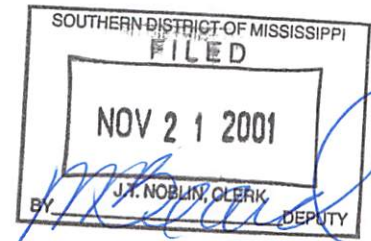


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



JOHN ROBERT SMITH, SHIRLEY HALL, AND
GENE WALKER

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 3:01CV855WS

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

**DEFENDANT MISSISSIPPI DEMOCRATIC EXECUTIVE COMMITTEE'S RESPONSE TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

COMES NOW, Defendant Mississippi Democratic Executive Committee (MDEC), and files its Response to Plaintiffs' Motion for Preliminary Injunction and would state unto this Court the following:

The matter pending before this Court is on Plaintiffs' Motion for a Preliminary Injunction pursuant to Fed. R. Civ. P. 65. Plaintiffs claim they will suffer irreparable harm if the requested relief is not granted; that plaintiffs threatened injury outweighs the threatened harm the injunction might do to the defendants; and that the injunctive relief will serve the public interest by permitting compliance with the election schedule.

Defendant MDEC contends that rather than entering a judgment on the merits of plaintiffs preliminary injunction, the district court should stay all proceedings and defer to the state court before taking any action; that a three judge panel is not required for a ruling by the district court on the issue of a stay; and that the plaintiffs have failed to meet their burden of proof required for a preliminary injunction.

Argument

1. THE FEDERAL DISTRICT COURT SHOULD ABSTAIN FROM EXERCISING JURISDICTION OVER THIS MATTER AND DEFER TO THE PENDING STATE COURT ACTION.

The United States Supreme Court stated that it is an established principle that “the Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts.” *Grove, et al. vs. Emison, et al.*, 507 U.S. 25, 34 (1992). The *Grove* Court further stated that “[w]e say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the state through its legislature or other body, rather than a federal court.” *Id.*

a. State Court Matter Should Proceed Without Intervention of Federal District Court

“This Court recognizes that state courts have concurrent jurisdiction with the federal courts to decide whether § 5 of the Voting Rights Act applies to contemplated changes in election procedures and further recognizes that state courts have the duty to uphold federal law, jurisdiction and duty which we gladly accept...” *Adams County Election Commission, et al. v. Sanders*, 586 So. 2d 829, 831 (Miss.1991). Currently pending in the Chancery Court for the First Judicial District of Hinds County is a matter styled *Beatrice Branch, et al. v. Eric Clark, et al.*, No. G-2001-1777, requesting that the court adopt a congressional redistricting map if the state legislature fails to draw new lines. In the interest of judicial economy and established principal favoring state court jurisdiction, the federal court should allow the state action to proceed. The state court has jurisdiction and the dispute can be resolved without substantial duplication. State courts have an obligation to uphold federal law. The chancery court will adhere to federal constitutional law and accommodate the federal and state interests in adopting a plan for submission to the Justice Department for pre-clearance. If the plaintiffs are not satisfied with the state court’s remedy then they may at any time proffer the assistance of the federal courts to address any grievance resulting

from the state court action. But, parallel litigation in state and federal court regarding the same facts and issues would create a "rush to judgment" climate surrounding Mississippi's redistricting mandate. Such a climate would be most unhealthy for the integrity and trust that our citizens demand of our democratic process. It would appear logical then to stay the federal proceedings. Plaintiffs, of course, may seek to intervene in the state action where their interests will be protected all the same.

The Fifth Circuit Court of Appeals opinion on abstention of federal courts in *Empire Pictures Distributing Compan, Inc. v. City of Fort Worth*, 273 F.2d 529, 534-535 (5th Cir. 1960) illustrates the latitude that should be given to the states when a state law question is enmeshed with federal questions. The Fifth Circuit states as follows:

This now well-established procedure is aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our federal system. To minimize the possibility of such interference a 'scrupulous regard for the rightful independence of state government at all times actuate the federal courts as their contribution furthering the harmonious relation between state and federal authority. In the service o this doctrine, which the Court has applied in many different contexts, no principle has found more consistent of clear expression than that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them. (emphasis added).

