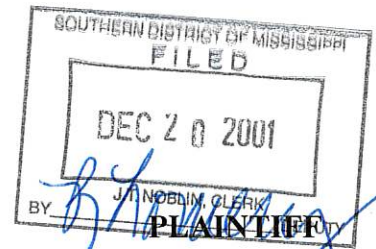


**URGENT AND NECESSITOUS TREATMENT OF THIS MATTER UNDER UNIFORM
RULE 7.2(H) IS REQUESTED**

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



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

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**

**PLAINTIFFS' MOTION FOR LEAVE TO AMEND
AND FOR PRELIMINARY INJUNCTION**

COME NOW John Robert Smith, Shirley Hall and Gene Walker, and file their Motion for Leave to Amend and 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 protect the integrity of the 2002 elections for the United States House of Representatives.

2. By order of December 13, 2001, in *In re: Mauldin*, No. 2001-M-01891, the Supreme Court of Mississippi changed Mississippi law to permit a congressional redistricting plan to be adopted by the Chancery for the First Judicial District of Hinds County, Mississippi,

instead of by the Legislature. On December 14, 2001, the Chancery Court began trial in the case of *Branch v. Clark*, No. G-2001-1777 W/4, in which the Intervenor in this Court have asked the Chancery Court to "issue an injunction adopting and directing the implementation of a congressional redistricting plan for the State of Mississippi." Because those events have an effect on the relief previously requested from this Court by plaintiffs, they respectfully move for leave to amend their complaint pursuant to Fed.R.Civ.P. 15. A copy of their proposed amended complaint is attached hereto and made a part hereof as Exhibit 1.

The Supreme Court's Order and the Judgment to be Entered by the Chancery Court are Changes in Mississippi Election Law and Must be Precleared Under § 5 of the Voting Rights Act.

3. Mississippi law has never given Chancery Courts in Mississippi jurisdiction to apportion congressional districts, even in the event the Legislature fails to do so. Such restrictions on the jurisdiction of the Chancery Court were set forth in *Brumfield v. Brock*, 169 Miss. 784, 142 So. 745 (1932), until the Supreme Court of Mississippi, without explanation, ruled to the contrary in its order in *In re: Mauldin*. Even so, the Chancery Court cannot redistrict Mississippi as long as a valid redistricting statute remains the law in Mississippi. Miss. Code Ann. § 23-15-1039, which was "pre-cleared" by the United States Attorney General in 1986 and remains valid law in Mississippi,¹ provides that:

¹The identical result is also mandated by 2 U.S.C. § 2a(c)(5). The reliance by Intervenor herein on *Shayer v. Kirkpatrick*, 541 F.Supp. 922, 926-27 (W.D.Mo. 1982), for the proposition that the at-large statute was implicitly repealed by the adoption of 2 U.S.C. § 2c in 1967 is misplaced. Another District Court harmonized the two statutes, holding that, although Congress generally intends elections to be held by district, "§ 2a(c)(5) provides emergency statutory relief from an otherwise unconstitutional situation." *Carstens v. Lamm*, 543 F.Supp. 68, 77-78 (D.Colo. 1982). The historical discussion upon which Intervenor rely in *Whitcomb v. Chavis*,

Should an election of representatives in congress occur after the number of representatives to which the state is entitled shall be changed, in consequence of a new apportionment being made by congress, and before districts shall have been changed to conform to the new apportionment, the representatives shall be chosen as follows; . . . and if the number of representatives shall be diminished, then the whole number shall be chosen by the electors of the state at large.

4. This Court is well aware that Mississippi cannot change any aspect of its election laws without receiving preclearance from federal authorities required by § 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The scope of that provision is quite broad. The Supreme Court of the United States has held "that Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way." *Allen v. State Bd. of Elections*, 393 U.S. 544, 566 (1969). In its regulation governing submissions under § 5, the Department of Justice gives the broadest possible scope to these terms:

Any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice of procedure, ostensibly expands voting rights, or is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the section 5 preclearance requirement.

28 C.F.R. § 51.12. Throughout Mississippi's history, the Legislature has undertaken the responsibility for congressional redistricting. The action taken by the Supreme Court constitutes a major alteration of election law in the State of Mississippi.

403 U.S. 124, 159 n.39 (1970), is plainly dictum, since that case involved state, not federal, elections.

5. If the Hinds County Chancery Court is permitted single-handedly to reapportion Mississippi congressional districts, this will certainly represent a change in election procedure and practice for Mississippi. Pursuant to § 5 of the Voting Rights Act, this change must be approved by federal authorities. A Mississippi chancellor has never before assumed this type of legislative function, and this extraordinary action requires this Court to enjoin all acts taken pursuant to the Supreme Court's order until such time as this new method of apportioning Mississippi has been approved pursuant to § 5.

6. Transfer of authority from the Legislature to the Chancery Court has a direct relation to voting. The Department of Justice interprets this type of change as triggering § 5 preclearance. The Department of Justice's official position is that "[s]ome transfers of authority between government officials . . . clearly have a direct relation to voting if they concern authority over voting procedures, **such as a change in who has authority to adopt a redistricting plan, conduct voter registration, or select polling place officials.**" See www.usdoj.gov/crt/voting/sec_5/types.htm (emphasis added). See, e.g., *Foreman v. Dallas County*, 521 U.S. 979 (1997). This sort of change is known as "enabling legislation," which is defined to include "[l]egislation authorizing counties, cities, school districts, or agencies or officials of the State to institute any of the changes described in § 51.13." 28 C.F.R. § 51.15(b)(1) (emphasis added). The judge presiding in the Chancery Court is an official of the State, and redistricting is a change described in 28 C.F.R. § 51.13(e).

7. In addition, any judgment entered by the Chancery Court purporting to impose a congressional redistricting plan itself constitutes a change from the previous plan set forth in Miss. Code Ann. § 23-15-1037 (Rev. 2001), and from the at-large plan mandated by the

Legislature in these circumstances under § 23-15-1039. That judgment itself cannot be enforced absent the approval of federal authorities under § 5 of the Voting Rights Act.

8. Pursuant to *Lopez v. Monterey County*, 519 U.S. 9, 23 (1996), this Court is required to do three things: (1) determine whether a covered voting change has occurred; (2) if so, whether preclearance has been obtained; and (3) if not, what relief by the court is appropriate. First, the Hinds County Chancery Court clearly will implement a change that is unprecedented in Mississippi history. Second, no preclearance has been obtained. Finally, the only appropriate relief is for enforcement of the Chancery Court judgment to be enjoined until that judgment and the Supreme Court's order purporting to vest it with authority have been approved pursuant to § 5.

9. 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. *Hathorn v. Lovorn*, 457 U.S. 255, 269-71 & n.23 (1982). *Grove v. Emison*, 507 U.S. 25 (1993), states the general rule that federal courts should defer to state courts adjudicating federal claims on redistricting matters. Intervenors, however, have presented no federal claims to the Chancery Court,² and *Grove*, in any event, involved Minnesota, which is not subject to § 5 of the Voting Rights Act. *Hathorn*, by contrast, is a Mississippi case in which the Supreme Court of the United States specifically held that Mississippi courts must defer to federal courts to craft interim relief where, as here, a change in election procedures has not been approved pursuant to § 5.

²A copy of their Amended Complaint in the Chancery Court is attached hereto and made a part hereof as Exhibit 2.

10. In this case, the proper interim relief is for this Court to enjoin all actions to be taken pursuant to the Supreme Court's order and any judgment the Chancery Court may enter until such time, if any, as they have both been approved by federal authorities pursuant to § 5 of the Voting Rights Act.

The Chancery Court's Action is in Violation of Article I, § 4 of the United States Constitution.

11. Judicial control of congressional redistricting in Mississippi is barred not only by federal statutes, but also by the United States Constitution. Article I, § 4 of the United States Constitution provides, "The Times, Places and Manner of Holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof" In *Smiley v. Holm*, 285 U.S. 355 (1932), the Supreme Court of the United States held that a governor could nevertheless veto a redistricting bill passed by the Legislature because executive veto was an accepted part of legislative practice in the thirteen original states in 1787. There is, however, no federal decision that considers whether a state court may impose a redistricting plan where the Legislature has failed to exercise the power conferred upon it by the United States Constitution.

