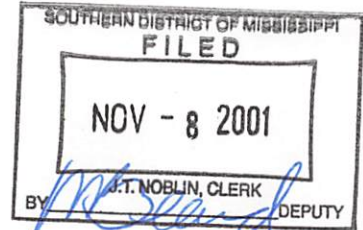


**URGENT AND NECESSITOUS TREATMENT OF THIS MATTER UNDER UNIFORM
RULE 7.2(H) IS REQUESTED**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**



**JOHN ROBERT SMITH, SHIRLEY
HALL, and GENE WALKER**

PLAINTIFF

CIVIL ACTION NO. 3:01CV855WS

VERSUS

DEFENDANTS

**ERIC CLARK, Secretary of State of
MISSISSIPPI; MIKE MOORE, Attorney
General for the State of Mississippi;
RONNIE MUSGROVE, Governor of
Mississippi; MISSISSIPPI REPUBLICAN
EXECUTIVE COMMITTEE; and
MISSISSIPPI DEMOCRATIC
EXECUTIVE COMMITTEE**

MOTION FOR PRELIMINARY INJUNCTION

COMES NOW, John Robert Smith, Shirley Hall and Gene Walker, and files their Motion for Preliminary Injunction pursuant to Fed. R. Civ. P. 65 and in support thereof would show the following:

1. Pursuant to Uniform Local Rule 7.2(H) urgent and necessitous treatment of this matter is requested. This Court's urgent action is needed to ensure that the voters of Mississippi have sufficient time to consider and compare the various candidates for United States House of Representatives for the full time approved by state law.
2. Recently released United States Census data shows that Mississippi's population has

not grown at the pace needed to maintain its five congressional districts. As a result, the current redistricting plan may no longer be enforced under federal law and requires a reduction in the number of congressional districts from five (5) to four (4).

3. It is the duty of the Mississippi legislature to redraw the districts to reflect this change. The legislature met in a special session on November 1, 2001, to adopt a redistricting plan, but failed to do so. The legislature adjourned on November 7, 2001 at the directive of Governor Ronnie Musgrove without adopting a plan. It is not likely that Governor Musgrove will reconvene the legislature to craft a plan, and it is thus, up to the courts to decide this important matter.

4. Mississippi law requires that qualification of candidates running for Congress in the 2002 elections occur by March 1, 2002. Miss Code Ann. § 23-15-299. With the new district boundary lines remaining undetermined at this point, plaintiffs and other voters in Mississippi do not have fair notice of the 2002 district boundary lines. Candidates and their supporters will have insufficient time to prepare, and voters will not be able to consider and compare the various candidates for the full time approved by law. Moreover, any postponement of that filing date necessitated by the lack of an enforceable redistricting plan would contravene the express directive of the Mississippi Supreme Court, which has held that an election schedule which violates the state election code is adverse to the public interest. In addition, any change in the election schedule would require approval by federal authorities under 42 U.S.C. § 1973c.

5. Therefore, the plaintiffs in this action, as registered voters in the State of Mississippi, pray that this Court enjoin the enforcement of the current election plan and impose a constitutional election plan in time to comply with the filing deadline for congressional elections

in Mississippi. In support thereof, plaintiffs would show the following:

6. The current congressional district design, codified under Miss. Code Ann. § 23-15-1037, which allows for the state to have five (5) congressional districts, is unconstitutional due to recently released census data showing that the population in Mississippi has not increased enough to maintain five (5) seats in the United States House of Representatives.

7. It is the duty of the legislature to redraw the districts to reflect this change; however, the legislature was adjourned at noon on November 7, 2001 at the directive of Governor Ronnie Musgrove without having agreed on a redistricting plan.

8. Any new plan established by the state cannot be enforced absent federal approval under 42 U.S.C. § 1973c. Because that statute gives the Attorney General of the United States 60 days to consider any submission, and because of the legislative impasse, there is now the strong possibility that enforceable district lines will not be drawn in time for the March 1, 2001 qualifying deadline.

9. On November 1, 2001, Plaintiffs filed this suit asking this Court for relief should the Mississippi legislature fail to adopt a redistricting plan in a timely manner to comport with the March 1, 2001 qualifying deadline.

10. The United States Supreme Court has held that a state court judgment or order concerning election laws are not binding on the rights of non-parties to that case and that federal courts should devise a remedy to enforce issues regarding § 5 of the Voting Rights Act, 42 U.S.C. 1973c. *Hathorn v. Lovorn*, 457 U.S. 255, 270-71 (1982).

