

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

HANCOCK COUNTY BOARD OF SUPERVISORS §
V. § **NO. 1:10CV564 LG-RHW**
RUHR §

(CONSOLIDATED WITH)

NAACP, et al. §
V. § **NO. 3:11CV122 LG-RHW**
PIKE COUNTY BOARD OF SUPERVISORS §

SECOND AMENDED COMPLAINT

JURISDICTION

1. This is an action for declaratory and injunctive relief for violation of rights secured to plaintiffs by the United States Constitution. The federal question jurisdiction of this Court is invoked pursuant to the 14th amendment to the United States Constitution, 28 U. S. C. §§ 1331, 1343, 2201, and 2202.

VENUE

2. The venue for this action is in the Jackson Division of the United States District Court for the Southern District of Mississippi because the defendants reside within this venue.

PARTIES

3. Plaintiff, the Pike County, Mississippi Branch of the NAACP (“National Association

for the Advancement of Colored People”) is a civil rights organization whose membership consists primarily of African American citizens and many registered voters throughout Pike County, Mississippi, including Supervisor Districts 1, 2, 3, 4, and 5 in Pike County, Mississippi.

4. Plaintiff, Frank Lee, is a registered African-American voter in Supervisor District 4 in Pike County, Mississippi.

5. Plaintiff, Gregory Partman, is a registered African-American voter in Supervisor District 3 in Pike County, Mississippi.

6. Plaintiffs bring this action individually and, pursuant to *Fed. R. Civ. P. 23(a), (b)(2)*, and ©, on behalf of themselves and all others similarly situated as a class action with the class defined as “all African-American citizens and voters in Pike County, Mississippi.”

7. With respect to the class, (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law and fact common to the class, © the claims of the representative parties are typical of the claims of the class, (d) the representative parties will fairly and adequately protect the interests of the class, and (e) the parties opposing the class have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

8. Defendant, the Pike County, Mississippi Board of Supervisors, is a local governmental body of the State of Mississippi responsible for conducting primary, special, and general elections for the office of supervisor, constable, and justice court judge for Pike County, Mississippi. This defendant may be served with the process of this Court by serving the Chancery Clerk, Doug Touchstone, whose address is Post Office Box 309, Magnolia, Mississippi 39652.

9. Defendant, the Pike County, Mississippi Democratic Executive Committee

(“PCDEC”), is a political party and quasi-governmental entity responsible for conducting primary elections for the Democratic Party in Pike County, Mississippi. This defendant may be served with the process of this Court by serving its Chairperson, James Taylor, whose address is McComb, Mississippi 39648.

10. Defendant, the Pike County, Mississippi Republican Executive Committee (“PCREC”), is a political party and quasi-governmental entity responsible for conducting primary elections for the Republican Party in Pike County, Mississippi. This defendant may be served with the process of this Court by serving its Chairperson, Flo Boyd, whose address is McComb, Mississippi 39648.

11. Defendant, the Pike County, Mississippi Board of Election Commissioners, is a local governmental body of the State of Mississippi responsible for conducting special and general elections for the office of supervisor, constable, and justice court judge for Pike County, Mississippi. This defendant may be served with the process of this Court by serving its Chairperson, Trudy Berger, whose address is Summit, Mississippi 39666.

12. Defendant, Roger Graves, is a local governmental official and Circuit Clerk for Pike County, Mississippi who, pursuant to § 23-15-299, Miss. Code Ann. (1972), is responsible for conducting elections for supervisor, justice court judge, and constable for Pike County, Mississippi. This defendant’s address is Magnolia, Mississippi 39652.

FACTS

13. The population for Pike County, Mississippi according to the 2010 federal decennial census is 40,404 persons of whom 20,813 (or 51.51%) are African-American.

14. Pike County, Mississippi is governed by a five (5) member board of supervisors

elected from single member districts.

15. Members of the Pike County, Mississippi Board of Supervisors are elected by popular vote to four year terms of office.

16. The terms of office for current members of the Pike County, Mississippi Board of Supervisors expire December 31, 2015.

17. Political party primary nomination elections for the current term of office for members of the Pike County, Mississippi Board of Supervisors was held on Tuesday, August 2, 2011.

18. The qualification deadline for candidates for supervisor was March 1, 2011.

19. A majority vote is required for political party nomination elections in Mississippi.

20. Political party second primary nomination or run-off elections for the current term of office for members of the Pike County, Mississippi Board of Supervisors was held on Tuesday, August 23, 2011.

21. A general election was held on Tuesday, November 8, 2011.

22. The ideal population for each supervisor district for Pike County, Mississippi is 8,081 persons according to the 2010 federal decennial census.

23. The total population for each supervisor district, the black population for each supervisor district, and the percentage of black population for each supervisor district in Pike County, Mississippi according to the 2010 federal decennial census is as follows:

<u>Supervisor District</u>	<u>Total Population</u>	<u>Black Population</u>	<u>Black Pop. %</u>
1	7,563	6,105	80.72%
2	7,501	5,334	71.11%

3	9,025	3,568	39.53%
4	8,574	2,509	29.26%
5	7,741	3,297	42.59%

24. The supervisor districts for Pike County, Mississippi have a total population deviation of 1,524 persons according to the 2010 federal decennial census with a maximum deviation percentage of 18.86%.

25. The Pike County, Mississippi Branch of the NAACP, is a civil rights organization whose members include and which represents citizens and registered voters Supervisor Districts 3 and 4 which are overpopulated and under represented, and the plaintiff is aggrieved by that under representation.

