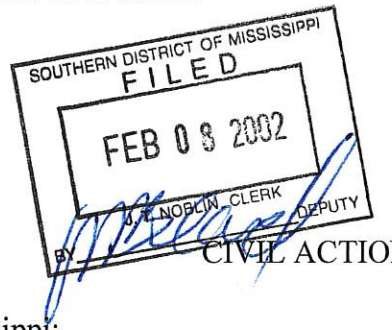
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



JOHN ROBERT SMITH,
SHIRLEY HALL, and
GENE WALKER — PLAINTIFFS

V. — 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

COMMENTS OF THE PLAINTIFFS AND
MISSISSIPPI REPUBLICAN EXECUTIVE COMMITTEE

COME NOW plaintiffs and defendant Mississippi Republican Executive Committee and respond as follows to the request for comments set forth in this Court's order of February 4, 2002:

1. Plaintiffs and the Mississippi Republican Executive Committee have no objection to the plan devised by the Court. It satisfies all constitutional and statutory criteria and can be defended on neutral redistricting principles. Although plaintiffs and the Mississippi Republican Executive Committee offered several plans which also meet those criteria, the plan adopted by the Court is entirely satisfactory.

2. However, plaintiffs and the Mississippi Republican Executive Committee do have one comment on this Court's analysis of its plan. The eighth factor taken into consideration by the Court was its effort "to includ[e] as much of the currently existing districts 3 and 4 in the new combined District 3 as possible." Analysis at 4. Although many of the witnesses advocated such

an objective, the Court's analysis does not give an explanation of its legal significance. Such an explanation would be useful in the event that the plan should be challenged on appeal.

3. Plaintiffs and the Mississippi Republican Executive Committee do not agree with the analysis given by the Chancery Court in support of its decision to combine old Districts 3 and 4 that "fairness to the incumbents is a paramount consideration." Opinion of December 21, 2001, at 14. Whatever consideration this Court may have given to that factor was properly secondary. In Balderas v. Texas, No. 6:01CV158 (E.D. Tex. Nov. 14, 2001), the Court considered political issues only after the plan had been completed to see whether it "was avoidably detrimental to Members of Congress of either party holding unique, major leadership posts," and whether the plan was "likely to produce a congressional delegation roughly proportional to the party voting breakdown across the state." Slip op. at 8-9. Accord, Good v. Austin, 800 F.Supp. 557, 566-67 (E.&W.D. Mich. 1992). To the extent that this Court considered the effect of the combination of old Districts 3 and 4 on the two incumbents simply as a check upon its plan, that practice is fully consistent with federal precedent.[1]

4. The combination of old Districts 3 and 4 can also be justified neutrally as a product of population changes. For instance, where Texas gained congressional seats, the Balderas Court accepted the suggestion of Dr. John Alford that "the most natural and neutral locator is to place

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[1]Hastert v. State Board of Elections, 777 F.Supp. 634 (N.D. Ill. 1991), upon which the Branch Intervenors have previously relied, does not authorize the use of politics as a guiding principle. There, incumbent Democratic Members of the Illinois congressional delegation claimed that the Republican plan would "result in a politically unfair distribution of congressional seats between Democrats and Republicans", id., at 656, in the manner forbidden by Davis v. Bandemer, 478 U.S. 109 (1986). The District Court rejected that claim, finding that the plan was "likely to yield the distribution of seats across party lines that mirrors the statewide partisan makeup of the voting citizenry." Id., at 659. No party has raised a Davis v. Bandemer challenge to any of the plans considered by this Court.

[new seats] where the population growth that produced the new additional districts has occurred." Slip op. at 6. By the same logic, where Mississippi has lost a seat, it would seem most logical to combine the two old districts with the least population. Senator Kirksey did so by combining portions of old District 4 into old District 2. Because that course raises at least potential problems under § 2 of the Voting Rights Act, 42 U.S.C. § 1973, this Court's decision to combine the two smallest unprotected districts makes good sense.

5. This Court's order does not explain what it might consider to be "the timely preclearance of the redistricting plan adopted by the State Chancery Court." In the event that preclearance is not received before the qualifying date of March 1, 2002, there may be no need for this Court to address other issues presented by the complaint. Nevertheless, plaintiffs and the Mississippi Republican Executive Committee do not waive their contentions, and expressly assert them in the alternative, that the adoption of a congressional redistricting plan by a state court acting under state law violates Article I, § 4 of the Constitution, and that the implementation of the Supreme Court's assignment of redistricting authority to the Chancery Court without obtaining approval under § 5 should result in the invalidation of the results of that trial even if approval is subsequently obtained. Moreover, as previously stated in response to questions from the Court, potential candidates need time to evaluate the new district lines and to make their decisions. For that reason, this Court's plan should take effect for the 2002 election if the Chancery Court plan has not been approved by February 15, 2002.

WHEREFORE, PREMISES CONSIDERED, plaintiffs and the Mississippi Republican Executive Committee pray that this Court will consider these comments offered pursuant to this Court's order of February 4, 2002.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael B. Wallace, do hereby certify that I have this date forwarded by U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing pleading to:

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THIS, the 8TH day of February, 2002.

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