 5-3-123. The next regular session of the Mississippi Legislature after the release of the census data is set to convene on January 3, 2012.

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28 congressional districts in order to assure that the congressional election
29 scheduled under the laws of the State of Mississippi is timely implemented
30 under a plan that satisfies both the requirements of the Constitution and Section
31 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

32 I.

33 The facts and procedural history of this case are set out in our previous
34 orders and opinions. *See Smith v. Clark*, 189 F. Supp. 2d 503 (S.D. Miss. Jan.
35 15, 2002); *Smith v. Clark*, NO. 3:01-CV-855WS (S.D. Miss. Feb. 19, 2002). In
36 order to resolve the issues presently before us, we necessarily set out additional
37 background facts.

38 On February 26, 2002, we entered a final judgment in this case that
39 enjoined the use of Mississippi's then existing five-district congressional plan
40 because the number of congressional representatives allotted to the state had
41 been reduced from five to four as a result of the 2000 Decennial census. The
42 five-district plan remains codified at Miss. Code Ann. § 23-15-1037, however.
43 Our final judgment provided as follows:

44 For the reasons stated in our opinions of February 19, 2002, and
45 February 26, 2002, the defendants are hereby enjoined from
46 implementing the congressional redistricting plan adopted by the
47 Chancery Court for the First Judicial District of Hinds County,
48 Mississippi.

49 It is further ordered that the defendants are enjoined from
50 implementing the former five district congressional redistricting
51 plan codified at Miss. Code Ann. § 23-15-1037.

52 It is further ordered that the defendants implement the
53 congressional redistricting plan adopted by this court in its order of
54 February 4, 2002, for conducting congressional primary and general
55 elections for the State of Mississippi in 2002.

56 It is further ordered that the defendants shall use the congressional
57 redistricting plan adopted by this court in its order of February 4,
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61 2002, in all succeeding congressional primary and general elections
62 for the State of Mississippi thereafter, until the State of Mississippi
63 produces a constitutional congressional redistricting plan that is
64 precleared in accordance with the procedures in Section 5 of the
65 Voting Rights Act of 1965.

66
67 This court shall retain jurisdiction to implement, enforce, and
68 amend this order as shall be necessary and just.

69 *Smith v. Clark*, 189 F. Supp. 2d 548, 559 (S.D. Miss. Feb. 26, 2002), *aff'd sub.*
70 *nom.*, *Branch v. Smith*, 538 U.S. 254 (2003). Since we entered this final
71 judgment, the Mississippi Legislature has failed to produce any redistricting
72 plan, let alone one that has obtained federal preclearance from either the United
73 States District Court for the District of Columbia or the United States
74 Department of Justice as required under Section 5 of the Voting Rights Act. As
75 a result, under the terms of the final judgment, every subsequent congressional
76 primary and general election has occurred under the four-district plan drawn by
77 this court.

78 The federal government has now completed the 2010 Decennial census.
79 Although the results of the census do not change the State of Mississippi's
80 number of congressional representatives, the four districts now stand
81 malapportioned because of population shifts among the districts. Thus, if these
82 same districts are utilized in subsequent congressional primary and general
83 elections, voters' rights will be violated under the Constitution and the Voting
84 Rights Act.

85 On June 27, 2011, the Chairman of the MREC, Arnie Hederman, gave
86 notice to the Mississippi Secretary of State, under Miss. Code Ann. § 23-15-1085,
87 that the Republican Party intends to hold a presidential primary in 2012. Under
88 Section 23-15-1085, the Secretary of State has the duty to "issue a proclamation
89 setting every party's congressional and senatorial primary elections" for the date
90 required by statute. *Id.* The presidential primary, set by Section 23-15-1081,

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91 will be held on March 13, 2012, and under Section 23-15-1083, the party
92 primaries for members of the United States House of Representatives will be
93 held on the same day. And, under Section 23-15-299, candidates seeking to run
94 for a congressional seat must qualify with the appropriate State Executive
95 Committee sixty days before the primary date, which in this presidential election
96 year will be January 13, 2012.

97 Asserting that the Mississippi Legislature had not produced a
98 constitutionally acceptable and precleared congressional redistricting plan , and
99 that it was not likely to do so before the qualifying date of January 13, 2012, the
100 MREC filed a motion on September 12, 2011, requesting that we amend our final
101 judgment under Federal Rule of Civil Procedure 60(b)(5) on the ground that
102 applying the judgment prospectively is no longer equitable. Specifically, the
103 MREC argued that there is no likelihood the Mississippi Legislature – which has
104 not adopted a congressional redistricting plan since 1991 – will adopt a plan by
105 statute, obtain the Governor’s signature, and obtain preclearance approval,
106 between the time the Legislature convenes on January 3, 2012, and the
107 qualifying date of January 13, 2012. Accordingly, the MREC requested that we
108 modify the final judgment, to satisfy the Constitution and the Voting Rights Act.
109 The Smith Plaintiffs and Governor Haley Barbour² joined in the MREC’s motion.

110 Attorney General Jim Hood³ filed a response on September 29, 2011,
111 objecting to the MREC’s motion on the grounds that it is premature, that the
112 MREC lacks standing, and that this court lacks authority under Rule 60(b)(5)
113 to amend the judgment.

² Under Fed. R. Civ. P. 25(d), Governor Haley Barbour is substituted for former Governor Ronnie Musgrove.

³ Under Fed. R. Civ. P. 25(d), Attorney General Jim Hood is substituted for former Attorney General Mike Moore.

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114 On October 10, 2011, Secretary of State Delbert Hosemann⁴ filed his
115 response. He contended the legislative Committee should be allowed until
116 December 4, 2011, to present a plan. In the event the Committee did not meet
117 its deadline, Secretary Hosemann urged this court to “take whatever action it
118 deems necessary” to insure the completion of the redistricting process by
119 January 13, 2012. According to Secretary Hosemann, an untimely redistricting
120 process could result in a special election at a cost to Mississippi taxpayers of
121 approximately \$750,000.

122 On October 12, 2011, the Intervenors filed a response, arguing that
123 redistricting should be addressed in a new lawsuit.

124 On November 8, 2011, we ordered the parties to appear for a status
125 conference on November 22, 2011. On November 21, a class-action complaint
126 was filed by seven African-American voting age persons representing each of the
127 state’s four congressional districts (hereinafter the “Buck Plaintiffs”). The Buck
128 Plaintiffs seek a declaratory judgment that the existing redistricting plan
129 contains malapportioned districts violating one person, one vote. They submit
130 their own plan and seek injunctive relief enjoining congressional elections to be
131 conducted under their proposed plan.