12. The Supreme Court of the United States considered, but did not resolve, an analogous issue in *Bush v. Gore*, 121 S.Ct. 525 (2000). Article II, § 1 delegates a similar power to state legislatures, providing that presidential electors shall be appointed by each state "in such Manner as the Legislature thereof may direct." The three concurring justices concluded that the Supreme Court of Florida, in devising its own rules for counting votes for electors, had usurped authority delegated by the Constitution to the Florida Legislature. *Id.*, at 533-39 (Rehnquist, C.J.,

concurring). By the same analysis, the Chancery Court's imposition of a redistricting plan would usurp authority delegated by the Constitution to the Mississippi Legislature.

13. For the Chancery Court to disregard the legislative declaration in § 23-15-1039 and to devise its own congressional redistricting plan would plainly violate the Constitution. For these reasons, then, federal law precludes the courts of this state from devising a new reapportionment plan, whether or not such a plan receives federal approval under § 5 of the Voting Rights Act.

The Chancery Court Action Violates Due Process.

14. The Chancery Court's Amended Scheduling Order did not provide the parties ample opportunity for discovery as is required by Miss. R. Civ. P. 40(a). The Chancery Court did not honor the parties' absolute right to twenty (20) days' notice of trial as is required by Miss. R. Civ. P. 40(b). The Chancery Court basically ignored all of the rules dealing with discovery. The parties had exactly 48 hours to propound discovery, receive responses, designate experts and prepare for trial.

15. As a practical matter, because the Chancery Court's action was not intended or anticipated by the Legislature, Mississippi law provides no guidelines which the Chancery Court can follow as it undertakes this most important task. Further, the Mississippi Rules of Civil Procedure, which act to protect the integrity of the judicial system, have been superseded because of the Chancery Court's expedited schedule. Defendants Clark, Moore, and Musgrove have failed to defend against Intervenor's claims in Chancery Court since the issuance of the Supreme Court's order. Private citizens who have intervened in that action cannot properly represent the

interests of these plaintiffs or all citizens of the State of Mississippi, particularly since they have had no meaningful opportunity to prepare for trial and since Mississippi law provides no notice of the legal standards which the Chancery Court may choose to enforce. Under these circumstances, enforcement of any judgment issued by the Chancery Court to the prejudice of the voting rights of these plaintiffs would deprive them of liberty without due process of the law.

16. The decision of the state courts cannot be binding on these plaintiffs, who were not parties to that proceeding. Even where an election plan has been approved by the highest court of a state, that plan can be invalidated by a district court where, as here, a plaintiff has not had a full and fair opportunity to litigate. *Johnson v. DeGrandy* 512 U.S. 997, 1004-06 (1994).

Relief

17. There is a substantial likelihood, and, in fact, it is certain, that plaintiffs will prevail on the merits, as the Mississippi judicial proceedings have received no federal approval under § 5 of the Voting Rights Act.

18. 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 that 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).

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

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

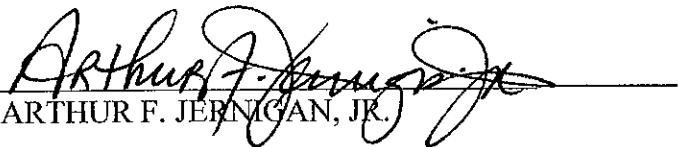
WHEREFORE, Plaintiffs respectfully move the following:

1. That this Court permit the filing of the proposed Amended Complaint;
2. That this Court enjoin permanently the defendants, their officers, agents, employees, attorneys, servants, successors in office, and all persons in active concert or participation with them from conducting any election using the current districting plan, as codified at Miss. Code Ann. § 25-15-1037;
3. That this Court permanently enjoin the defendants, their officers, agents, employees, attorneys, servants, successors in office, and all persons in active concert or participation with them from administering, enforcing, or being bound by the enforcement of the order of the Supreme Court of Mississippi of December 13, 2001, in *In re: Mauldin*;
4. That this Court permanently enjoin the defendants, their officers, agents, employees, attorneys, servants, successors in office, and all persons in active concert or participation with them from conducting any election using any plan to be set forth in the judgment to be entered by the Chancery Court in *Branch v. Clark*;
5. That this Court permanently enjoin the Intervenor, their officers, agents, employees, attorneys, servants, successors in office, and all persons in active concert or participation with them from attempting in any way to enforce the judgment to be entered in *Branch v. Clark*;
6. That the Court will find that the proper remedy in this case, pursuant to federal and Mississippi law, is that the congressional representatives will be chosen by the electors of the state-at-large, pursuant to Miss. Code Ann. § 23-15-1039 and 2 U.S.C. § 2a(c)(5);

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

Respectfully Submitted,

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

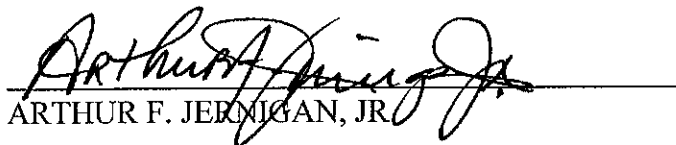
BY: 
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CERTIFICATE OF SERVICE

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 17 day of December, 2001.


ARTHUR F. JERNIGAN, JR.

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

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

PLAINTIFFS

CIVIL ACTION NO. 3:01CV855WS

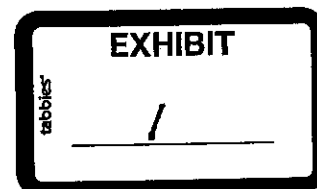
VERSUS

**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

AMENDED COMPLAINT

COME NOW the Plaintiffs, John Robert Smith, Shirley Hall, and Gene Walker, and bring this action to enforce voting rights guaranteed to them by the United States Constitution and federal law. The United States Constitution in Article I, Section 2, requires that a census be undertaken every ten (10) years specifically for the purpose of adjusting the number of congressional seats to which each state is entitled. The recently released census data showing that a decrease in population in Mississippi has required a reduction in the number of congressional districts from five (5) to four (4). The current redistricting plan, which divides the state into five congressional districts, thus, may no longer be enforced under federal law. The State of Mississippi as of the date and time of the filing of this Amended Complaint has failed validly to adopt a new redistricting plan, and any plan subsequently adopted cannot be enforced until it has been approved under § 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The qualifying



deadline for candidacy for the United States House of Representatives is March 1, 2002. 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, and would itself require approval under 42 U.S.C. § 1973c. Therefore, the plaintiffs in this action, as registered voters in the State of Mississippi, are seeking injunctive relief to ensure that the State of Mississippi has a constitutional redistricting plan in place in time to comply with the filing deadline for congressional elections in Mississippi.

JURISDICTION AND VENUE

1. This Court has original jurisdiction of this action, and plaintiffs have the right to bring suit under 28 U.S.C. § 1331, which provides:

The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws or treaties of the United States.

2. This Court also has jurisdiction over this matter under 28 U.S.C. § 1343(a)(3) and (4), which provides for jurisdiction over the following civil action:

- (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
- (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

3. This case requires convocation of a three-judge federal court pursuant to 28 U.S.C. § 2284, which provides:

- (a) A district court of three judges shall be convened when otherwise required by act of Congress or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

4. Venue is proper in this district under 28 U.S.C. § 1391(b), which provides as follows:

- (b) A civil action wherein jurisdiction is not found solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

PARTIES

5. The Plaintiffs are JOHN ROBERT SMITH, an adult resident citizen and registered voter of Lauderdale County, Mississippi; SHIRLEY HALL, an adult resident citizen and registered voter of Rankin County, Mississippi; and GENE WALKER, an adult resident citizen and registered voter of Scott County, Mississippi.

6. Defendants Eric Clark, Mike Moore, and Ronnie Musgrove of citizens of the United States of America and of the State of Mississippi; each is sued in his official capacity. Defendant Eric Clark is the Secretary of State of Mississippi. Defendant Mike Moore is the Attorney General of Mississippi. Defendant Ronnie Musgrove is the Governor of Mississippi. These three defendants compose the State Board of Election Commissioners of the State of Mississippi. Miss. Code Ann. § 23-15-211(1). As such, they are responsible for implementing and enforcing Mississippi's election laws in general elections.

