No. _____

In The

SUPREME COURT OF THE UNITED STATES
October Term, 2011

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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 ,

Appellants,

VS.

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 Commissioner; 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,

Appellees,

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,

Appellees-Intervenors.

On Appeal from Decisions Of The Three-Judge Court
Of The United States District Court For The
Southern District of Mississippi

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JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED FOR REVIEW

1. Did the three-judge district court err by denying a preliminary injunction requiring compliance with the one-person one-vote mandate before the next election?

2. Should the results of an election in districts that do not comply with the one-person, one-vote mandate be set aside and a new election ordered promptly?

LIST OF PARTIES

The parties to the proceedings below were the appellants: 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; the appellees: 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 Commissioner; 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; and appellees-intervenors: 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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

OTHER AUTHORITIES:

REFERENCE TO OFFICIAL OPINIONS BY LOWER COURTS

Appellants appeal adverse decisions rendered by a three-judge district court for the Southern District of Mississippi. The adverse decisions are a Memorandum Opinion and Order denying injunctive relief and an Order denying an amended motion to amend the Memorandum Opinion and Order. The decisions are unreported and are set out in full in the Appendix, at pages App. 1-27. The Memorandum Opinion and Order was rendered and filed for record on May 16, 2011. It is set out in full at App. 3-27. The Order denying the amended motion to amend was rendered on May 26, 2011 and filed for record on May 27, 2011. It is set out in full at App. 1-2.

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STATEMENT OF THE GROUNDS FOR INVOKING JURISDICTION

This is a direct appeal from a Memorandum Opinion and Order denying a preliminary injunction issued by a three-judge district court for the Southern District of Mississippi on May 16, 2011 and an Order denying the amended motion to amend the Memorandum Opinion and Order issued by the three-judge district court on May 26, 2011. The three-judge district court was convened pursuant to 28 U.S.C. § 2284 to decide the constitutionality of statewide legislative reapportionment plans for the State of Mississippi. Appellants timely filed a notice of appeal in the United States District Court for the Southern District of Mississippi on June 7, 2011. Jurisdiction was invoked in the district court pursuant to 28 U.S.C. §§ 1331, 1343, and 2284. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1253 and 2284. This court has jurisdiction of this appeal. *Chapman v. Meier*, 420 U.S. 1, 13-14 (1975); *N.A.A.C.P. v. New York*, 413 U.S. 345, 353-356 (1973); *Florida Lime & Avocado Growers, Inc. V. Jacobsen*, 362 U.S. 73, 75-85 (1960).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Supremacy Clause, Article VI, Clause 2 of the United States Constitution, 28 U.S.C. § 2284, and Article 13, Section 254 of the Constitution for the State of Mississippi. The texts of these constitutional and statutory provisions are set out in App. 39-44.

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STATEMENT OF THE CASE

This is a statewide legislative reapportionment case for the State of Mississippi . The bicameral legislature is composed of a Senate consisting of a 52 members Senate and a House of Representatives consisting of 122 members. State senators and representatives are elected from single-member districts and serve four year terms. Candidates for legislative office are nominated by party primaries or qualify as independents. A general election is held in November. Any vacancy in a legislative office is filled by a special election called by the Governor.

Primary elections are scheduled for August 2, 2011 with run-offs, if necessary, scheduled for August 23, 2011. A general election is scheduled for November 8, 2011. The candidate qualification deadline was June 1, 2011. Winners of the November 8, 2011 general election will take office in January, 2012. The next regular legislative election will be in 2015.

A presidential preference primary, primary for congressional candidates, and a general election will be held in 2012. The qualification deadline for congressional candidates is January 13, 2012. Party primaries are scheduled for March 13, 2012, and a general election is scheduled for November 6, 2012.

The Mississippi Constitution[1] allows the legislature to reapportion at any time but requires it to do so by the end of the legislative session in the second year following the decennial census. If the legislature fails to timely reapportion, then the responsibility passes to a commission appointed by state officials. Reapportionment is accomplished by a joint resolution passed by a majority of the members of each chamber. The State Constitution requires reapportionment every 10 years after 1982. [App. 43]. The legislature was reapportioned and the plans were precleared by the United States Attorney General in 2002.

