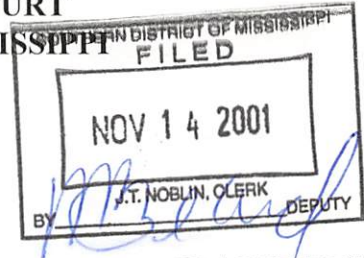


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



JOHN ROBERT SMITH,  
SHIRLEY HALL, and  
GENE WALKER

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:01CV855 WS

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

**STATE DEFENDANTS' MOTION TO DISMISS  
AND OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

State Defendants Eric Clark, Secretary of State, Mike Moore, Attorney General, and Ronnie Musgrove, Governor, (hereinafter referred to as "Defendant Officials"), by and through the Attorney General, respectfully move the Court to dismiss the Complaint and oppose the Motion for Preliminary Injunction filed by Plaintiffs.

For the reasons set forth in detail in a memorandum of law submitted directly to the District Judge, the Plaintiffs' Complaint on its face and as a matter of law should be forthwith dismissed by the Court in that:

1. The Complaint is based on speculation and complains of matters that are not ripe for review, see *Preiser v. Newkirk*, 422 U.S. 395, 95 S.Ct. 2330, 45 L.Ed.2d 272; *Renne v. Geary*, 501 U.S. 312, 320-322, 111 S.Ct. 2331, 2338, 45 L.Ed.2d 272 (1991); *United Transp. Union v. Foster*, 205 F.3d 851, 856-857 (5<sup>th</sup> Cir. 2000).

2. The Complaint is based upon state law and does not present any current or imminent violation of federal law by these executive branch State officials named as defendants, and is accordingly barred by the Eleventh Amendment, see *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S.89, 105-106, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984) (Eleventh Amendment bars suit for injunctive relief against State officials based on state law); *Okpalobi v. Foster*, 244 F.2d 405, 421-424 (5<sup>th</sup> Cir. 2001) (en banc) (named State officials could not be sued for injunctive relief under *Ex Parte Young*, because *inter alia*, officials had not acted nor specifically threatened to enforce challenged statute).

3. The Complaint does not prescribe an ongoing injury-in-fact to plaintiffs which currently can be permissibly redressed by court decree, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 531 (1992).

4. State defendants further oppose plaintiffs' motion for preliminary injunction. For many of the same fundamental reasons and threshold considerations set forth in paragraphs 1 through 3 above, plaintiffs' motion for preliminary injunction must necessarily be denied. As a matter of law and under the circumstances here, plaintiffs cannot meet their burden of clearly demonstrating all of the prerequisites to relief under *Canal Authority v. Callaway*, 489 F.2d 567 (5th Cir. 1974), to wit:

(1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm an injunction merits to [the defendants] and (4) that granting the preliminary injunction will not disserve the public interest.

5. Absent a clear demonstration of Article III justiciability as a threshold matter, no preliminary injunction can issue. There is no clear demonstration of a likelihood of success on the "merits," because, *inter alia*, no current violation of any federal law is alleged or demonstrated. There is no

demonstration of a ripe case or controversy and a cognizable and redressable injury in fact, much less the immediate and "irreparable harm" required for a preliminary injunction. Moreover, the public interest militates in favor of permitting an opportunity for the state legislature to perform its function of redistricting without premature intervention by the courts, and this is particularly true where matters are contingent and speculative in nature at present.

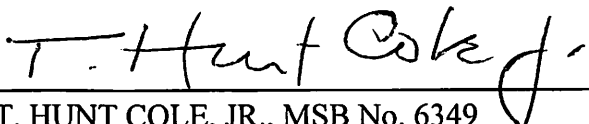
6. No preliminary injunction could issue absent the convening of and consideration by a three judge court.

WHEREFORE, the state official defendants respectfully move the Court to dismiss the Complaint and further oppose the motion for preliminary injunction.

Respectfully submitted,

ERIC CLARK, Secretary of State of Mississippi;  
MIKE MOORE, Attorney General for the State of  
Mississippi; RONNIE MUSGROVE, Governor of  
Mississippi, Defendants

**BY: MIKE MOORE, ATTORNEY GENERAL**

BY:   
T. HUNT COLE, JR., MSB No. 6349  
SPECIAL ASSISTANT ATTORNEY GENERAL

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**CERTIFICATE OF SERVICE**

This is to certify that I, T. Hunt Cole, Jr., Special Assistant Attorney General for the State of Mississippi, have this date caused to be mailed, via United States Postal Service, first-class postage prepaid, a true and correct copy of *State Defendants' Motion to Dismiss and Opposition to Motion for Preliminary Injunction* to the following:

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This the 14<sup>th</sup> day of November, 2001.

  
T. HUNT COLE, JR.