26. Plaintiff, Frank Lee, is a citizen and voter in Supervisor District 4, which has a substantial black population, and plaintiff, Frank Lee, does not want the black voting strength in Pike County, Mississippi diluted.

27. Plaintiff, Gregory Partman, is a citizen and voter in Supervisor District 3, which is overpopulated and underrepresented and which has a substantial black population, and plaintiff, Gregory Partman, is injured by that underrepresentation and he does not want the black voting strength in Pike County, Mississippi diluted.

28. Pike County, Mississippi is a jurisdiction covered by the preclearance requirements of § 5 of the Voting Rights Act of 1975, as amended and extended, 42 U. S. C. § 1973c, that has a long and official history of racial discrimination against African-American citizens and voters that has affected their right to register, vote, and participate in the political process.

29. Voting in elections in Pike County, Mississippi is racially polarized.

30. White bloc voting in Pike County, Mississippi is statistically significant.

31. The Pike County, Mississippi Board of Supervisors failed to redistrict the county's supervisor districts to comply with the one-person one-vote principle of the Equal Protection Clause of the 14th amendment to the United States Constitution and obtain preclearance of any new redistricting plan prior to the March 1, 2011 candidate qualification deadline, the August, 2011 political party primary nomination elections, and the November, 2011 general election.

32. The existing apportionment scheme for Pike County, Mississippi results in discrimination against African-American voters in violation of rights secured to plaintiffs by Section 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973.

33. The present supervisor districts are grossly malapportioned.

34. The plaintiffs would be aggrieved if elections are held under the grossly malapportioned existing apportionment scheme with the candidates elected being allowed to hold office for the next four years.

35. African-American voters in Pike County, Mississippi are politically cohesive in Mississippi.

36. The African-American population in Pike County, Mississippi is geographically large and insular such that several black majority supervisor districts could be maintained or created.

37. African-American citizens and voters in Pike County, Mississippi suffer from the lingering effects of gross disparities in socioeconomic factors that adversely affect their ability to effectively participate in the political process and elect candidates of their choice to elective office.

38. African-American voters in Pike County, Mississippi have been denied equal opportunity to participate in the political process and to elect representatives of their choice under

the totality of the circumstances.

39. All of the actions and inactions of the defendants, as mentioned above, have been intentional and deliberate or have resulted in impermissible discrimination against the plaintiffs.

40. As a proximate results of the actions and inactions of the defendants, as mentioned above, the plaintiffs have suffered a violation of their constitutional and statutory rights.

CAUSES OF ACTION

COUNT I - 14th AMENDMENT EQUAL PROTECTION ONE PERSON ONE VOTE

41. The existing redistricting plan for Pike County, Mississippi is unconstitutionally malapportioned and violate rights secured to plaintiffs by the Equal Protection Clause of the 14th Amendment to the United States Constitution and 42 U. S. C. § 1983.

COUNT II - VOTE DILUTION CLAIM -§ 2 of the VOTING RIGHTS ACT OF (1965)

42. The existing redistricting plan for Pike County, Mississippi results in discrimination against African-American voters in violation of rights secured to plaintiffs by Section 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973.

CAUSATION, INJURY, AND REMEDY

43. As a proximate result of the actions and inactions of the defendants, as mentioned above, plaintiffs have suffered a violation of their federal constitutional rights, and plaintiffs have incurred expenses, attorney fees, and court costs.

EQUITABLE RELIEF

44. Plaintiffs request the a declaratory judgment, pursuant to 28 U. S. C. §§ 2201 and 2202, that the defendants have violated rights secured to plaintiffs by the 14th amendment to the United States Constitution and Section 2 of the Voting Rights Act of 1965, as amended, 42 U. S.

C. § 1973, and plaintiffs requested pre-election injunctive relief and now request post-election injunctive relief of setting aside the 2011 elections and ordering special elections with shortened terms of office for members of the Board of Supervisors.

45. And, plaintiffs request an award of court costs and attorney fees and litigation expenses pursuant to 42 U. S. C. §§ 1973l(e) and 1988.

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully request the following legal and equitable relief:

a. A declaratory judgment, pursuant to 28 U. S. C. §§ 2201 and 2202, that the present apportionment scheme and the actions and inactions of the defendants violate rights secured to plaintiffs by the 14th amendment to the United States Constitution and Section 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973;

b. A temporary restraining order, preliminary injunction, and/or a permanent injunction enjoining the defendants from conducting elections under the existing redistricting plans for supervisor in Pike County, Mississippi;

c. An Order setting aside the 2011 elections for Supervisor and ordering a special election for Supervisor for Pike County, Mississippi;

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

e. Award plaintiffs court costs and a reasonable attorney's fee pursuant to 42

U. S. C. §§ 1973l(e), and 1988; and

f. Grant plaintiffs general relief.

This the 5th day of November, 2012.

Respectfully submitted,
PIKE COUNTY, MISSISSIPPI BRANCH OF THE
NAACP, FRANK LEE, and GREGORY PARTMAN,
on behalf of themselves and all others similarly situated

/s/ Carroll Rhodes

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CERTIFICATE OF SERVICE

I, CARROLL RHODES, hereby certify that I have this day electronically filed using the Court's ECF filing system a true and correct copy of the above and foregoing Amended Complaint, and the Court has electronically served a copy of the motion upon the following:

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This the 5th day of November, 2012.

/s/ Carroll Rhodes

CARROLL RHODES