The 2010 decennial census for Mississippi was released on February 3, 2011. Census data show that both the Senate and House of Representatives are grossly malapportioned. The State population is 2,967,297 persons. Accordingly, the ideal population is 57,063 persons for each Senate district and 24,322 persons for each House district. The population variance is 69.08% for Senate districts[2] and 134.35% for House districts.[3] A number of Senate and House districts exceed ± 5% deviation.[4]

The Mississippi House of Representatives adopted a joint resolution on March 4, 2011 reapportioning the House of Representatives. The House referred the joint resolution to the Senate where it died in the Senate Elections Committee. The Senate then adopted a joint resolution reapportioning the Senate and referred it to the House where it was amended by adding the House's reapportionment plan. The House of Representatives then adopted the amended joint resolution on

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[1]Art. 13, Sec. 254, Miss. Const. (1890).

[2]The total range of population deviation is 39,422 persons in Senate districts.

[3] The total range of population deviation is 32,677 persons in House districts.

[4]A total of 14 Senate and 38 House districts have a population deviation greater than 5%, and a total of 19 Senate and 58 House districts have a population deviation less than 5%.

March 15, 2011 and referred it back to the Senate for concurrence. The Senate declined to concur but invited conference on March 17, 2011. The Speaker of the House declined to appoint conferees which resulted in an impasse. The amended joint resolution died on the legislative calender on April 7, 2011 when the Senate and House adjourned.

The appellants, the Mississippi State Conference of the National Association for the Advancement of Colored People ("NAACP"), Thomas Plunkett, Rod Woullard, and Hollis Watkins, challenged the existing statewide apportionment scheme on March 17, 2011 as violating the one-person, one-vote principle of the Equal Protection Clause of the Fourteenth Amendment.[5] They requested a remedy that was neither retrogressive nor discriminatory.

The appellees are State officials responsible for conducting primary, general, and special elections. Governor Haley Barbour, Mississippi Attorney General Jim Hood, and Secretary of State Delbert Hosemann, as members of the State Board of Election Commissioners, are responsible for conducting general and special elections. The Mississippi Democratic Party and the Mississippi Republican Party are responsible for conducting party primaries. Connie Cochran, as chairperson of the Hinds County, Mississippi Board of Election Commissioners, is responsible for printing ballots and certifying election results to the Mississippi Secretary of State.[6]

The Apportionment and Elections Committee of the Mississippi House of Representatives,

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[5]The NAACP alleges the organization has members who are voters in overpopulated and under-represented Senate and House districts. Plunkett alleges he is a voter in an overpopulated and under-represented Senate district and House district. Woullard alleges he is a voter in an overpopulated and under-represented House district.

[6]The chairperson of each county board of election commissioners is responsible for printing ballots and certifying election results to the Mississippi Secretary of State. See, § 23-15-351, Miss. Code Ann. (2010) and § 23-15-610, Miss. Code Ann. (2010). Connie Cochran was sued as a representative of a defendant class of chairpersons of county boards of election commissioners.

the Mississippi State Senate Democratic Caucus and State Democratic Senators, in their individual capacities, State Senator Terry C. Burton, and State House of Representative members Sidney Bondurant, Becky Currie, and Mary Ann Stevens were allowed to intervene.

Appellants filed a motion to convene a three-judge district court on March 21, 2011 and a motion for a preliminary injunction on March 28, 2011. A three-judge district court was finally constituted on April 13, 2011.[7]

The three-judge district court issued an Order and Notice on April 29, 2011 indicating an inclination to order interim elections using the 2011 legislative plans. The court noted that the "proposed interim remedy appears to be necessary in the light of the acknowledgment of all parties that the existing state legislative districts are unconstitutionally malapportioned and because of the exigent circumstances of this case, including the June 1, 2011 deadline for candidates to qualify to run for office..." [App. 29]. The court then scheduled a hearing for Tuesday, May 10, 2011, for the parties to present "their views, comments, and objections to this proposed remedy." [App. 30].