7. Defendants Mississippi Republican Executive Committee and Mississippi Democratic Executive Committee are unincorporated associations elected pursuant to the laws of the State of Mississippi. They are responsible for implementing and enforcing Mississippi's election laws in primary elections. They are sued in their official capacities.

7A. Beatrice Branch, Rims Barber, L.C. Dorsey, David Rule, James Woodard, Joseph P. Hudson, and Robert Norvel were permitted to intervene in this action by this Court's order entered December 5, 2001. Neither this Court's order or Intervenor's motion specified the capacity in which Intervenor's were permitted to intervene. Intervenor's are considered here as defendants because the Amended Complaint seeks relief against them.

BASIS OF CLAIMS

8. The United States Constitution in Article I, Section 2, requires that a census be taken every ten (10) years specifically for the purpose of adjusting the number of congressional seats to which each state is entitled.

9. Article I, Section 2 of the United States Constitution, as amended by Section 2 of the Fourteenth Amendment, provides in part that "the House of Representatives shall be composed of members chosen every second year of the people of the several states" and that "representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state" U. S. Constitution, Article I, Section 2; U. S. Constitution, Amend. XIV, Section 2.

10. The Secretary of Commerce has reported to the President of the United States the tabulation of population for each of the fifty (50) states, including the State of Mississippi, as

determined in the 2000 Decennial Census. Those population figures show Mississippi's total population to have declined since the 1990 Decennial Census.

11. As a result of the decrease in population, Mississippi is now allotted only four (4) seats in the U. S. House of Representatives. The enforcement of the current plan, set forth in Miss Code Ann. § 25-15-1037, by the defendants, acting under color of state law, would deprive plaintiffs of rights secured under the Constitution and law of the United States, in violation of 42 U.S.C. § 1983.

12. Article I, Section 4 of the United States Constitution provides, "The Times, Places, and Manner of Holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof" The Legislature met in special session on November 1, 2001, to adopt a redistricting plan, but failed to do so.

13. 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. The Mississippi Supreme Court has said 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).

14. This qualifying deadline, which has been approved pursuant to 42 U.S.C. § 1973c and cannot be changed without similar approval, is threatened by the fact that the Legislature has not adopted a new redistricting plan. The interest of the plaintiffs and all Mississippi voters are prejudiced unless the State validly adopts a plan in time for it to be approved pursuant to 42 U.S.C. § 1973c in advance of the March 1, 2002, qualifying deadline.

15. Under § 5 of the Voting Rights Act, the State of Mississippi must obtain approval by appropriate federal authorities whenever it "shall enact or seek to administer any voting

qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964.” On November 1, 1964, and at all times thereafter through the date of filing of the Complaint in this action, certain procedures were in force in the State of Mississippi with regard to congressional redistricting. First, consistent with Article I, Section 4 of the Constitution, the Mississippi Legislature had always adopted by statute plans for conducting congressional elections in Mississippi. Second, as declared by *Brumfield v. Brock*, 169 Miss. 784, 142 So. 745 (1932), the Chancery Courts of Mississippi had no power or jurisdiction to devise congressional redistricting plans of their own or to interfere with statutes adopted by the Legislature for that purpose. Third, the Legislature had provided by statute that, “if the number of representatives be diminished, then the whole number shall be chosen by the electors of the state at large.” Miss. Code § 3306 (1942), readopted by 1986 Miss. Gen. Laws ch. 495, § 308, codified at Miss. Code Ann. § 23-15-1039 (Rev. 2001). The readoption of this provision in 1986 was approved by the Attorney General of the United States pursuant to § 5 of the Voting Rights Act.

16. On October 15, 2001, Intervenors herein filed a complaint against defendants Clark, Moore, and Musgrove in the Chancery Court of the First Judicial District of Hinds County, Mississippi, bearing the caption *Branch v. Clark*, No. G-2001-1777 W/4, wherein they asked the Court to “issue an injunction adopting and directing the implementation of a congressional redistricting plan for the State of Mississippi.” Defendants Clark, Moore, and Musgrove, together with other petitioners, sought a writ of prohibition in the Supreme Court of Mississippi challenging the Chancery Court’s jurisdiction to adjudicate the complaint and to grant the requested relief. On December 13, 2001, the Supreme Court of Mississippi denied relief and issued an order in *In re: Mauldin*, No. 2001-M-01891, a copy of which is attached

hereto and made a part hereof as Exhibit A. That order found "that the Hinds County Chancery Court had jurisdiction of this matter," and further ordered, "Any congressional redistricting plan adopted by the chancery court in cause no. G-2001-1777 W/4 will remain in effect, subject to any congressional redistricting plan which may be timely adopted by the Legislature." The Supreme Court's order constitutes enabling legislation within the meaning of 28 C.F.R. § 51.15 and therefore constitutes a change in a voting qualification or prerequisite to voting, standard, practice, or procedure which must be, but has not been, approved by federal authorities pursuant to § 5 of the Voting Rights Act.

17. Consistent with the order of the Supreme Court of Mississippi, the Chancery Court of the First Judicial District of Hinds County began a trial in *Branch v. Clark* on December 14, 2001. At noon on the day before trial began, the Intervenorers in this Court first disclosed the contents of the relief they were seeking from the Chancery Court. A copy of Intervenorers' redistricting plan, together with the data they submitted to the Chancery Court in its support, is attached hereto and made a part hereof as Exhibit B.¹ Intervenorers' expert testified at trial that she had been asked to draw a plan in which the percentage of Gore voters from the 2000 election would reach the high fifties in District 2 and the low forties in District 3. By contrast, a federal court "must draw a redistricting plan according to 'neutral districting factors,' including, inter alia, compactness, contiguity, and respecting county and municipal boundaries." *Balderas v. Texas*, No. 6:01CV158 (E.D.Tex. Nov. 14, 2001), slip op. at 5. The terms of any judgment to be entered by the Chancery Court will constitute a voting qualification or prerequisite to voting,

¹Intervenorers also proposed a modified plan in which District 3 would also include several precincts in Jones County, including the residence of Representative Chip Pickering, who currently represents District 3.

or standard, practice, or procedure which must be but has not been approved by federal authorities pursuant to § 5 of the Voting Rights Act.

18. Since the issuance of the Supreme Court's order, defendants Clark, Moore, and Musgrove have presented no further defense against Intervenor's claims in the Chancery Court. The interests of plaintiffs and other Mississippians have therefore been unrepresented in this purported adversary proceeding conducted before a judge elected from one-quarter of one county. Although certain private individuals intervened in an attempt to provide adversity, the Chancery Court denied them due process and a meaningful opportunity to participate in the hearing by commencing the trial less than one full day after the Intervenor's revealed their requested plan. A copy of the Amended Scheduling Order of December 7, 2001, pursuant to which the trial has been conducted is attached hereto and made a part hereof as Exhibit C. To enforce the result of such a trial so as to infringe these plaintiffs' right to vote would deprive them of liberty without due process of law.

19. Under Article I, Section 4 of the United States Constitution, only the Legislature or Congress can prescribe the manner of electing representatives. For a state court to purport to prescribe the manner of election as a matter of Mississippi law, particularly while disregarding Miss. Code Ann. § 23-15-1039 and 2 U.S.C. § 2a(c)(5), both of which require representatives to be elected from the state at large, violates the plain terms of this constitutional provision.

NECESSITY OF INJUNCTIVE RELIEF

20. A controversy exists between the parties. Plaintiffs have no adequate remedy at law other than this action for injunctive relief. 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. Therefore, plaintiffs will suffer irreparable injury as a result of the violations complained of, and that injury will continue unless declared unlawful and enjoined by this Court.