132 On November 29, 2011, Chief Judge Jones of the Fifth Circuit appointed
133 the members of this court to serve as the members of the three-judge district
134 court to hear and resolve the Buck Plaintiffs’ lawsuit under 28 U.S.C. § 2284.
135 On December 7, the Buck Plaintiffs filed an amended complaint asserting the
136 same allegations and requesting identical relief. On December 19, we entered
137 an order consolidating the Buck Plaintiffs’ lawsuit with the initial case in the
138 interest of judicial economy and conflict preclusion.

⁴ Under Fed. R. Civ. P. 25(d), Secretary of State Delbert Hosemann is substituted for former Secretary of State Eric Clark.

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139 During the status conference on November 22, 2011, the parties iterated
140 the arguments made in their responses to the MREC's motion.⁵ After the
141 hearing, we saw no hope that the Mississippi Legislature would produce a timely
142 plan. We explained, however, that we would take no action until the December
143 4, 2011, deadline had passed for a proposed plan to be produced by the
144 Committee. If the Committee failed to act timely, however, we informed the
145 parties that we would move forward with drawing a new plan in order to have
146 a final plan in place by January 13, 2012. We requested that the parties submit
147 comments on the plan submitted by the Buck Plaintiffs by December 12, 2011.

148 As anticipated, the Committee did not produce a plan by December 4,
149 2011. Thus, on December 6, in order to insure the timely election of
150 congressional representatives, this court ordered the MREC to purchase
151 redistricting software for the court to use in drafting a proposed plan
152 reapportioning Mississippi's four congressional districts. In accordance with the
153 terms of that Order, the MREC delivered the software to this court on December
154 8.

155 On December 12, 2011, we received various responses and criticisms to the
156 Buck Plaintiffs' plan. Relevant to the question of our authority to act under Rule
157 60(b)(5), Attorney General Hood said that he no longer objects to this court
158 modifying the final judgment, although he characterizes it as a "last resort."

159 On December 19, 2011, this court filed its proposed plan, attached hereto
160 as an appendix. Included in the order were the factors considered in drawing

⁵ During the hearing, the Smith Plaintiffs proffered that they lived in the same districts as they did in 2002, when they filed the original complaint in this case. Attorney General Hood's argument that no one had standing to assert a one person, one vote challenge to the current plan was thus refuted. As no one disputes that all of Mississippi's four congressional districts stand malapportioned after the 2010 Decennial census, the Smith Plaintiffs' proffer is sufficient to establish their standing to initiate this challenge. Furthermore, the suggestion that the MREC, a defendant in this case, may not seek relief from the judgment under Rule 60(b)(5) is meritless.

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161 the new plan, as well as an instruction to the parties that any and all objections,
162 comments, and suggestions to the new plan were to be submitted to the court by
163 December 22, 2011. On that date, no party objected to the proposed plan, nor
164 did any party have any comments or suggestions. In short, all parties accepted
165 the court-drawn plan.

166 II.

167 In explaining the action we have taken and are taking, we will first
168 address our authority to amend the final judgment under Rule 60(b)(5). We then
169 address our amendment of the final judgment in accordance with the December
170 19, 2011, order proposing a new congressional redistricting plan.

171 A.

172 As we have set out above, the MREC, joined by the Plaintiffs, Governor
173 Barbour, and Secretary Hosemann, have moved to amend the final judgment
174 entered on February 26, 2002, which, among other things, implemented the
175 current four-district plan adopted by this court in its order of February 2, 2002.
176 The basis for the motion to amend is that applying the judgment prospectively
177 is no longer equitable in the light of the currently malapportioned districts and
178 the applicable law. Although no party now challenges our authority under Rule
179 60(b)(5) to amend our final judgment, we *sua sponte* hold that, under Rule
180 60(b)(5), we have jurisdictional and procedural authority to amend the final
181 judgment and draw a new plan.

182 Under Rule 60(b)(5) a court, on motion and just terms, “may relieve a
183 party . . . from a final judgment, order, or proceeding” if applying the judgment
184 “prospectively is no longer equitable.” The language is clear and authoritative.
185 To obtain relief, the movant must show that: “(1) the judgment has prospective
186 application and (2) it is no longer equitable that it should so operate.” *Kirksey*
187 *v. City of Jackson*, 714 F.2d 42, 43 (5th Cir. 1983).

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188 “Like the traditional equity rule on which it is based, [R]ule 60(b)(5)
189 applies only to judgments that have prospective effect as contrasted with those
190 that offer a present remedy for a past wrong.” *Cook v. Birmingham News*, 618
191 F.2d 1149, 1152 (5th Cir. 1980) (internal quotation marks omitted). The phrase
192 is not defined in the text of Rule 60(b)(5) or in its accompanying Advisory
193 Committee Notes. Extrapolating from the Supreme Court’s holdings in
194 *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421, 431 (1855), and
195 *United States v. Swift & Co.*, 286 U.S. 106, 114, 114–15 (1932), however, the
196 D.C. Circuit has held that “whether an order or judgment has prospective
197 application within the meaning of Rule 60(b)(5) [depends on] whether it is
198 ‘executory’ or involves ‘the supervision of changing conduct or conditions.’”
199 *Twelve John Does v. District of Columbia*, 841 F.2d 1133, 1139 (D.C. Cir. 1988).
200 Under either definition of prospective application examined in *Twelve John*
201 *Does*, our final judgment has prospective application.

202 First, the final judgment is executory by its terms. It *orders* the
203 defendants to perform a future act, i.e., to use the court-drawn congressional
204 redistricting plan in all succeeding elections. Although the order is in effect
205 until the State of Mississippi produces its own plan, that does not undermine its
206 executory character. Indeed, the Supreme Court of Mississippi has recognized
207 that because the Legislature failed to produce a congressional redistricting plan,
208 the State “is currently under a federal court injunction ordering that the State
209 use the congressional districts drawn by the three-judge court,” which “will
210 remain in place *until* that court vacates it or the Legislature draws a
211 redistricting plan which is then federally precleared under § 5.” *Mauldin v.*
212 *Branch*, 866 So.2d 429, 435–36 (Miss. 2003) (emphasis added).

