

**UNITED STATES DISTRICT COURT
FOR THE 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

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 Intervenors in this Court first disclosed the contents of the relief they were seeking from the Chancery Court. A copy of Intervenors’ 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 Intervenors’ expert testified at trial that she had been asked to draw a plan in which the percentage of Gore voters from the 2000 election

¹Intervenors 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.

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, 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 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: 
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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 the following counsel of record:

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This the 31 day of December, 2001.


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