WHEREFORE, plaintiffs respectfully pray:

1. That this Court assume jurisdiction of this matter and immediately certify a three-judge court, pursuant to the provisions of 28 U.S.C. § 2284, and order a speedy hearing of this cause;

2. That this Court enjoin permanently the defendants, their officers, agents, employees, attorneys, servants, successors in office, and all persons in active concert or participation with them from conducting any election using the current districting plan, as codified at Miss. Code Ann. § 25-15-1037;

3. That this Court permanently enjoin the defendants, their officers, agents, employees, attorneys, servants, successors in office, and all persons in active concert or participation with them from administering, enforcing, or being bound by the enforcement of the order of the Supreme Court of Mississippi of December 13, 2001, in *In re: Mauldin*;

4. That this Court permanently enjoin the defendants, their officers, agents, employees, attorneys, servants, successors in office, and all persons in active concert or participation with them from conducting any election using any plan to be set forth in the judgment to be entered by the Chancery Court in *Branch v. Clark*;

5. That this Court permanently enjoin the Intervenor, their officers, agents, employees, attorneys, servants, successors in office, and all persons in active concert or

participation with them from attempting in any way to enforce the judgment to be entered in *Branch v. Clark*;

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

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

8. That this Court expedite consideration of this matter and impose a remedy early enough so that the qualifying deadline of March 1, 2002, would not be postponed;

9. That this Court award plaintiffs their reasonable attorneys fees; and expenses pursuant to the Civil Rights Attorneys Fees Act, 42 U.S.C. § 1988; and

10. That the Court retain jurisdiction of this action and grant plaintiffs such other and further necessary or proper relief which may in the discretion of this Court be appropriate and equitable.

Respectfully submitted,

JOHN ROBERT SMITH,
SHIRLEY WALKER, and
GENE WALKER

BY: _____
ARTHUR F. JERNIGAN, JR.

ARTHUR F. JERNIGAN, JR. (MSB #3092)
STACI B. O'NEAL (MSB #99910)
WATSON & JERNIGAN, P.A.
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FACSIMILE: (601) 932-4400

Serial: 92338

IN THE SUPREME COURT OF MISSISSIPPI

No. 2001-M-01891

***IN RE: CAROLYN MAULDIN, STACY
SPEARMAN, DAVID MITCHELL,
JAMES C. HAYS AND MISSISSIPPI
REPUBLICAN EXECUTIVE
COMMITTEE***

FILED

Petitioners

DEC 13 2001

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

ORDER

This matter came before the Court sitting en banc on the Petition for Writ of Mandamus filed by Carolyn Mauldin, Stacy Spearman, David Mitchell, James C. Hays and the Mississippi Republican Executive Committee, the Response filed by Beatrice Branch, Rims Barber, L.C. Dorsey, David Rule, Melvin Horton, James Woodard, Joseph P. Hudson and Robert Norvel, the Petition for Writ of Prohibition filed by the State of Mississippi, the Supplemental Petition for Writ of Prohibition filed by Carolyn Mauldin, Stacy Spearman, David Mitchell, James C. Hays and the Mississippi Republican Executive Committee, the Supplement to Petition for Writ of Prohibition filed by the State, and the Responses filed by the Honorable Pat Wise and other respondents. Petitioners ask that this Court order that the Plaintiffs' Amended Complaint filed in cause no. G-2001-1777 W/4, Hinds County Chancery Court, be dismissed, or that cause no. G-2001-1777 W/4 be transferred to Hinds County Circuit Court. Petitioners also ask that this Court stay the trial set in cause no. G-2001-1777 W/4 for December 14, 2001. After due consideration the Court finds that the Hinds County Chancery Court has jurisdiction of this matter. The Court further finds that the request to

0206

EXHIBIT

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dismiss the Plaintiffs' Amended Complaint is denied. The Court further finds that the request to transfer this cause to circuit court is denied, as is the request for stay of the December 14, 2001, trial date. Any congressional redistricting plan adopted by the chancery court in cause no. G-2001-1777 W/4 will remain in effect, subject to any congressional redistricting plan which may be timely adopted by the Legislature.

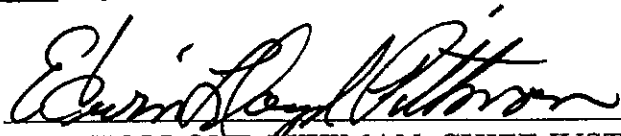
IT IS THEREFORE ORDERED that the Petition for Writ of Mandamus filed by Carolyn Mauldin, Stacy Spearman, David Mitchell, James C. Hays and the Mississippi Republican Executive Committee be and the same is hereby denied.

IT IS FURTHER ORDERED that the Petition for Writ of Prohibition filed by the State of Mississippi be and the same is hereby denied.

IT IS FURTHER ORDERED that the Supplemental Petition for Writ of Prohibition filed by Carolyn Mauldin, Stacy Spearman, David Mitchell, James C. Hays and the Mississippi Republican Executive Committee be and the same is hereby denied.

IT IS FURTHER ORDERED that the Supplement to Petition for Writ of Prohibition filed by the State of Mississippi be and the same is hereby denied.

SO ORDERED, this the 13th day of December, 2001.

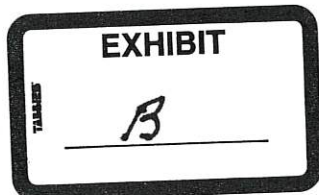
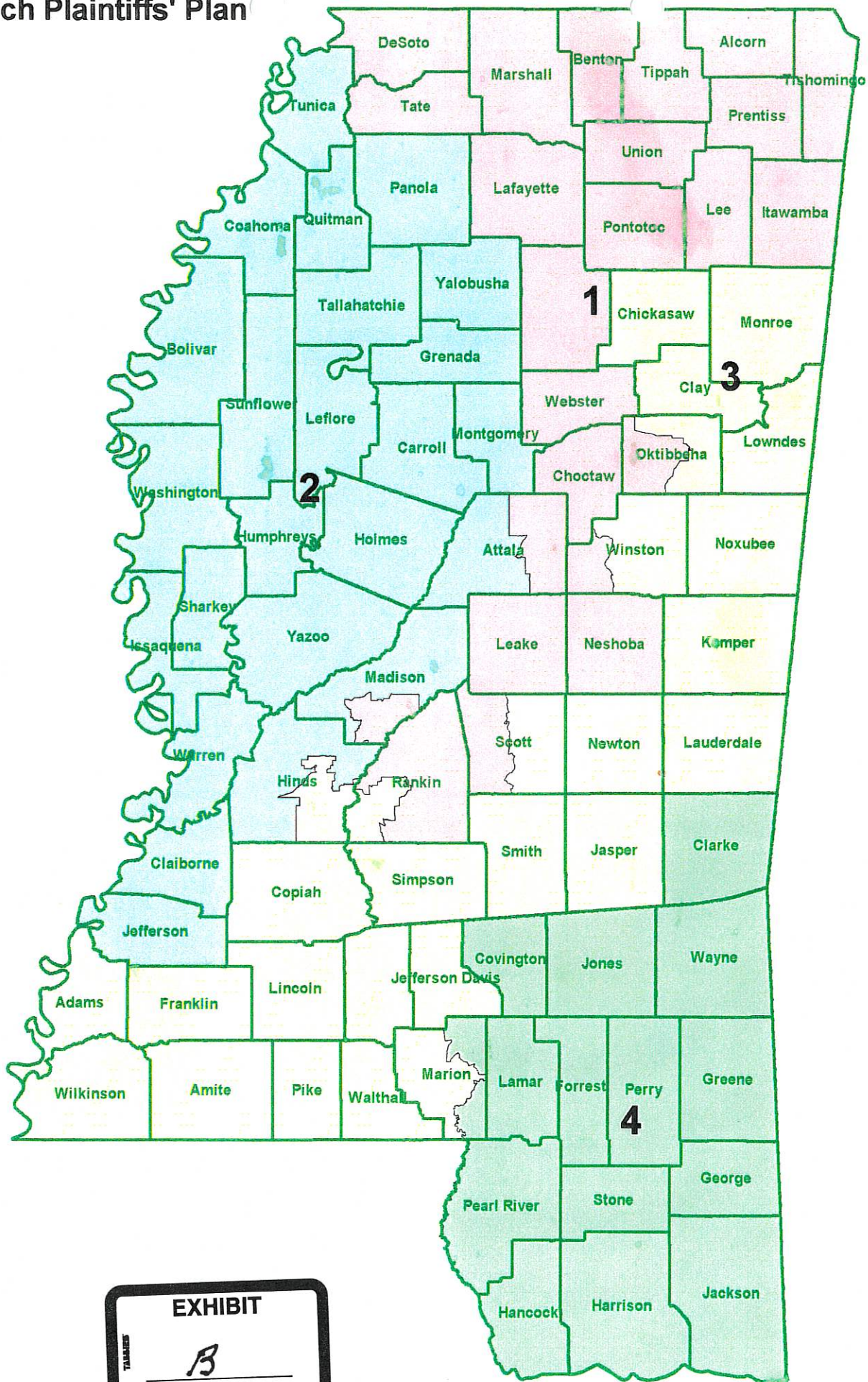


EDWIN LLOYD PITTMAN, CHIEF JUSTICE
FOR THE COURT

Smith, P.J., would dismiss Plaintiffs' Amended Complaint, or in the alternative, transfer to circuit court.