213 Second, the final judgment requires this court to supervise changing
214 conditions between the parties. *See Swift*, 286 U.S. at 114 (“The distinction is
215 between restraints that give protection to rights fully accrued upon facts so

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216 nearly permanent as to be substantially impervious to change, and those that
217 *involve the supervision of changing conduct or conditions* and are thus
218 provisional and tentative.” (emphasis added)). The conditions underlying the
219 final judgment, the population of the districts, are not nearly so permanent as
220 to be substantially impervious to change. It is a fact of life that populations shift
221 over time, and as a result, we are now required to supervise amendment of the
222 final judgment on the basis of changed conditions. Our express retention of
223 “jurisdiction to implement, enforce, and amend [the] order as shall be necessary
224 and just” supports our conclusion regarding the prospective nature of the final
225 judgment. In *Cook v. Birmingham News*, the Fifth Circuit explained that the
226 consent decree in question did not have prospective application, in part, because
227 “unlike the district court that had approved the decree at issue in the *Swift* case,
228 [the district court here] did not state that it *reserved power to modify the decree*
229 *or that it retained jurisdiction* over the case. It would have been natural for the
230 decree to have contained such a provision if it had been intended that the court
231 supervise the parties’ compliance.” *Cook*, 618 F.2d at 1153 (emphasis added)
232 (internal citation omitted). Our language retaining jurisdiction in the final
233 judgment, far from being superfluous as has been suggested, demonstrates that
234 we intended to continue to supervise the parties’ compliance with the order and
235 any changed conditions that could make the defendants’ compliance with the
236 final judgment problematic.⁶ Indeed, we were effectively ordering a sovereign

⁶ Our reservation of jurisdiction takes into account Judge Rubin’s observations in footnote one in *Jackson v. DeSoto Parish School Board*, 585 F.2d 726 (5th Cir. 1978). In *Jackson*, a class of African-America citizens challenged the constitutionality of a reapportionment scheme for the election of the parish police jury and the local school board, which had been formulated as a result of prior litigation. *Id.* at 728. In footnote one of the opinion Judge Rubin stated:

The plaintiffs might have moved under Rule 60(b)(5), F.R.C.P., for relief from the prior judgment on the grounds that it “is no longer equitable that the judgment should have prospective application.” Plaintiffs did not seek to

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237 state in precise terms to perform, and to continue to perform, certain acts to
238 comply with the federal Constitution and statutes – no light thing for us or it.
239 It is not the sort of thing to say, then to cast aside and allow to rot in our
240 presence.

241 Now that we have determined that we have the power to amend or modify
242 the final judgment under Rule 60(b)(5) because the final judgment has
243 prospective application, we turn to the second question posed: whether legal or
244 factual circumstances have changed that make applying the final judgment
245 prospectively no longer equitable. “The party seeking to modify an injunction
246 bears the burden of establishing that a significant change in factual conditions
247 or the law warrants revision of the injunction.” *United States v. Texas*, 601 F.3d
248 354, 373 (5th Cir. 2010) (citing *Rufo v. Inmates of the Suffolk Cnty. Jail*, 502
249 U.S. 367, 383–84 (1992)). It is undisputed that factual conditions have changed
250 since we entered the final judgment in 2002. The parties are all in agreement
251 that the results of the 2010 Decennial census show that the four districts are
252 now malapportioned, violating the constitutional one person, one vote

overturn elections that took place under the challenged apportionment scheme, but to secure a modification of the plan before any more elections were held. A Rule 60(b) motion would have allowed the judge to consider within a single action all issues relating to the DeSoto Parish apportionment plan. We note, however, that in reapportionment, unlike school desegregation and institutional reform cases, the court’s jurisdiction is not continuing, and the plan, once adopted and acted upon, does not require further judicial supervision.

Id. at 730 n.1 (internal citation omitted).

This footnote is dicta in a case that did not present a question relating to Rule 60(b)(5). Even if it were not dicta the case does not bar our proceeding under Rule 60(b)(5) here because we expressly reserved jurisdiction, unlike the district court’s original order in *Jackson*. Indeed, other courts have relied, in part, on this footnote to deny motions to amend in cases concerning reapportionment schemes, but again, our proceeding here is consistent with those courts to the extent they have relied on the absence of any express reservation of jurisdiction. See *Perry-Bey v. City of Norfolk, Va.*, 678 F. Supp. 2d 348, 382 (E.D. Va. 2009); *King v. State Bd. of Elections*, 979 F. Supp. 582, 590 (N.D. Ill.), *vacated on other grounds*, 519 U.S. 978 (1996).

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253 requirement. As the deadline for the Committee to submit a plan has passed,
254 all parties agree that the plan must be modified and redrafted by this court in
255 order to comply with the statutory deadlines for candidate qualifying and
256 primary elections. Thus, we hold that the moving parties have demonstrated a
257 significant change in factual conditions warranting revision of the final
258 judgment.

259 B.

260 Accordingly, attached hereto is the court-drafted and party-accepted
261 congressional redistricting plan for the State of Mississippi under the 2010
262 Decennial census. This court proposed this plan to the parties in an order
263 entered on December 19, 2011. No party objected to the proposed plan.

264 At the status conference on November 22, 2011, all of the parties
265 expressed a preference for using this court's current plan, with only such
266 modifications as were necessary to equalize the population among the four
267 districts. That is what we have done. All of the factors that we considered in
268 crafting our previous plan, set out in our order of February 4, 2002, and our
269 opinion of February 19, 2002, were taken into account in making the changes
270 necessary to equalize population among the districts, except that we did not have
271 to consider combining two existing districts, as we did ten years ago. The factors
272 we considered are specifically addressed in the explanation accompanying the
273 December 19, 2011 order and below.

274 C.

275 In drafting the plan, this Court considered many of the same factors that
276 we considered when we drafted Mississippi's congressional redistricting plan ten
277 years ago. During the past ten years, Mississippi's population grew from
278 2,844,658 to 2,967,297. That growth was not, however, consistent among the
279 four congressional districts. The population of District 1 grew more than
280 Districts 3 and 4, and District 2 lost population during the last ten years. In

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281 order to equalize the population among the districts, approximately 46,000
282 people had to be removed from District 1; 27,000 people had to be removed from
283 Districts 3 and 4 (combined); and 73,000 people had to be moved into District 2.
284 Nevertheless, we made as few changes as possible to the current districts. Some
285 changes were inevitable, however. Yet, the core constituencies of each district
286 were substantially preserved, as reflected in the attached Core Constituencies
287 Report.