The 2011 Senate plan has a maximum population deviation of 9.60%,[8] and the 2011 House plan has a maximum population deviation of 9.96%.[9] Although each plan was adopted by each respective chamber, the plans were never jointly approved by a majority of the members of both houses.

Secretary of State Delbert Hosemann filed a motion to dismiss on April 1, 2011 and argued at the May 10, 2011 hearing that appellants complaint was premature because the Mississippi

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[7]District judges Daniel P. Jordan, III, and Carlton Reeves recused themselves.

[8]Appellants filed a motion for interim relief requesting the court to order use of the 2011 Senate Composite 2 Plan.

[9]Appellants filed a motion for interim relief requesting the court to order use of the 2011 House Consensus 2 Plan.

Constitution does not require the legislature to redistrict before 2012. Secretary Hosemann argued that the 2002 reapportionment scheme is constitutionally valid for 10 years under *Reynolds v. Sims*, 377 U. S. 533 (1964).

The three-judge district court issued a Memorandum Opinion and Order on May 16, 2011 finding that "all parties to this litigation agree that, based on the 2010 census data, the current apportionment scheme does not satisfy this one-person, one-vote principle." [App. 18-19]. The court, however, held that "[t]he Mississippi Legislature was last reapportioned in 2002, and under the State's decennial reapportionment scheme, the Legislature has one more year before reapportionment and redistricting are required by the one-person, one-vote precedents." [App. 20]. The court refused to grant appellants' motion for a preliminary injunction. However, the court retained jurisdiction "to order appropriate relief, including special elections, if appropriate, upon motion of any party, following completion -- or failure -- of the process for redistricting of the Mississippi Legislature prescribed by Article 13, Section 254 of the Mississippi Constitution." [App. 24]. The court did not order a new election but indicated the court would consider a motion by any party requesting special elections if a reapportionment plan "is adopted by the end of the 2012 session, in accordance with Section 254 of the Mississippi Constitution, and ,,, precleared by the Department of Justice or the United States District Court for the District of Columbia..." [App. 24-25]. The court ordered the Mississippi Attorney General to notify all parties of any preclearance decision. [App. 25]. Thereafter, any party desiring special elections must file the request within "30 days...." after notification from the Attorney General. [App. 25]. If, however, the legislature fails to adopt and preclear an apportionment scheme by the end of the 2012 legislative session, then the court will "schedule hearings and proceed to draw a new plan." [App. 25].

Appellants filed an amended motion to amend the Memorandum Opinion and Order and a

separate motion for relief from judgment on May 23, 2011 arguing that the three-judge district court made manifest errors of law.[10] [App. 45-62]. Appellants argued that "[t]he Supreme Court in *Sixty-Seventh Minnesota State Senate v. Beens* held that the 10-year presumption of validity of a redistricting plan is a rebuttable presumption," and the Supreme Court held in *Georgia v. Ashcroft* "that the legal fiction that an apportionment scheme is constitutionally valid for a 10-year period disappears when new census data is released showing the scheme is malapportioned." [App. 52, 54].

Appellants also argued that state policy provide for party primaries and a general election for legislative elections, and that any remedy for the on-person, one-vote violation should incorporate this state policy. [App. 54-58]. Party primaries for federal officers are scheduled for March 13, 2012, and a general election is scheduled for November, 2012. The legislative session ends in May, 2012. Appellants argued that remedial legislative elections should be held in conjunction with the 2012 elections for federal officers. [App. 54-60].

The next regularly scheduled legislative election including primaries will occur in 2015. Appellants constitutional right to an equal vote will be denied if remedial elections are not held before 2015.

The three-judge district court denied appellants' amended motion to amend the Memorandum Opinion and Order and separate motion for relief from judgment on May 27, 2011.

Appellants filed their notice of appeal on June 7, 2011.