Cobb, J., not participating.

Branch Plaintiffs' Plan



**Summary Report
Branch Plaintiffs' Plan 1**

District	Population	Deviation	% Dev.	Total Voting Age Population (VAP)	AP Black VAP	% AP Black VAP
1	711050	-115	-.02	525588	94192	17.92
2	711145	-20	0	502590	296683	59.03
3	711280	+115	+.02	519199	194116	37.39
4	711183	+18	0	522094	104003	19.92
Totals:	2844658	230	.04	2069471	688994	33.29

**Summary Report
Branch Plaintiffs' Plan 1
2000 Presidential Race Performance Data**

District	Population	Deviation	% Dev.	Total Votes (Bush+Gore only, no third party candidates)	Bush	% Bush	Gore	% Gore
1	711050	-115	-.02	251773	168435	66.9	83338	33.10
2	711145	-20	0	235056	97430	41.45	137626	58.55
3	711280	+115	+.02	260304	152462	58.57	107842	41.43
4	711183	+18	0	253992	169433	66.71	84559	33.29
Totals:	2844658	230	.04	1001125	587760	58.71	413365	41.29

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Plan: Branch Plaintiffs' Plan 1
Plan Type
Administrato
User:

Plan Components Report

Wednesday, December 12, 2001

5:39 PM

	Population	TotalVotes	Bush	Gore
District 1				
Alcorn County	34,558	12,313	7,254	5,059
Attala County				
VTD: Berea	217	90	73	17
VTD: Ethel	842	289	183	106
VTD: Liberty Chapel	470	176	110	66
VTD: McCool	597	245	136	109
VTD: Providence	516	235	196	39
VTD: Thompson	269	102	87	15
VTD: Zama	561	198	128	70
Attala County Subtotal	3,472	1,335	913	422
Benton County	8,026	3,447	1,561	1,886
Calhoun County	15,069	5,699	3,448	2,251
Choctaw County	9,758	3,676	2,398	1,278
DeSoto County	107,199	34,465	24,879	9,586
Itawamba County	22,770	8,418	5,424	2,994
Lafayette County	38,744	12,220	7,081	5,139
Leake County	20,940	6,907	4,114	2,793
Lee County	75,755	24,693	15,551	9,142
Madison County				
VTD: Bear Creek	2,461	1,116	838	278
VTD: Cobblestone Church Of God	5,472	2,544	2,133	411
VTD: Gluckstadt	3,432	1,470	1,193	277
VTD: Highland Colony Bap. Ch.	2,137	882	678	204
VTD: Madison 1	1,651	785	698	87
VTD: Madison 2	3,585	1,939	1,727	212
VTD: Madison 3	3,853	1,925	1,616	309
VTD: Madisonville	427	132	90	42
VTD: Main Harbor	1,953	760	636	124
VTD: Ridgeland 1	3,565	1,170	879	291
VTD: Ridgeland 3	3,990	998	669	329
VTD: Ridgeland 4	2,571	620	434	186
VTD: Ridgeland First Meth. Ch.	2,941	1,317	929	388
VTD: Trace Harbor	1,820	834	736	98
VTD: Victory Baptist Church	3,788	1,791	1,592	199
VTD: Whisper Lake	1,968	974	828	146
Madison County Subtotal	45,614	19,257	15,676	3,581
Marshall County	34,993	12,458	4,723	7,735

Plan: Branch Plaintiffs' Plan 1
Type:

Administrator:
User:

	Population	TotalVotes	Bush	Gore
District 1 (continued)				
Neshoba County	28,684	8,972	6,409	2,563
Oktibbeha County				
VTD: Adaton	861	330	197	133
VTD: Bradley	330	150	96	54
VTD: Craig Springs	262	117	105	12
VTD: Double Springs	492	179	152	27
VTD: Maben	677	237	121	116
VTD: North Longview	982	546	377	169
VTD: Self Creek	624	258	185	73
VTD: South Longview	427	174	103	71
VTD: South Starkville	7,044	2,455	1,767	688
VTD: Sturgis	1,327	601	411	190
VTD: West Starkville	4,838	1,904	1,195	709
Oktibbeha County Subtotal	17,864	6,951	4,709	2,242
Pontotoc County	26,726	9,372	6,601	2,771
Prentiss County	25,556	8,362	5,080	3,282
Rankin County				
VTD: Antioch	356	137	120	17
VTD: Castlewoods	6,303	2,758	2,350	408
VTD: Cato	1,375	568	438	130
VTD: Crest Park	2,890	1,121	937	184
VTD: Crossroads	1,121	401	359	42
VTD: Cunningham Heights	1,552	622	549	73
VTD: Dry Creek	1,785	475	287	188
VTD: East Brandon	1,580	750	676	74
VTD: East Crossgates	3,238	2,014	1,827	187
VTD: Eldorado	3,122	1,186	964	222
VTD: Fannin	4,067	1,715	1,338	377
VTD: Flowood	1,473	459	353	106
VTD: Grants Ferry	4,142	1,209	1,000	209
VTD: Holbrook	4,525	1,798	1,514	284
VTD: Johns	763	339	241	98
VTD: Leesburg	1,255	312	270	42
VTD: Mayton	344	106	80	26
VTD: Mullins	1,088	397	167	230
VTD: North Brandon	4,300	1,327	1,173	154
VTD: North McLaurin	1,879	584	478	106
VTD: North Pearson	503	144	116	28
VTD: North Richland	2,141	736	633	103
VTD: Northeast Brandon	1,272	670	484	186
VTD: Oakdale	1,289	633	558	75
VTD: Patton Place	1,702	658	564	94
VTD: Pearl	1,624	470	389	81
VTD: Pelahatchie	3,708	1,061	805	256
VTD: Pisgah	2,301	556	322	234
VTD: Puckett	1,220	372	294	78
VTD: Reservoir	4,468	2,694	2,329	365
VTD: Shiloh	323	199	138	61

Plan: Branch Plaintiffs' Plan 1
Type:

Administrator:
User:

District 1 (continued)

Rankin County (continued)

	Population	Total Votes	Bush	Gore
VTD: South Brandon	2,289	564	463	101
VTD: South Crossgates	1,574	754	648	106
VTD: South McLaurin	2,694	938	802	136
VTD: Star	1,675	580	416	164
VTD: West Crossgates	2,184	1,326	1,188	138
VTD: West Pearl	3,351	772	587	185
Rankin County Subtotal	81,476	31,405	25,857	5,548

Scott County

VTD: Clifton	208	78	64	14
VTD: Contrell	752	149	54	95
VTD: Cooperville	541	184	148	36
VTD: East-West Morton	3,146	958	691	267
VTD: Forkville	398	195	167	28
VTD: Liberty (28123405)	1,068	467	374	93
VTD: Ludlow	815	358	232	126
VTD: North Morton	2,327	651	305	346
VTD: Pulaski	606	222	165	57
VTD: Springfield	643	213	189	24
Scott County Subtotal	10,504	3,475	2,389	1,086

Tate County

Tippah County

Tishomingo County

Union County

Webster County

Winston County

VTD: Calvary	339	146	79	67
VTD: Ford School	427	208	165	43
VTD: Hinze	69	29	26	3
VTD: Liberty	594	196	80	116
VTD: Lobutcha	292	104	54	50
VTD: Mars Hill	343	140	109	31
VTD: Vowell	263	103	49	54
Winston County Subtotal	2,327	926	562	364

District 1 Subtotal

711,050	251,773	168,435	83,338
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District 2

Attala County

VTD: Aponaug	514	166	132	34
VTD: Carmack	399	168	128	40
VTD: East	1,561	695	591	104
VTD: Hesterville	516	172	127	45
VTD: McAdams	556	240	117	123
VTD: Newport	656	278	132	146
VTD: North Central	492	203	160	43
VTD: Northeast	2,711	817	283	534
VTD: Northwest	2,029	467	271	196
VTD: Possumneck	378	195	117	78