288 When the proposed map is compared to the 2002 Court Plan now in effect,
289 the major changes are summarized as follows:

290 Panola, Yalobusha, and Grenada Counties were moved from District 1 to
291 District 2. Leake County is no longer split between Districts 2 and 3, but the
292 entire county is now in District 2. Winston and Webster Counties are no longer
293 split between Districts 1 and 3, but they are entirely in District 1. We found it
294 necessary to split Oktibbeha County between Districts 1 and 3. Jasper County
295 is no longer split, but is now all in District 3. Marion and Jones Counties are no
296 longer split, but are wholly in District 4. Finally, Clarke County had to be split
297 between Districts 3 and 4.

298 All of these changes were necessary in order to equalize the population
299 among districts and to prevent retrogression in District 2, while maintaining the
300 research universities in separate districts and not extending travel distance
301 within the current elongated District 2. A retrogression inquiry under Section
302 5, by definition, requires a comparison of a jurisdiction's new voting plan with
303 its existing plan to determine whether the new plan preserves current minority
304 voting strength. Undermining the current exercise of the electoral franchise by
305 racial minorities would amount to "backsliding." This, the court cannot allow.
306 *Georgia v. Ashcroft*, 539 U.S. 461, 477-78 (2003).

307 Other minor changes were made in order to balance the population in
308 Districts 2 and 3, and to avoid splitting municipalities other than the City of

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309 Jackson, which was split under the 2002 Court Plan. These changes include
310 moving the Gluckstadt precinct in Madison County from District 2 to District 3.
311 This change was necessary to avoid dividing the City of Madison, which annexed
312 a portion of that precinct after the 2002 Court Plan went into effect. Two
313 precincts in northern Madison County (Cedar Grove and Ratliff's Ferry) were
314 moved from District 3 to District 2, and several precincts in the downtown
315 Jackson area in Hinds County were shifted from District 2 to District 3, which
316 already had a presence in the City of Jackson.

317 1.

318 Population Equality

319 The United States Constitution mandates a good-faith effort to ensure, as
320 nearly as is practicable, that a State's congressional districts reflect equal
321 population. This Court achieved substantial population equality while splitting
322 only four of eighty-two counties and without splitting any precincts or any cities
323 other than the City of Jackson, which already had been split under the 2002
324 Court Plan, with the approbation of Mayor Harvey Johnson.⁷ The population
325 deviation range is from +38 people in District 2 to -48 people in District 4. This
326 slight deviation is de minimis, necessary, and acceptable in order to avoid
327 dividing community interests, voter confusion and government expense that
328 burdens the governments and the governed when counties and municipalities
329 are split between congressional districts.

330 2.

331 Majority-Minority District

332 The Voting Rights Act requires that one congressional district in
333 Mississippi be maintained with an appropriate majority of African-American
334 voting-age residents. This district is represented on the map as District 2.

⁷ We note that this Court is not required to adopt the preferences of politicians, but may consider any of their suggestions recognized by the jurisprudence of Section 5.

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335 Under the 2002 Court Plan, African-Americans constituted 59.20% of the voting-
336 age population. District 2 under the 2002 Court Plan now has an African-
337 American voting-age population of 63.3%. Under this Court's proposed plan,
338 African-Americans constitute 61.36% of the voting-age population in District 2.
339 This result prevents retrogression of the voting rights of African-American
340 residents of District 2 under Section 5 of the Voting Rights Act.

341 3.

342 Compactness

343 This Court has attempted to achieve, as nearly as possible, four compact
344 districts. As we observed ten years ago, the ability to create compact districts
345 is limited by the distribution of population and the need to prevent retrogression
346 in District 2. Thus, sparsely populated districts necessarily will be
347 geographically larger than heavily populated districts.

348 4.

349 County and Municipal Boundaries

350 The proposed plan splits only four counties: Hinds, Madison, Oktibbeha,
351 and Clarke. Eight counties were split under this Court's 2002 plan. We think
352 this fact is a significant improvement over the former plan.

353 The large population in Hinds and Madison Counties, as well as the need
354 to prevent retrogression in District 2, necessitated the splitting of those counties
355 between Districts 2 and 3. Clarke County is split only because it is necessary to
356 equalize the population between Districts 3 and 4. Oktibbeha County is split to
357 equalize the population in District 1 and to maintain a major university in
358 District 3. The only municipality that is split is the City of Jackson, which was
359 split under the 2002 Plan. Ten years ago, Mayor Johnson testified that he
360 preferred that the City of Jackson be represented by two congressmen.⁸ Because

⁸ See *supra* footnote 7.

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361 Jackson is the State's largest city, it would be difficult to devise a plan that does
362 not split Jackson while at the same time respecting the one person, one vote
363 principle and preventing retrogression in District 2.

364 5.

365 Historical and Regional Interests

366 The plan preserves as much as possible, given the constraints of
367 population equality and Section 5 of the Voting Rights Act, the core historical
368 and regional interests of the Mississippi River/Delta region, East Central
369 Mississippi, Southwest Mississippi, North Mississippi, and the Gulf Coast
370 region.

371 6.

372 Universities and Military Bases

373 The plan is drawn to continue to assure that the four major research
374 universities are in separate districts. The military bases located in Lowndes,
375 Lauderdale, and Harrison Counties remain in separate districts under this
376 Court's plan.⁹

377 7.

378 Growth Areas

379 This Court has continued to make an effort to place the most rapidly
380 growing areas of the State into separate districts as much as possible given the
381 legal constraints that determine the configurations of each district.

382 8.

383 Incumbent Residences

⁹ We note that this Court is not required to assure that the military bases and major research universities are in separate districts, but may consider this factor in drawing the districts.

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411 Having determined that the final judgment we entered on February 26,
412 2002 has prospective application and that the movants have shown a significant
413 change in factual conditions warranting amendment of the final judgment, we
414 hold that, under Rule 60(b)(5), the final judgment shall be amended in
415 accordance with the order of December 19, 2011 and in accordance with this
416 opinion.

417 Accordingly, the MREC's motion to amend is granted, and the Buck
418 Plaintiffs' motion for preliminary and permanent injunctive relief is denied as
419 moot. The congressional redistricting plan proposed by this court in its Order
420 of December 19, 2011, shall be implemented for conducting congressional
421 primary and general elections for the State of Mississippi in 2012, and in all
422 succeeding congressional primary and general elections for the State of
423 Mississippi thereafter, until the State of Mississippi produces a constitutional
424 congressional redistricting plan that is precleared in accordance with the
425 procedures in Section 5 of the Voting Rights Act of 1965.