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[10]Appellants made identical arguments in both motions.

ARGUMENT I

The three-judge district court erred by denying a preliminary injunction requiring compliance with the one-person one-vote mandate before the next election.

The one-person, one-vote principle of "the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." *Reynolds v. Sims*, supra, at 568. This equal population principle is generally satisfied when the total range of population deviation in a legislature's apportionment scheme is less than 10%. *Brown v. Thomson*, 462 U. S. 835 (1983). States may "adopt some reasonable plan for periodic revision of their apportionment schemes" to ensure compliance with the equal population principle. *Reynolds v. Sims*, supra, at 583. "Decennial reapportionment appears to be a rational approach" to the equal population requirement. *Id*. The Court in *Reynolds*, however, did not clearly define the phrase "decennial reapportionment." The phrase could mean reapportionment every 10 years, or it could mean reapportionment after a decennial census.[11]

The three-judge district court, in reliance on *Reynolds*, construed decennial reapportionment as reapportionment every 10 years.[12] [App. 6]. Appellants disagree. Other precedents indicate that decennial reapportionment means reapportionment after a decennial census. See, *Whitcomb v. Chavis*, 403 U. S. 124, 163 (1971); *Sixty-Seventh Minnesota State Senate v. Beens*, 406 U. S. 187, 195 (1972); *Georgia v. Ashcroft*, 539 U. S. 461, 488, n. 2 (2003). In *Whitcomb*, the Court held that "[d]ecennial reapportionment was suggested as a presumptively rational method" of reapportionment. *Whitcomb v. Chavis*, supra, at 163. A State can "be compelled to reapportion itself

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[11]A census has been taken every 10 years since 1790. *Franklin v. Massachusetts*, 505 U. S. 788 (1992) (citing, U. S. Const., Art. I, § 2, cl. 3).

[12]The three-judge district court held that a "legislature must reapportion itself only every 10 years." [App. 6].

more than once in a 10-year period." *Id.* The holding in *Sixty-Seventh Minnesota State Senate* indicates that reapportionment may be required when the most recent census shows that an existing apportionment scheme is no longer constitutionally acceptable.[13] *Sixty-Seventh Minnesota State Senate v. Beens*, supra, at 195. Finally, in *Georgia v. Ashcroft*, the Court held that after a new 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*, supra, 488, n. 2. This precedent establishes that "decennial reapportionment" means reapportionment after a decennial census.[14] The requirement for reapportionment is triggered by a new census showing shifts and changes in a population. *Sixty-Seventh Minnesota State Senate v. Beens*, supra, at 195; *Georgia v. Ashcroft*, supra, 488, n. 2. It is not triggered by the passage of time. *Sixty-Seventh Minnesota State Senate v. Beens*, supra, at 195; *Georgia v. Ashcroft*, supra. The three-judge district court's holding otherwise is reversible error.

Although the Equal Protection Clause does not require "annual or biennial reapportionment...," *Reynolds v. Sims*, supra, at 583, it does not preclude a legislature from

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[13]The Court held:

> The 1966 Minnesota apportionment legislation, the court found, in the light of the 1970 census figures no longer provided a constitutionally acceptable apportionment of either house. No one challenges that basic finding here, and we have no reason to rule otherwise.

Sixty-Seventh Minnesota State Senate v. Beens, supra, at 195.

[14]Decennial reapportionment does not necessarily mean reapportionment after each decennial census. A jurisdiction may not be required to reapportion after every census. For instance, if the population variance in a legislature's scheme is substantially less than 10% before a census and still substantially less than 10% after a new census, then the scheme is presumptively constitutional and there is no reapportionment requirement. Reapportionment is required only when shifts and changes in a population are such that a new census shows a districting scheme violates the one-person, one-vote principle. *Sixty-Seventh Minnesota State Senate v. Beens*, supra, at 195; *Georgia v. Ashcroft*, supra, 488, n. 2.

reapportioning more frequently than every 10 years. *League of United Latin American Citizens v. Perry*, 548 U. S. 399 (2006) ("*LULAC*"). The Mississippi Constitution allows the legislature to reapportion more frequently than every 10 years but requires it to do so by the end of the legislative session in the second year after a decennial census. Art. 13, § 254, Miss. Const. (1890).