11. There is a substantial likelihood, and in fact, it is certain, that plaintiffs will prevail on the merits, as the congressional district lines must be redrawn to comply with constitutional

standards.

12. There is a substantial threat that plaintiffs will suffer irreparable injury if this injunction is not granted. The Mississippi Supreme Court has stated that an election schedule which violates the state election code is adverse to the public interest. *Adams County Election Comm'n v. Sanders*, 586 So.2d 829, 832 (Miss. 1991).

13. The threatened injury to the plaintiffs here outweighs the threatened harm the injunction might do to the defendant, as defendants will have the opportunity to present their ideas on a redistricting plan with this Court.

14. The granting of this injunction will serve the public interest by permitting compliance with the election schedule, as explained in *Adams County*.

WHEREFORE, plaintiff respectfully move the following:

15. That this Court enjoin enforcement of the current congressional districting plan.

16. That this Court find order that the proper remedy in this case, pursuant to federal and Mississippi law, is that the congressional representatives be chosen by the electors of the state-at-large, pursuant to Miss Code Ann. § 23-15-1039 and 2 U.S.C.A. § 2a(c)(5).

17. In the alternative, should this Court find that the proper remedy is not an at-large election under 2 U.S.C.A. § 2a(c)(5) and Miss. Code Ann. § 23-15-1039, that this Court impose a new, constitutional districting plan.

18. That this Court expedite consideration of this matter, as it is an urgent and necessitous matter under Uniform Rule 7.2(H).

Respectfully Submitted,

**JOHN ROBERT SMITH,
SHIRLEY HALL, and
GENE WALKER**

BY:


ARTHUR F. JERNIGAN, JR.

ARTHUR F. JERNIGAN, JR. (MSB #3092)
STACI B. O'NEAL (MSB #99910)
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TELEPHONE: (601) 939-8900
FACSIMILE: (601) 932-4400

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day mailed *via* United States mail, postage prepaid, a true and correct copy of the above and foregoing to all counsel of record.

This the 8 day of November, 2001.


ARTHUR E. JERNIGAN, JR.

**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

**ERIC CLARK, Secretary of State of MISSISSIPPI;
MIKE MOORE, Attorney General for the State of
Mississippi; RONNIE MUSGROVE, Governor of
Mississippi; MISSISSIPPI REPUBLICAN
EXECUTIVE COMMITTEE; and MISSISSIPPI
DEMOCRATIC EXECUTIVE COMMITTEE**

DEFENDANTS

NOTICE OF MOTION

TO: HONORABLE RONNIE MUSGROVE
GOVERNOR
STATE OF MISSISSIPPI
NEW CAPITOL
400 HIGH STREET
JACKSON, MS 39201

HONORABLE MIKE MOORE
ATTORNEY GENERAL
STATE OF MISSISSIPPI
GARTIN JUSTICE BUILDING
450 HIGH STREET
JACKSON, MS 39201

HONORABLE ERIC CLARK
SECRETARY OF STATE
STATE OF MISSISSIPPI
401 MISSISSIPPI STREET
JACKSON, MS 39201

CHAIRMAN, EXECUTIVE COMMITTEE
MISSISSIPPI DEMOCRATIC PARTY
832 NORTH CONGRESS ST.
JACKSON, MS 39202

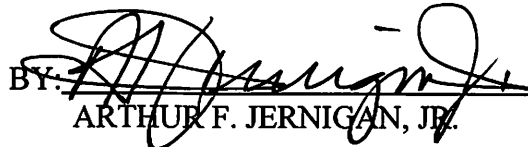
MR. JIM HERRING
CHAIRMAN, EXECUTIVE COMMITTEE
MISSISSIPPI REPUBLICAN PARTY
415 YAZOO ST.
JACKSON, MS 39201

TAKE NOTICE that the Plaintiffs' *Motion for Preliminary Injunction* will be brought on for hearing before the Honorable Henry T. Wingate at the United States District Court for the Southern District of Mississippi in Jackson, Mississippi, as soon as it may be heard.

THIS the 8th day of November, 2001.

Respectfully submitted,

**JOHN ROBERT SMITH,
SHIRLEY HALL, and GENE WALKER**

BY: 
ARTHUR F. JERNIGAN, JR.

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This the 8th day of November, 2001.


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