426 This court shall retain jurisdiction to implement, enforce, and amend this
427 judgment as shall be necessary and just.

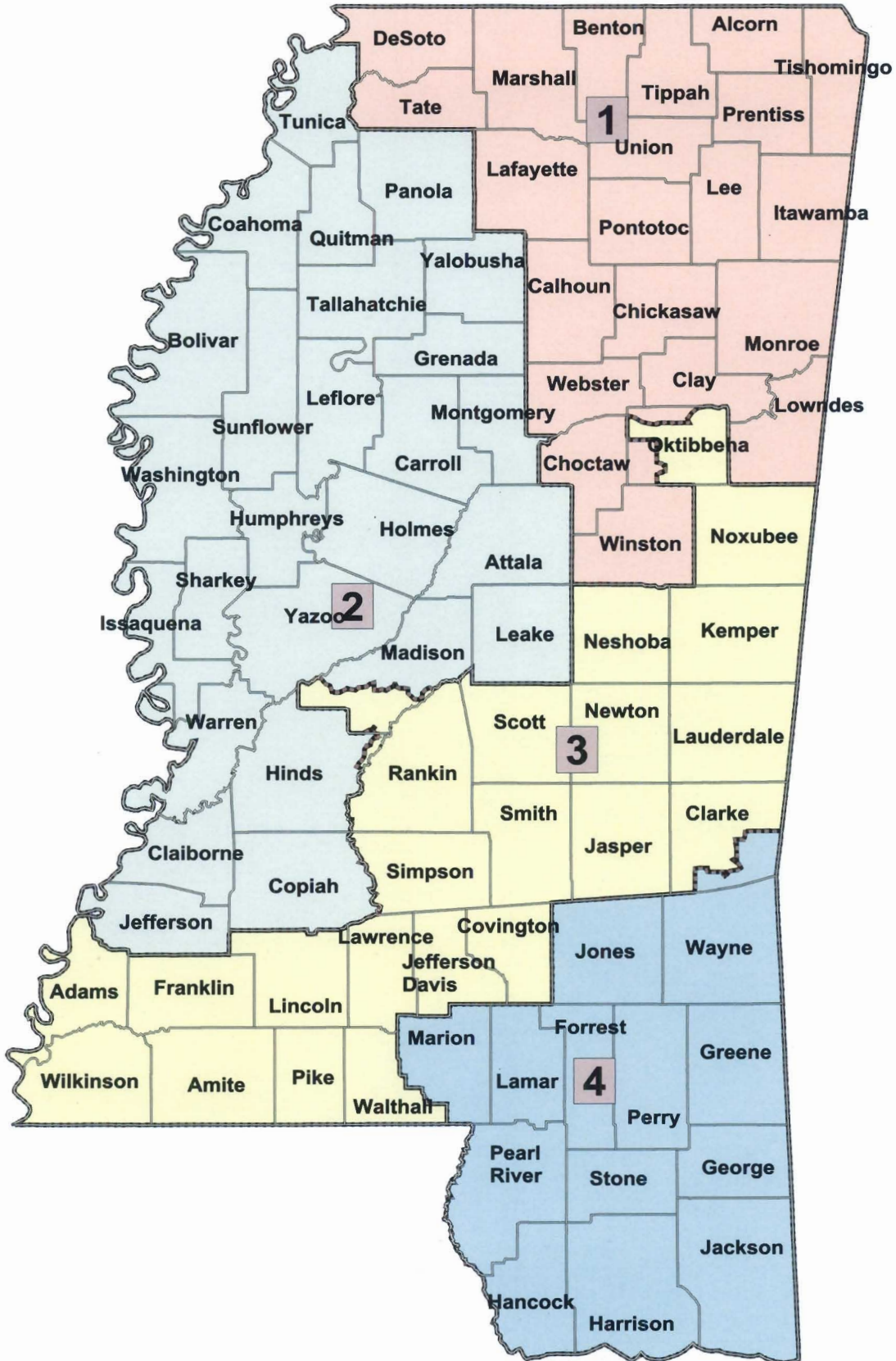
428 SO ORDERED, this 30th day of December, 2011.

429
430 s/ E. Grady Jolly
431 E. GRADY JOLLY
432 UNITED STATES CIRCUIT JUDGE

433
434 s/ Henry T. Wingate
435 HENRY T. WINGATE
436 UNITED STATES DISTRICT JUDGE

437
438 s/ David C. Bramlette
439 DAVID C. BRAMLETTE
440 UNITED STATES DISTRICT JUDGE

**Mississippi Congressional Redistricting Plan
United States District Court
Southern District of Mississippi
December 19, 2011**



Plan: Mississippi Congressional Redistricting Plan
 Plan Type:
 Administrator:
 User:

Plan Components Report

Friday, December 16, 2011

2:30 PM

	POPULATION	[18+_Pop]	[18+_Blk]	[18+_Wht]
District 1				
Alcorn MS County	37,057	28,036	2,928	24,364
Benton MS County	8,729	6,572	2,322	4,134
Calhoun MS County	14,962	11,223	2,931	7,900
Chickasaw MS County	17,392	12,820	5,114	7,297
Choctaw MS County	8,547	6,470	1,867	4,529
Clay MS County	20,634	15,332	8,392	6,765
DeSoto MS County	161,252	115,627	23,002	86,955
Itawamba MS County	23,401	18,001	1,060	16,697
Lafayette MS County	47,351	38,591	8,346	28,577
Lee MS County	82,910	60,804	15,121	44,087
Lowndes MS County	59,779	44,724	18,167	25,553
Marshall MS County	37,144	28,441	12,909	14,877
Monroe MS County	36,989	27,907	8,185	19,402
Oktibbeha MS County				
VTD: Bell Schoolhouse	505	387	242	141
VTD: Bradley	339	267	67	196
VTD: Center Grove	440	329	166	162
VTD: Maben	706	495	279	211
VTD: Sturgis	1,171	934	214	712
Oktibbeha MS County Subtotal	3,161	2,412	968	1,422
Pontotoc MS County	29,957	21,877	2,902	17,872
Prentiss MS County	25,276	19,391	2,600	16,552
Tate MS County	28,886	21,427	6,194	14,777
Tippah MS County	22,232	16,589	2,490	13,635
Tishomingo MS County	19,593	15,055	398	14,317
Union MS County	27,134	20,144	2,777	16,672
Webster MS County	10,253	7,674	1,427	6,156
Winston MS County	19,198	14,409	6,162	7,992
District 1 Subtotal	741,837	553,526	136,262	400,532
District 2				
Attala MS County	19,564	14,478	5,726	8,534
Bolivar MS County	34,145	25,502	15,556	9,417