The three-judge district court held that reapportionment is not required before 2012 since the State reapportioned in 2002. [App. 6]. This construction of the State Constitution conflicts with the Equal Protection Clause's equal population requirement. See, *Sixty-Seventh Minnesota State Senate v. Beens*, supra, at 195. The equal population principle becomes a mandate before the next election when a new census shows shifts in a population such that the one-person, one-vote principle is violated. *Georgia v. Ashcroft*, supra, 488, n. 2; *Sixty-Seventh Minnesota State Senate v. Beens*, supra, at 195. If the one-person, one-vote mandate requires reapportionment but a state constitutional provision does not, then the state constitutional provision must yield. *Reynolds v. Sims*, supra, at 583. "When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls." *Reynolds v. Sims*, supra, at 583. If the Mississippi Constitution does not require reapportionment before 2012, then it conflicts with the Equal Protection Clause and the Supremacy Clause controls. *Id.*

The three-judge district court also relied on *Upham v. Seamon* as authority for holding that appellants claim was premature. [App. 5-7]. That reliance was misplaced. The lower court construed *Upham* as giving deference to a state constitutional provision in deciding when reapportionment is required. [App. 3-7]. The three-judge district court misconstrued *Upham*'s holding. The *Upham* decision requires a district court to follow state policy choices as much as possible when devising or selecting a reapportionment plan for use as an interim remedy. *Upham v. Seamon*, 456 U. S. 37 (1982) (per curiam). State policy choices do not necessarily have to be

followed in deciding when reapportionment is required. See, *Reynolds v. Sims*, supra, at 583. When there is a conflict between a state constitutional provision and the one-person, one-vote mandate as to when reapportionment is required, the Supremacy Clause requires the state constitutional provision to yield to the Equal Protection Clause. *Reynolds v. Sims*, supra, at 583; *Georgia v. Ashcroft*, supra, 488, n. 2.

The census for Mississippi was released on February 3, 2011 and showed substantial shifts and changes in the State's population. The legislature considered reapportionment plans between March 4, 2011 and March 17, 2011. An impasse was reached on March 17, 2011 and appellants filed this challenge seeking to enjoin the 2011 legislative elections and requesting a remedy for the malapportionment. The legislature had an adequate opportunity to reapportion but failed to timely do so. This Court held in *White v. Weiser* that "judicial relief becomes appropriate ... when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *White v. Weiser*, 412 U. S. 783, 794-795 (1973) . It becomes the unwelcome obligation of the federal courts to fashion a remedy for malapportioned districts if "the imminence of a state election makes it impractical" for the legislature to fashion a remedy. *Wise v. Lipscomb*, 437 U. S. 535, 540 (1978). A plaintiff is entitled to enjoin the next election if a State fails to reapportion after new census figures show that existing districts fail to comply with the one-person, one-vote mandate. *Georgia v. Ashcroft*, supra, 488, n. 2. Appellants were entitled to an injunction requiring compliance with the one-person, one-vote mandate before the August, 2011 primaries and the November, 2011 general election. The three-judge district court's holding otherwise is reversible error.

ARGUMENT II

The results of an election in districts that do not comply with the one-person one-vote mandate should be set aside and a new election promptly ordered.