Plan: Branch Plaintiffs' Plan 1
Type:

Administrator:
User:

	Population	TotalVotes	Bush	Gore
District 2 (continued)				
Attala County (continued)				
VTD: Sallis	1,519	665	201	464
VTD: South Central	2,007	717	429	288
VTD: Southwest	885	190	45	145
VTD: Williamsville	1,966	820	560	260
Attala County Subtotal	16,189	5,793	3,293	2,500
Bolivar County	40,633	13,256	4,847	8,409
Carroll County	10,769	4,891	3,165	1,726
Claiborne County	11,831	4,553	883	3,670
Coahoma County	30,622	9,357	3,695	5,662
Grenada County	23,263	8,557	4,744	3,813
Hinds County				
VTD: 1	297	63	30	33
VTD: 10	731	218	8	210
VTD: 11	984	321	8	313
VTD: 12	1,062	394	6	388
VTD: 13	1,309	458	17	441
VTD: 14	1,672	610	479	131
VTD: 15	488	203	137	66
VTD: 16	2,132	360	110	250
VTD: 17	853	448	319	129
VTD: 18	1,227	345	13	332
VTD: 19	1,148	334	8	326
VTD: 2	940	251	8	243
VTD: 20	1,880	468	11	457
VTD: 21	1,022	228	21	207
VTD: 22	2,605	901	30	871
VTD: 23	2,484	844	9	835
VTD: 24	2,382	418	48	370
VTD: 25	2,463	616	88	528
VTD: 26	1,328	332	51	281
VTD: 27	1,931	1,001	25	976
VTD: 28	2,053	859	18	841
VTD: 29	1,037	535	22	513
VTD: 30	1,426	418	9	409
VTD: 31	1,939	780	9	771
VTD: 32	1,362	645	536	109
VTD: 33	1,252	778	676	102
VTD: 34	2,184	1,308	1,091	217
VTD: 35	2,401	1,360	1,133	227
VTD: 36	1,739	628	414	214
VTD: 37	1,636	613	301	312
VTD: 38	1,442	385	155	230
VTD: 39	1,695	528	41	487
VTD: 4	1,121	292	4	288
VTD: 40	2,391	753	19	734
VTD: 41	2,818	1,127	32	1,095

Plan: Branch Plaintiffs' Plan 1
Type:

Administrator:
User:

	Population	TotalVotes	Bush	Gore
District 2 (continued)				
Hinds County (continued)				
VTD: 42	3,156	677	172	505
VTD: 43	4,359	726	203	523
VTD: 44	3,002	1,235	929	306
VTD: 45	2,789	1,650	1,411	239
VTD: 46	2,367	2,262	1,847	415
VTD: 47	3,107	345	38	307
VTD: 5	1,995	364	170	194
VTD: 50	968	163	8	155
VTD: 51	1,013	395	16	379
VTD: 52	2,319	533	31	502
VTD: 53	585	158	7	151
VTD: 54	1,149	274	32	242
VTD: 55	1,848	345	20	325
VTD: 56	1,027	109	5	104
VTD: 57	1,436	380	13	367
VTD: 58	2,025	767	25	742
VTD: 59	3,079	705	29	676
VTD: 6	2,314	285	111	174
VTD: 60	987	168	25	143
VTD: 61	2,406	482	24	458
VTD: 62	2,545	526	83	443
VTD: 63	1,062	415	9	406
VTD: 64	1,101	354	14	340
VTD: 66	231	54	1	53
VTD: 67	2,186	364	95	269
VTD: 68	4,122	1,162	495	667
VTD: 69	2,083	444	210	234
VTD: 70	1,230	190	87	103
VTD: 71	2,069	523	287	236
VTD: 72	2,477	340	149	191
VTD: 73	1,887	412	242	170
VTD: 74	1,597	382	251	131
VTD: 75	1,430	354	221	133
VTD: 78	4,337	932	712	220
VTD: 79	2,990	1,175	798	377
VTD: 8	1,412	520	322	198
VTD: 80	3,625	772	51	721
VTD: 81	2,131	1,274	150	1,124
VTD: 82	2,252	842	28	814
VTD: 83	4,481	1,728	103	1,625
VTD: 84	420	174	9	165
VTD: 85	3,943	1,643	47	1,596
VTD: 86	2,615	585	39	546
VTD: 87	2,085	410	122	288
VTD: 88	2,937	955	181	774
VTD: 89	2,114	271	94	177
VTD: 9	1,836	716	449	267
VTD: 90	1,666	347	197	150
VTD: 92	3,598	1,119	676	443

Plan: Branch Plaintiffs' Plan 1
Type:

Administrator:
User:

	Population	TotalVotes	Bush	Gore
District 2 (continued)				
Hinds County (continued)				
VTD: 94	3,657	1,222	344	878
VTD: 95	910	294	192	102
VTD: Bolton	1,894	884	229	655
VTD: Brownsville	754	316	179	137
VTD: Cayuga	495	200	84	116
VTD: Chapel Hill	1,378	458	234	224
VTD: Cynthia	753	310	51	259
VTD: Edwards	3,711	1,220	316	904
VTD: Jackson State	1,658	1,193	14	1,179
VTD: Learned	924	367	231	136
VTD: Pinchaven	2,749	1,123	634	489
VTD: Pocahontas	620	322	143	179
VTD: Raymond 1	3,346	1,195	801	394
VTD: Tinnin	1,153	468	354	114
VTD: Utica 1	1,297	761	345	416
VTD: Utica 2	1,396	588	158	430
Hinds County Subtotal	190,522	61,749	21,433	40,316
Holmes County	21,609	7,384	1,937	5,447
Humphreys County	11,206	3,916	1,628	2,288
Issaquena County	2,274	921	366	555
Jefferson County	9,740	3,386	600	2,786
Leflore County	37,947	11,015	4,622	6,393
Madison County				
VTD: Bible Church	964	274	3	271
VTD: Camden	1,703	468	50	418
VTD: Cameron	120	160	86	74
VTD: Canton Pct. 7	707	238	16	222
VTD: Canton Precinct 1	2,644	840	379	461
VTD: Canton Precinct 2	2,511	1,197	827	370
VTD: Canton Precinct 3	603	173	71	102
VTD: Canton Precinct 4	3,332	870	155	715
VTD: Canton Precinct 5	1,732	638	0	638
VTD: Couparle	60	37	12	25
VTD: Flora	1,756	823	583	240
VTD: Liberty	2,118	608	14	594
VTD: Lorman-Cavalier	1,531	746	465	281
VTD: Luther Branson School	1,207	462	97	365
VTD: Mad. Co. Bap. Fam. Lf.Ct.	2,013	546	5	541
VTD: Magnolia Heights	1,916	510	136	374
VTD: New Industrial Park	577	161	19	142
VTD: Ratliff Ferry	1,075	455	202	253
VTD: Sharon	855	376	61	315
VTD: Smith School	499	184	164	20
VTD: Tougaloo	605	362	2	360
VTD: Virilia	532	146	92	54
Madison County Subtotal	29,060	10,274	3,439	6,835

Plan: Branch Plaintiffs' Plan 1
Type:

Administrator:
User:

	Population	TotalVotes	Bush	Gore
District 2 (continued)				
Montgomery County	12,189	4,764	2,630	2,134
Panola County	34,274	11,304	5,424	5,880
Quitman County	10,117	3,383	1,280	2,103
Sharkey County	6,580	3,309	1,120	2,189
Sunflower County	34,369	8,350	3,369	4,981
Tallahatchie County	14,903	5,469	2,428	3,041
Tunica County	9,227	2,331	792	1,539
Warren County	49,644	18,083	10,731	7,352
Washington County	62,977	17,616	7,280	10,336
Yalobusha County	13,051	5,144	2,470	2,674
Yazoo County	28,149	10,251	5,254	4,997
District 2 Subtotal	711,145	235,056	97,430	137,626
District 3				
Adams County	34,340	14,756	6,691	8,065
Amite County	13,599	6,350	3,677	2,673
Chickasaw County	19,440	7,403	3,649	3,754
Clay County	21,979	8,124	3,570	4,554
Copiah County	28,757	10,488	5,643	4,845
Franklin County	8,448	3,913	2,427	1,486
Hinds County				
VTD: 76	2,526	731	506	225
VTD: 77	2,601	493	299	194
VTD: 91	3,212	1,086	267	819
VTD: 93	1,845	176	86	90
VTD: 96	2,828	1,251	815	436
VTD: 97	659	194	144	50
VTD: Byram 1	4,541	1,811	1,444	367
VTD: Byram 2	2,063	1,108	951	157
VTD: Clinton 1	4,406	1,255	964	291
VTD: Clinton 2	5,308	2,413	2,015	398
VTD: Clinton 3	4,439	1,951	1,476	475
VTD: Clinton 4	2,201	1,019	805	214
VTD: Clinton 5	1,590	872	708	164
VTD: Clinton 6	3,697	1,157	859	298
VTD: Dry Grove	1,076	622	467	155
VTD: Old Byram	2,665	1,153	953	200
VTD: Raymond 2	4,257	1,270	864	406
VTD: Spring Ridge	4,297	1,827	1,267	560
VTD: St. Thomas	560	206	13	193
VTD: Terry	5,507	2,198	1,417	781
Hinds County Subtotal	60,278	22,793	16,320	6,473
Jasper County	18,149	6,398	3,294	3,104