In *Hurley State Bank v. Helen Garrett*, Civil Action No. 3:01-CV-114WS (March 5, 2001), Your Honor recognized and appreciated the concurrent jurisdiction of state and federal courts over like or similar claims raised before both courts by stating, "When state and federal courts simultaneously possess jurisdiction over lawsuits arising out of the same transaction or occurrence, as here, ordinarily neither forum should interfere with the other's exercise of jurisdiction." (Quoting *Atlantic Coast Line Ry. vs. Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 295 (1970)).

b. A three-judge panel is not necessary to grant stay of federal court proceeding

Defendant requests this court to stay or hold in abeyance the federal court proceeding until such time as the state court matter has been completed. There is no applicable federal law that

precludes a single federal judge from staying a proceeding pending the outcome of a state case that arises out of and is a substantially similar matter. There arises no prejudice to the plaintiffs. Plaintiffs are not precluded from filing an action resulting from a decision of the state court that affects or offends a federal right or guarantee.

2. PLAINTIFFS' INJUNCTIVE RELIEF SHOULD BE DENIED AS THE REQUISITE ELEMENTS FOR SAID RELIEF HAVE NOT BEEN SATISFIED.

Four factors must be satisfied by the movant before injunctive relief can be granted. First, the movant must show a substantial likelihood that he will ultimately prevail on the merits. Even if, *arguendo*, plaintiffs are successful in prevailing on the merits of this case, injunctive relief is still untimely. Injunctive relief would be moot if the state court resolves the issues and produces a congressional plan prior to the March 1, 2002, qualification deadline pursuant to § 25-15-299.

Second, the movant must show that he will suffer irreparable injury if the injunction is not issued. Here, the state court has already begun to act on plaintiffs' injunctive relief and there is an immediately forthcoming remedy for congressional redistricting. The state court's flexibility and authority to decide the issue foils the necessitous nature of movants' petition. There are no issues that have to be resolved in federal court that cannot be decided by the state court. Furthermore, the issues raised in the state court petition are substantially the same or similar to movants' petition. Although the parties are not the same, the resolution of the issues will have the same preclusive effect. There is no purpose served in litigating in two different forums. Plaintiffs quite easily could enter an appearance in the state case and have their issues heard before the court. Therefore, it would appear proper for the court that received the case first to decide whether the state should be enjoined from proceeding upon the current congressional district scheme.

Third, the injury to the movants must outweigh the potential harm to the opposing party. Plaintiffs through intervention can pursue the same remedy in the state court as it is seeking in federal court.

Fourth, injunctive relief should not be adverse to the public interest. As argued above, the United States Supreme Court in *Grove* again recognized that redistricting primary is the responsibility of the individual states, not federal courts. The state court will serve the public interest and the issues will be adjudicated with all deliberate speed.

Plaintiffs have failed to meet their burden under the factors for injunctive relief. For the reasons outlined above, this Court should deny movants request.

WHEREFORE PREMISES CONSIDERED Defendant MDEC requests this court to hear its request for a stay of proceedings without requiring a three-judge panel.

Further, Defendant MDEC further requests the district court to abstain from adjudicating the merits of plaintiffs' preliminary injunction and defer to the state court action currently pending.

Furthermore, Defendant MDEC request the district court to find that the plaintiffs have failed to meet their burden of proof required for a preliminary injunction.

RESPECTFULLY SUBMITTED,



SHANE F. LANGSTON
OMAR L. NELSON

OF COUNSEL:

Shane F. Langston, MSB #1061
Omar L. Nelson, MSB # 100105
LANGSTON SWEET & FREESE
201 North President Street
Jackson, Mississippi 39201
(601) 969-1356

CERTIFICATE OF SERVICE

I, undersigned counsel, do hereby certify that this day mailed via U.S. Mail postal service a true and correct copy of the foregoing to the following:

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

Mr. Jim Herring
Chairman, Executive Committee
Mississippi Republican Party
415 Yazoo Street
Jackson, MS 39201

Arthur F. Jernigan, Jr.
Watson & Jernigan, PA
Mirror Lake Plaza, Ste 1502
2829 Lakeland Drive
PO Box 23546
Jackson, MS 39225-3546

T. Hunt Cole, Jr.
Office of the Attorney General
Post Office Box 220
Jackson, MS 39205

THIS the 21 day of November, 2001.



Shane F. Langston, Esquire
Omar L. Nelson, Esquire