Plan: Mississippi Congressional Redistricting PlaAdministrator:

Type:

User:

	POPULATION	[18+ Pop]	[18+ Blk]	[18+ Wht]
District 2 (continued)				
Carroll MS County	10,597	8,314	2,600	5,603
Claiborne MS County	9,604	7,335	6,042	1,182
Coahoma MS County	26,151	18,487	13,264	4,956
Copiah MS County	29,449	22,065	10,600	10,899
Grenada MS County	21,906	16,515	6,612	9,720
Hinds MS County				
VTD: 10	679	492	489	1
VTD: 11	659	508	498	2
VTD: 12	798	591	580	4
VTD: 13	1,044	807	790	5
VTD: 16	1,744	1,338	917	397
VTD: 18	927	697	677	16
VTD: 19	1,023	730	714	12
VTD: 2	461	389	371	10
VTD: 20	1,047	798	784	6
VTD: 21	811	587	557	21
VTD: 22	2,096	1,491	1,463	17
VTD: 23	2,125	1,417	1,399	6
VTD: 24	1,236	829	774	32
VTD: 25	2,128	1,478	1,428	35
VTD: 26	1,077	774	690	50
VTD: 27	1,713	1,368	1,349	9
VTD: 28	1,861	1,535	1,514	16
VTD: 29	976	764	741	12
VTD: 30	1,003	745	735	2
VTD: 31	1,474	1,140	1,112	10
VTD: 38	1,476	1,013	808	190
VTD: 39	1,628	1,163	1,137	20
VTD: 4	861	643	639	0
VTD: 40	2,103	1,620	1,559	44
VTD: 41	2,537	1,872	1,842	20
VTD: 42	2,849	2,065	1,859	163
VTD: 43	3,838	2,551	2,252	204
VTD: 46	2,247	1,746	841	811
VTD: 50	752	571	498	63
VTD: 51	614	465	452	12
VTD: 52	1,724	1,243	1,190	44
VTD: 53	309	235	231	2
VTD: 54	1,280	969	905	40
VTD: 55	1,388	979	946	23
VTD: 56	589	444	422	16
VTD: 57	1,154	828	809	19
VTD: 58	1,671	1,322	1,287	22
VTD: 59	2,300	1,531	1,486	28
VTD: 6	1,916	1,594	844	706
VTD: 60	816	599	473	122
VTD: 61	1,634	1,137	1,096	26
VTD: 62	2,518	1,686	1,576	87

Plan: Mississippi Congressional Redistricting Plan Administrator:

Type:

User:

	POPULATION	[18+_Pop]	[18+_Blk]	[18+_Wht]
District 2 (continued)				
Hinds MS County (continued)				
VTD: 63	1,189	1,006	952	18
VTD: 64	802	626	610	12
VTD: 66	158	109	106	0
VTD: 67	1,585	1,014	928	76
VTD: 68	4,140	2,774	2,411	323
VTD: 69	2,007	1,276	1,116	144
VTD: 70	1,684	894	758	102
VTD: 71	2,144	1,360	1,068	264
VTD: 72	2,354	1,398	1,184	195
VTD: 73	2,166	1,385	1,143	212
VTD: 74	1,716	1,060	842	208
VTD: 75	1,389	882	717	151
VTD: 76	1,468	933	687	229
VTD: 77	2,897	1,891	1,307	513
VTD: 79	3,557	2,572	1,664	629
VTD: 80	4,130	2,796	2,664	90
VTD: 81	1,902	1,584	1,505	58
VTD: 82	1,839	1,398	1,346	40
VTD: 83	3,738	2,650	2,616	22
VTD: 84	296	237	224	9
VTD: 85	3,222	2,390	2,354	17
VTD: 86	2,343	1,607	1,540	54
VTD: 87	2,391	1,525	1,237	206
VTD: 88	2,501	1,835	1,580	223
VTD: 89	2,035	1,412	1,189	202
VTD: 90	3,254	2,025	1,620	341
VTD: 91	2,927	2,086	1,879	187
VTD: 92	4,132	2,651	2,203	420
VTD: 93	2,800	1,875	1,496	343
VTD: 94	3,832	2,687	2,377	273
VTD: 95	877	646	364	273
VTD: 96	2,613	1,892	1,330	540
VTD: 97	1,210	825	532	260
VTD: Bolton	1,650	1,272	854	411
VTD: Brownsville	783	597	313	278
VTD: Byram 1	8,418	5,886	3,433	2,321
VTD: Byram 2	3,123	2,359	712	1,619
VTD: Cayuga	494	375	232	141
VTD: Chapel Hill	1,384	1,068	452	602
VTD: Clinton 1	2,873	2,208	589	1,518
VTD: Clinton 2	6,645	4,888	1,172	3,434
VTD: Clinton 3	3,915	3,128	1,021	2,055
VTD: Clinton 4	2,090	1,514	519	938
VTD: Clinton 5	1,441	1,089	189	875
VTD: Clinton 6	4,137	3,127	1,302	1,445
VTD: Cynthia	1,104	817	560	249
VTD: Dry Grove	1,271	1,011	318	683
VTD: Edwards	3,406	2,522	1,824	648
VTD: Jackson State	2,210	2,181	2,109	21

Plan: Mississippi Congressional Redistricting Plan Administrator:

Type: User:

	POPULATION	[18+ Pop]	[18+ Blk]	[18+ Wht]
District 2 (continued)				
Hinds MS County (continued)				
VTD: Learned	999	750	304	440
VTD: Old Byram	3,959	2,936	989	1,905
VTD: Pinehaven	3,491	2,573	990	1,440
VTD: Pocahontas	648	534	334	195
VTD: Raymond 1	3,305	2,448	1,054	1,375
VTD: Raymond 2	5,417	4,619	2,332	2,224
VTD: Spring Ridge	4,616	3,442	1,838	1,554
VTD: St. Thomas	461	347	326	19
VTD: Terry	6,599	5,045	1,953	3,051
VTD: Tinnin	1,221	897	189	688
VTD: Utica 1	1,294	1,003	446	534
VTD: Utica 2	1,309	970	748	186
Hinds MS County Subtotal	214,647	155,661	111,385	40,808
Holmes MS County	19,198	13,621	10,926	2,582
Humphreys MS County	9,375	6,673	4,742	1,814
Issaquena MS County	1,406	1,125	702	412
Jefferson MS County	7,726	5,901	4,940	932
Leake MS County	23,805	16,443	6,058	8,935
Leflore MS County	32,317	23,566	16,240	6,667
Madison MS County				
VTD: Bible Church	1,320	768	765	2
VTD: Camden	1,536	1,125	929	193
VTD: Cameron	162	133	75	58
VTD: Canton Precinct 1	2,807	2,044	1,437	519
VTD: Canton Precinct 2	2,656	1,981	1,047	830
VTD: Canton Precinct 3	483	348	182	163
VTD: Canton Precinct 4	2,863	1,984	1,742	197
VTD: Canton Precinct 5	2,194	1,438	1,408	22
VTD: Canton Precinct 7	475	383	354	27
VTD: Cedar Grove	296	239	27	210
VTD: Couparle	86	72	56	16
VTD: Liberty	2,259	1,762	1,171	169
VTD: Luther Branson School	1,302	928	754	169
VTD: Mad. Co. Bap. Fam. Lf.Ct	2,088	1,259	1,183	12
VTD: Magnolia Heights	2,261	1,539	1,204	327
VTD: New Industrial Park	617	444	310	127
VTD: Ratliff Ferry	1,359	1,042	522	512
VTD: Sharon	1,098	826	684	136
VTD: Tougaloo	671	657	631	7
VTD: Virililia	409	342	79	254
Madison MS County Subtotal	26,942	19,314	14,560	3,950
Montgomery MS County	10,925	8,255	3,520	4,611
Panola MS County	34,707	25,363	11,430	13,557
Quitman MS County	8,223	6,070	4,000	1,989

Plan: Mississippi Congressional Redistricting Plan Administrator:

Type: User:

	POPULATION	[18+ Pop]	[18+ Blk]	[18+ Wht]
District 2 (continued)				
Sharkey MS County	4,916	3,660	2,501	1,123
Sunflower MS County	29,450	22,303	15,578	6,382
Tallahatchie MS County	15,378	11,893	6,209	5,012
Tunica MS County	10,778	7,561	5,186	2,154
Warren MS County	48,773	36,135	15,755	19,486
Washington MS County	51,137	36,800	24,851	11,356
Yalobusha MS County	12,678	9,656	3,449	6,104
Yazoo MS County	28,065	20,988	11,189	9,105
District 2 Subtotal	741,862	543,684	333,621	197,290
District 3				
Adams MS County	32,297	25,102	12,446	11,661
Amite MS County	13,131	10,176	4,046	6,040
Clarke MS County				
VTD: Beaver Dam	485	371	179	191
VTD: Desoto	457	350	164	181
VTD: East Quitman	1,821	1,446	101	1,322
VTD: Energy	417	317	24	293
VTD: Enterprise	2,063	1,529	303	1,214
VTD: Harmony Beat 1	284	208	85	123
VTD: Harmony Beat 2	626	466	198	267
VTD: North Quitman	1,313	988	168	805
VTD: Oak Grove	548	384	304	69
VTD: Pachuta	602	455	278	174
VTD: Pineridge	281	215	111	102
VTD: Rolling Creek	392	297	21	273
VTD: Snell	335	263	5	257
VTD: Souinlovie	384	296	43	252
VTD: South Quitman	1,642	1,178	713	455
VTD: Stonewall Beat 1	776	553	325	224
VTD: Stonewall Beat 3	1,143	881	149	724
VTD: Union	1,125	849	32	809
Clarke MS County Subtotal	14,694	11,046	3,203	7,735
Covington MS County	19,568	14,481	4,646	9,576
Franklin MS County	8,118	6,075	1,948	4,082
Hinds MS County				
VTD: 1	345	328	159	158
VTD: 14	1,348	1,136	80	1,001
VTD: 15	442	387	26	357
VTD: 17	843	662	43	610
VTD: 32	1,238	993	78	903
VTD: 33	1,176	901	2	879
VTD: 34	2,242	1,715	34	1,655
VTD: 35	2,144	1,617	84	1,506
VTD: 36	1,671	1,269	712	530
VTD: 37	1,644	1,253	621	612

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	POPULATION	[18+_Pop]	[18+_Blk]	[18+_Wht]
District 3 (continued)				
Hinds MS County (continued)				
VTD: 44	3,992	2,907	1,648	1,158
VTD: 45	2,553	2,060	194	1,817
VTD: 47	1,781	1,401	1,106	260
VTD: 5	1,926	1,742	883	803
VTD: 78	4,029	3,333	1,158	2,030
VTD: 8	1,303	1,181	128	996
VTD: 9	1,961	1,696	78	1,562
Hinds MS County Subtotal	30,638	24,581	7,034	16,837
Jasper MS County	17,062	12,939	6,439	6,378
Jefferson Davis MS County	12,487	9,539	5,367	4,063
Kemper MS County	10,456	8,015	4,604	3,111
Lauderdale MS County	80,261	60,181	23,860	35,041
Lawrence MS County	12,929	9,663	2,777	6,623
Lincoln MS County	34,869	25,766	7,398	18,050
Madison MS County				
VTD: Bear Creek	3,703	2,702	1,222	1,407
VTD: Cobblestone	2,692	2,069	256	1,764
VTD: Flora	1,907	1,408	377	1,006
VTD: Gluckstadt	10,393	7,163	1,041	5,882
VTD: Highland Colony Bap. Ch.	3,851	2,798	501	2,078
VTD: Lorman-Cavalier	1,692	1,346	499	827
VTD: Madison 1	2,818	1,964	157	1,737
VTD: Madison 2	3,466	2,474	128	2,258
VTD: Madison 3	4,683	3,269	398	2,775
VTD: Main Harbor	1,709	1,455	46	1,366
VTD: NorthBay	1,244	932	81	828
VTD: Ridgeland 1	3,528	2,709	844	1,647
VTD: Ridgeland 3	4,333	3,210	1,880	981
VTD: Ridgeland 4	2,968	2,392	1,057	1,145
VTD: Ridgeland First Meth. Ch.	3,570	2,697	661	1,951
VTD: Ridgeland Tennis Center	5,659	4,377	931	3,133
VTD: Smith School	555	457	18	431
VTD: SunnyBrook	757	540	54	471
VTD: Trace Harbor	2,146	1,600	71	1,514
VTD: Victory Baptist Church	1,724	1,244	71	1,124
VTD: Whispering Lake	2,394	1,716	177	1,475
VTD: Yandell Road	2,469	1,719	205	1,467
Madison MS County Subtotal	68,261	50,241	10,675	37,267
Neshoba MS County	29,676	21,161	4,058	13,826
Newton MS County	21,720	16,067	4,663	10,626
Noxubee MS County	11,545	8,416	5,877	2,440
Oktober MS County				
VTD: Central Starkville	3,106	2,474	1,210	1,167
VTD: Craig Springs	256	205	6	199