Plan: Branch Plaintiffs' Plan 1
Type:

Administrator:
User:

	Population	TotalVotes	Bush	Gore
District 3 (continued)				
Jefferson Davis County	13,962	5,272	2,437	2,835
Kemper County	10,453	4,223	1,914	2,309
Lauderdale County	78,161	25,727	17,315	8,412
Lawrence County	13,258	7,513	3,674	3,839
Lincoln County	33,166	12,898	8,540	4,358
Lowndes County	61,586	20,722	12,502	8,220
Marion County				
VTD: Balls Mill	1,071	460	284	176
VTD: Cedar Grove	820	419	236	183
VTD: City Hall Beat 3	828	293	175	118
VTD: Courthouse Beat 4	1,324	472	343	129
VTD: Darbun	447	243	178	65
VTD: East Columbia	2,107	575	221	354
VTD: Foxworth	1,691	961	566	395
VTD: Goss	837	352	296	56
VTD: Hub	919	429	141	288
VTD: Jefferson Middle School	688	306	6	300
VTD: Kokomo	971	414	265	149
VTD: Morgantown	777	345	293	52
VTD: National Guard Beat 1	2,666	1,297	1,130	167
VTD: Pittman	933	434	338	96
VTD: Popetown Beat 2	1,914	824	602	222
VTD: Sandy Hook	535	256	139	117
VTD: South Columbia	860	446	31	415
VTD: Stovall	907	293	79	214
VTD: White Bluff	139	61	46	15
Marion County Subtotal	20,434	8,880	5,369	3,511
Monroe County	38,014	13,128	7,434	5,694
Newton County	21,838	7,687	5,540	2,147
Noxubee County	12,548	4,789	1,530	3,259
Oktibbeha County				
VTD: Bell Schoolhouse	536	298	68	230
VTD: Center Grove	639	266	113	153
VTD: Central Starkville	3,375	927	274	653
VTD: East Starkville	3,586	420	254	166
VTD: Gillespie Street Center	3,132	896	425	471
VTD: Hickory Grove	2,644	722	348	374
VTD: North Starkville	3,491	1,550	867	683
VTD: Northeast Starkville	2,967	436	249	187
VTD: Oktoc	1,301	516	136	380
VTD: Osborn	1,805	532	154	378
VTD: Sessums	1,562	548	167	381
Oktibbeha County Subtotal	25,038	7,111	3,055	4,056
Pike County	38,940	13,867	7,464	6,403
Rankin County				

Plan: Branch Plaintiffs' Plan 1
Type:

Administrator:
User:

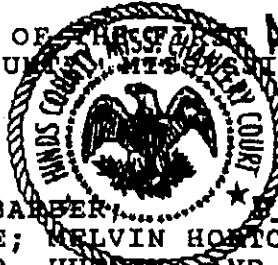
	Population	Total Votes	Bush	Gore
District 3 (continued)				
Rankin County (continued)				
VTD: Clear Branch	1,574	453	355	98
VTD: Cleary	1,564	945	794	151
VTD: East Steens Creek	2,584	952	779	173
VTD: Monterey	3,285	1,014	712	302
VTD: Mountain Creek	546	305	245	60
VTD: South Pearson	1,466	428	196	232
VTD: South Richland	4,187	1,385	1,102	283
VTD: Springhill	3,286	1,083	727	356
VTD: West Brandon	6,432	1,848	1,342	506
VTD: West Steens Creek	4,364	1,037	795	242
VTD: Whitfield	4,563	178	79	99
Rankin County Subtotal	33,851	9,628	7,126	2,502
Scott County				
VTD: Harpersville	1,851	556	233	323
VTD: High Hill	629	228	122	106
VTD: Hillsboro	1,394	539	300	239
VTD: Homewood	550	187	143	44
VTD: Lake	640	237	132	105
VTD: Langs Mill	1,433	443	337	106
VTD: North Forest	2,586	507	68	439
VTD: Northeast Forest	946	458	391	67
VTD: Northwest Forest	694	319	281	38
VTD: Salem	1,184	265	165	100
VTD: Sebastapol	913	318	289	29
VTD: South Forest	3,112	738	408	330
VTD: Steele	1,273	446	153	293
VTD: Usry	714	233	190	43
Scott County Subtotal	17,919	5,474	3,212	2,262
Simpson County	27,639	9,481	6,254	3,227
Smith County	16,182	6,458	4,838	1,620
Walthall County	15,156	5,832	3,476	2,356
Wilkinson County	10,312	3,974	1,423	2,551
Winston County				
VTD: American Legion	1,989	716	120	596
VTD: Bethany	242	124	102	22
VTD: Betheden-Loakfoma	363	154	103	51
VTD: Bond	915	341	242	99
VTD: County Agent	1,794	640	129	511
VTD: Crystal Ridge	385	153	96	57
VTD: Dean Park	404	150	8	142
VTD: E.M.E.P.A.	1,357	489	360	129
VTD: Elementary School	834	434	182	252
VTD: Ellison Ridge	436	230	144	86
VTD: Fairground	2,044	779	551	228
VTD: Gum Branch	134	73	43	30
VTD: Louisville Electric	224	91	71	20
VTD: Louisville High School	429	194	161	33

Plan: Branch Plaintiffs' Plan 1
Type:

Administrator:
User:

	Population	TotalVotes	Bush	Gore
District 3 (continued)				
Winston County (continued)				
VTD: Lovorn Tractor	297	176	144	32
VTD: Nanih Waiya	1,378	575	427	148
VTD: Nanih Waiya-Handle	573	215	156	59
VTD: New Hope	271	144	123	21
VTD: Noxapater	1,618	701	450	251
VTD: Old National Guard Armory	904	413	354	59
VTD: Sinai	369	235	78	157
VTD: Zion Ridge	873	388	44	344
Winston County Subtotal	17,833	7,415	4,088	3,327
District 3 Subtotal	711,280	260,304	152,462	107,842
District 4				
Clarke County	17,955	6,871	4,503	2,368
Covington County	19,407	6,803	4,180	2,623
Forrest County	72,604	21,781	13,281	8,500
George County	19,144	7,120	5,143	1,977
Greene County	13,299	4,399	3,082	1,317
Hancock County	42,967	14,127	9,326	4,801
Harrison County	189,601	51,398	32,256	19,142
Jackson County	131,420	54,273	37,051	17,222
Jones County	64,958	24,053	16,340	7,713
Lamar County	39,070	27,864	20,124	7,740
Marion County				
VTD: Broom	831	235	146	89
VTD: Carley	1,389	579	484	95
VTD: Morris	1,545	794	439	355
VTD: Pinebur	956	212	167	45
VTD: Union	440	210	191	19
Marion County Subtotal	5,161	2,030	1,427	603
Pearl River County	48,621	16,186	11,575	4,611
Perry County	12,138	4,038	2,808	1,230
Stone County	13,622	5,379	3,702	1,677
Wayne County	21,216	7,670	4,635	3,035
District 4 Subtotal	711,183	253,992	169,433	84,559
State totals	2,844,658	1,001,125	587,760	413,365

IN THE CHANCERY COURT OF THE STATE OF MISSISSIPPI
HINDS COUNTY, MISSISSIPPI



ATTEST A TRUE COPY
FILED

DEC 07 2001

GLYNN PEPPER, CHANCERY CLERK

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; MELVIN HORTON;
JAMES WOODARD; JOSEPH P. HUDSON; AND
ROBERT NORVEL

PLAINTIFFS

VS.