The three-judge district court erred by failing to require compliance with the one-person, one-vote mandate before the next election. See, *Georgia v. Ashcroft*, supra, 488, n. 2; *Sixty-Seventh Minnesota State Senate v. Beens*, supra, at 195. The court compounded the error by failing to promptly order new elections. The court, however, indicated a willingness to consider a motion for special elections filed by any party after the 2012 legislative session. This conditional remedy is neither adequate nor prompt. The remedy is not adequate because no party will have standing to file such a motion ,[15] and the requirement to do so unnecessarily burdens appellants.[16] The remedy is not prompt because party primaries for federal officers will be held before the court considers

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[15]According to the lower court, any party may file a motion requesting special elections after the Mississippi Attorney General notifies everyone that new reapportionment plans have been enacted and precleared. [App. 24-25]. However, neither the appellees nor the intervenors have standing to request affirmative relief. A party requesting affirmative relief must have suffered an injury-in-fact caused by the conduct complained of which is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U. S. 555 (1992); *U. S. v. Louisiana*, 515 U. S. 737 (1995). Neither the appellees nor intervenors have suffered an injury in fact caused by the conduct complained of. A party suffering an injury-in-fact in an equal population vote dilution case is a voter in a district that is overpopulated and under-represented. *U. S. v. Louisiana*, supra; *Fairley v. Patterson*, 493 F. 2d 598 (5th Cir. 1974). The only parties who alleged an injury-in-fact were the appellants. If the legislature enacts reapportionment plans in compliance with the one-person, one-vote principle, then no party will have standing to challenge those plans and request relief. *U. S. v. Louisiana*, supra; *Fairley v. Patterson*, supra.

[16]Appellants sought pre-election relief. Therefore, they should not have to file a new motion requesting special elections within 30 days after the Mississippi Attorney General receives notice that new apportionment plans have been precleared. If the appellants somehow miss this 30 day window, then incumbents will continue to represent malapportioned districts. District courts have the authority to provide a remedy for the problem of incumbent legislators continuing to represent voters in malapportioned districts. See, *McDaniel v. Sanchez*, 452 U. S. 130, 153 n. 35 (1981).

special elections.[17]

The Mississippi legislature was afforded an adequate opportunity to enact valid reapportionment plans.[18] However, the legislature failed to take advantage of the opportunity. A legislature should be afforded only one opportunity to enact valid reapportionment plans before a court grants "relief under equitable principles to insure that no further elections are held under an unconstitutional scheme." *Davis v. Mann*, 377 U. S. 678, 693 (1964). If a legislature fails to timely enact valid reapportion plans, then a court should implement a remedy before the next election. *WMCA, Inc. v. Lomenzo*, 377 U. S. 633 (1964). In this regard, the court should act promptly to set aside the results of elections conducted in violation of federal law, *N.A.A.C.P. v. Hampton County Election Commission*, 470 U. S. 166, 182-183 (1985), and schedule special elections, if necessary, to coincide with impending Presidential and congressional elections. *O'Connor v. Coleman*, 425 U. S. 675 (1976) (per curiam).

It is likely that legislators elected in the malapportioned districts will serve four years before the next election under the three-judge court's Memorandum Opinion and Order. The courts should not perpetuate this unconstitutional apportionment for another three years. *Swann v. Adams*, 383 U. S. 210, 211-212 (1966) (per curiam).

Therefore, the Court should reverse the three-judge district court's decision and remand the case with instructions to order elections to coincide with the 2012 federal elections.

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[17]Party primaries for federal officers will be held in March, 2012. The court will not consider special elections before May, 2012.

[18]Even if it is determined that the legislature has not been afforded a reasonable opportunity to reapportion, the Court should remand the case with directions to the district court to "enter an order fixing a reasonable time within which" to reapportion. *Scott v. Germano*, 381 U. S. 407, 409 (1965) (per curiam). One week into the 2012 legislative session is a reasonable time. See, *Smith v. Clark*, 189 F. Supp. 2d 503 (S. D. Miss. 2002) (three-judge court).

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CONCLUSION

Since the three-judge district court erroneously denied appellants' motion for a preliminary injunction, this Court should note probable jurisdiction, reverse the decision of the three-judge court and remand the case with instructions to enjoin scheduled elections and fashion an interim remedy, or, in the alternative, allow the elections to proceed and then promptly set the results of the elections aside and order new elections to coincides with the 2012 federal elections.

Dated: July 15, 2011.

Respectfully submitted,

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