Plan: Mississippi Congressional Redistricting Plan Administrator:

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	POPULATION	[18+ Pop]	[18+ Blk]	[18+ Wht]
District 3 (continued)				
Oktibbeha MS County (continued)				
VTD: Double Springs	427	345	28	315
VTD: East Starkville	3,236	3,125	693	2,133
VTD: Gillespie Street Center	3,901	3,096	1,108	1,887
VTD: Hickory Grove	3,380	2,848	935	1,876
VTD: North Adaton	426	342	117	220
VTD: North Longview	1,085	826	135	673
VTD: North Starkville 2	1,757	1,381	832	493
VTD: North Starkville 3	3,250	2,517	776	1,688
VTD: Northeast Starkville	3,273	3,114	648	2,314
VTD: Oktoc	1,055	835	584	244
VTD: Osborn	1,450	1,084	690	379
VTD: Self Creek	577	451	63	379
VTD: Sessums	1,353	1,032	685	333
VTD: South Adaton	614	454	125	317
VTD: South Longview	362	289	73	214
VTD: South Starkville	6,669	5,325	1,201	3,790
VTD: Southeast Oktibehha	338	246	140	101
VTD: West Starkville	7,995	6,564	1,905	4,373
Oktibbeha MS County Subtotal	44,510	36,553	11,954	23,095
Pike MS County	40,404	29,433	14,251	14,641
Rankin MS County	141,617	106,083	19,062	83,566
Scott MS County	28,264	20,630	7,289	11,609
Simpson MS County	27,503	20,252	6,624	13,287
Smith MS County	16,491	12,230	2,582	9,526
Walthall MS County	15,443	11,368	4,701	6,470
Wilkinson MS County	9,878	7,607	5,200	2,368
District 3 Subtotal	741,822	557,605	180,704	357,918
District 4				
Clarke MS County				
VTD: Carmichael	500	405	129	273
VTD: Langsdale	304	224	178	45
VTD: Manassa	227	171	3	167
VTD: Shubuta	777	586	411	167
VTD: Springs	230	172	82	90
Clarke MS County Subtotal	2,038	1,558	803	742
Forrest MS County	74,934	57,231	19,152	35,983
George MS County	22,578	16,518	1,320	14,893
Greene MS County	14,400	11,244	3,191	7,930
Hancock MS County	43,929	33,431	2,214	29,982
Harrison MS County	187,105	141,252	28,512	102,343
Jackson MS County	139,668	104,068	20,774	77,612
Jones MS County	67,761	50,413	12,992	35,465

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	POPULATION	[18+_Pop]	[18+_Blk]	[18+_Wht]
District 4 (continued)				
Lamar MS County	55,658	41,050	7,312	32,627
Marion MS County	27,088	20,156	6,168	13,698
Pearl River MS County	55,834	42,102	4,830	35,976
Perry MS County	12,250	9,136	1,711	7,296
Stone MS County	17,786	13,455	2,446	10,760
Wayne MS County	20,747	15,313	5,487	9,594
District 4 Subtotal	741,776	556,927	116,912	414,901
State totals	2,967,297	2,211,742	767,499	1,370,641

Population	[18+_Pop]	[18+_Blk]	[18+_Wht]
Mississippi Congressional Redistricting Plan District 1 is composed of:			
718,804 (96.90%) from district 1 in 2002 Court Plan	536,227 (96.87%)	128,983 (94.66%)	390,795 (97.57%)
23,033 (03.10%) from district 3 in 2002 Court Plan	17,299 (03.13%)	7,279 (05.34%)	9,737 (02.43%)
Mississippi Congressional Redistricting Plan, New District 1 Total is 741,837			
Total, and % Population:	553,526 (74.62%)	136,262 (18.37%)	400,532 (293.94%)
Mississippi Congressional Redistricting Plan District 2 is composed of:			
69,291 (09.34%) from district 1 in 2002 Court Plan	51,534 (09.48%)	21,491 (06.44%)	29,381 (14.89%)
653,376 (88.07%) from district 2 in 2002 Court Plan	478,680 (88.04%)	306,792 (91.96%)	160,721 (81.46%)
19,195 (02.59%) from district 3 in 2002 Court Plan	13,470 (02.48%)	5,338 (01.60%)	7,188 (03.64%)
Mississippi Congressional Redistricting Plan, New District 2 Total is 741,862			
Total, and % Population:	543,684 (73.29%)	333,621 (44.97%)	197,290 (59.14%)
Mississippi Congressional Redistricting Plan District 3 is composed of:			
14,887 (02.01%) from district 2 in 2002 Court Plan	11,021 (01.98%)	3,215 (01.78%)	7,460 (02.08%)
701,830 (94.61%) from district 3 in 2002 Court Plan	527,556 (94.61%)	170,464 (94.33%)	338,615 (94.61%)
25,105 (03.38%) from district 4 in 2002 Court Plan	19,028 (03.41%)	7,025 (03.89%)	11,843 (03.31%)
Mississippi Congressional Redistricting Plan, New District 3 Total is 741,822			
Total, and % Population:	557,605 (75.17%)	180,704 (24.36%)	357,918 (198.07%)
Mississippi Congressional Redistricting Plan District 4 is composed of:			
12,866 (01.73%) from district 3 in 2002 Court Plan	9,454 (01.70%)	2,192 (01.87%)	7,153 (01.72%)
728,910 (98.27%) from district 4 in 2002 Court Plan	547,473 (98.30%)	114,720 (98.13%)	407,748 (98.28%)
Mississippi Congressional Redistricting Plan, New District 4 Total is 741,776			
Total, and % Population:	556,927 (75.08%)	116,912 (15.76%)	414,901 (354.88%)