CAUSE NO. G-2001-1777 W/4

ERIC CLARK, Secretary of State of Mississippi;
MIKE MOORE, Attorney General of Mississippi;
and RONNIE MUSGROVE, Governor of Mississippi DEFENDANTS

AMENDED SCHEDULING ORDER

On December 3, 2001, this Court issued a scheduling order setting trial in this matter for January 14, 2002. On December 5, a three-judge panel of the United States District Court for the Southern District of Mississippi issued an order stating that "if it is not clear to this Court by January 7, 2002 that the State authorities can have a redistricting plan in place by March 1, we will assert our jurisdiction and proceed expeditiously to rule on the Plaintiffs' Motion for Preliminary Congressional Districts." *Smith v. Clark*, No. 3:01-CV-855WS (S.D. Miss. Order of Dec. 5, 2000). Although this Court believes that the December 3 scheduling order set out a reasonable time frame, it is useful to avoid a situation where the federal and state courts are involved in the process of adopting redistricting plans at the same time. Therefore, the Court finds and orders that the parties comply with the following scheduling order which supersedes the orders of December 3 and 6,

EXHIBIT

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2001:

1. All motions to add parties and motions to intervene and/or appear amicus curiae shall be filed by December 10, 2001.

2. A hearing will be held on December 11, 2001 at 2:30 p.m. before the Honorable Patricia D. Wise to consider any such motions, as well as any other matters raised by the parties. All parties are required to attend unless specifically excused by the Court.

3. All experts will be designated no later than 12:00 p.m. on December 13, 2001.

4. Given the nature of this litigation and after having considered Rule 26 of the Mississippi Rules of Civil Procedure, all parties are encouraged to fully and expeditiously cooperate in discovery. All discovery shall be completed by December 13, 2001 at 1:00 p.m.

5. All proposed redistricting plans should be filed and exchanged by the parties and any amicus curiae no later than 12:00 p.m., December 13, 2001. In addition, the parties shall file and exchange a proposed list of witnesses and exhibits no later than 12:00 p.m. on December 13, 2001.

6. A pretrial status conference will be held on December 13, 2001 at 2:30 p.m. before the Honorable Patricia D. Wise. All parties are required to attend.

7. Trial of this matter shall take place on December 14, 2001 beginning at 9:30 a.m., Saturday, December 15, 2001, December 17, 18, 19, 2001.

8. The parties shall submit position papers and briefs for consideration no later than 11:00 a.m. on December 20, 2001.

9. The Court will attempt to adopt a plan no later than December 21, 2001 so that the State's chief legal officer can submit it for preclearance no later than December 28, 2001, and sooner if possible. All parties shall cooperate in assisting the State's chief legal officer so that the preclearance obligation can be fulfilled in a prompt and timely manner.

10. Copies of all pleadings, the proposed plans, and the lists of witnesses and exhibits shall be served on all parties by hand if possible, and if not by hand, by facsimile as well as by mail.

SO ORDERED AND ADJUDGED, this the 7th day of December, 2001.


CHANCELLOR

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; MELVIN HORTON;
JAMES WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL

FILED
OCT 17 2001

PLAINTIFFS

vs.

L. GLYNN PEPPER, CHANCERY CLERK No. S-2001-1777 W/4

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

BY _____ D.C.

DEFENDANTS

AMENDED COMPLAINT

This action for injunctive relief is brought to insure compliance with Mississippi law regarding the timing of congressional elections in the State of Mississippi.

1. Plaintiffs Beatrice Branch and Rims Barber are residents and registered voters of Hinds County, Mississippi and the presently existing Fourth Congressional District. David Rule and Melvin Horton are residents and registered voters of Holmes County, Mississippi and the presently existing Second Congressional District. Plaintiff James Woodard is a resident and registered voter of Webster County, Mississippi and the presently existing First Congressional District. He also is an elected Supervisor in Webster County. Plaintiff Joseph P. Hudson is a resident and registered voter of Harrison County, Mississippi and the presently existing Fifth Congressional District. Plaintiff Robert Norvel is a resident and registered voter of Jackson County, Mississippi and the presently existing Fifth Congressional District. He also is an elected supervisor in Jackson County. These plaintiffs have an interest in participating as voters in the regularly scheduled 2002 elections for members of Congress from the State of Mississippi. They also have an interest in insuring that

the provisions of Mississippi law relating to the scheduling of those election are fully enforced.

2. Defendant Eric Clark is the Secretary of State of Mississippi. Defendant Mike Moore is the Attorney General of Mississippi. Defendant Ronnie Musgrove is the Governor of Mississippi. Pursuant to § 23-15-211(1) of the Mississippi Code, the three of them constitute the State Board of Election Commissioners of the State of Mississippi. As occupants of the offices they hold, and as members of the State Board of Election Commissioners, they are responsible for the implementation and enforcement of Mississippi's election laws. They are sued in their official capacities as occupants of the offices they hold and as members of the State Board of Election Commissioners.

3. Mississippi law requires that the first step in the decennial redistricting of congressional districts occur by December 3, 2001. Pursuant to § 5-3-123 and § 5-3-129 of the Mississippi Code, the Standing Joint Congressional Redistricting Committee of the Mississippi legislature must draw a congressional redistricting plan and present it to the legislature and governor no later than thirty days preceding the convening of the next regular session of the legislature after the publication of the results of the decennial census. The decennial census results were published in early 2001. The next regular session of the legislature convenes January 2, 2002. See Miss. Code § 5-1-7. Thus, the Committee's plan must be presented to the legislature and governor no later than thirty days prior to January 2, which is December 3, 2001.

4. Mississippi law requires that qualification of candidates running for Congress in the 2002 elections occur by March 1, 2002. See Miss. Code § 23-15-299. The new districting plan must be enacted well in advance of that time in order for the qualification to occur as scheduled.

5. As of the present time, the Joint Congressional Redistricting Committee has yet to adopt, recommend, or present a plan to the legislature and governor. The legislature has yet to adopt or implement a plan. Unless the legislature adopts a plan in time for it to be implemented in advance

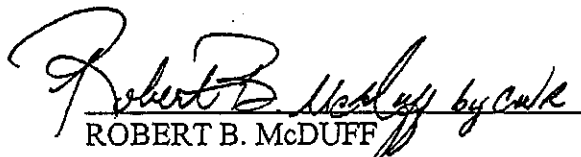
of the March 1 qualifying deadline, the interests of the plaintiffs and all Mississippi voters in enforcement of Mississippi's election laws will be compromised, and their rights under Mississippi law to participate in a congressional election process conducted in a timely manner will be violated.

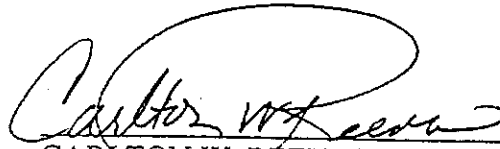
6. This Court has jurisdiction of actions for injunctive relief of this type.

7. In the event the Committee fails to recommend, and the legislature fails to adopt, a congressional redistricting plan in a timely manner, it will be the duty of this Court to insure enforcement of the laws and to adopt and implement a congressional redistricting plan so that the plan can be in place in sufficient time for the candidate qualification and election process to go forward according to the schedule established by Mississippi law.

Accordingly, the plaintiffs request that this Court assume jurisdiction of this cause and further request that, in the event a congressional redistricting plan is not adopted by the legislature in a timely manner, this Court proceed to hold a hearing and issue an injunction adopting and directing the implementation of a congressional redistricting plan for the State of Mississippi that allows the candidate qualification and election process to go forward as required by Mississippi law. The plaintiffs also request any other relief to which they are entitled.

Respectfully submitted,


ROBERT B. McDUFF
Miss. Bar No. 2532
767 North Congress Street
Jackson, Mississippi 39202
(601) 969-0802



CARLTON W. REEVES (MSB #8515)

J. CLIFF JOHNSON II (MSB #9383)

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P.O. Box 22725

Jackson, MS 39225-2725

(601) 354-2121

COUNSEL FOR PLAINTIFFS