

No. _____

**In The
Supreme Court of the United States**

MISSISSIPPI STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, THOMAS PLUNKETT,
ROD WOULLARD, and HOLLIS WATKINS, on behalf
of themselves and all others similarly situated,

Appellants,

vs.

PHIL BRYANT, in his official capacity as Governor of the
State of Mississippi, JIM HOOD, in his official capacity
as Attorney General of the State of Mississippi, and
DELBERT HOSEMANN, in his official capacity as
Secretary of State of the State of Mississippi, as members
of the State Board of Election Commissioners;
THE MISSISSIPPI REPUBLICAN PARTY EXECUTIVE
COMMITTEE; THE MISSISSIPPI DEMOCRATIC PARTY
EXECUTIVE COMMITTEE; and CONNIE COCHRAN,
in her official capacity as Chairman of the Hinds County,
Mississippi Board of Election Commissioners, on behalf
of herself and all others similarly situated,

Appellees.

**On Appeal From A Judgment Of The
Three-Judge Court Of The United States District
Court For The Southern District Of Mississippi**

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED FOR REVIEW

1. Can a State be constitutionally compelled to re-district in time for the first election after a census even though the existing districting scheme is less than ten years old?
2. Should the results of an election be set aside and a new election ordered when pre-election relief has been denied and the election has been conducted in violation of the one-person, one-vote mandate?

LIST OF ALL PARTIES

The parties to the proceedings below were the appellants: Mississippi State Conference of the National Association for the Advancement of Colored People, Thomas Plunkett, Rod Woullard, and Hollis Watkins, on behalf of themselves and all others similarly situated; the appellees: Phil Bryant,¹ in his official capacity as Governor of the State of Mississippi, Jim Hood, in his official capacity as Attorney General of the State of Mississippi, and Delbert Hosemann, in his official capacity as Secretary of State of the State of Mississippi, as members of the State Board of Election Commissioners; the Mississippi Republican Party Executive Committee; the Mississippi Democratic Party Executive Committee; and Connie Cochran, in her official capacity as Chairman of the Hinds County, Mississippi Board of Election Commissioners, on behalf of herself and all others similarly situated; and appellee-intervenors: Apportionment and Elections Committee of the Mississippi House of Representatives, Mississippi State Senate Democratic Caucus and State Democratic Senators, in their individual capacities, Terry C. Burton, Sidney Bondurant, Becky Currie, and Mary Ann Stevens.

¹ Phil Bryant is the successor in office to Haley Barbour. Governor Bryant was substituted as a defendant in the District Court.

CORPORATE DISCLOSURE

Pursuant to Supreme Court Rule 29.6, the Mississippi State Conference of the National Association for the Advancement of Colored People states that the National Association for the Advancement of Colored People is a non-profit corporation that is composed of individual members. The National Association for the Advancement of Colored People does not issue any stock.

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REFERENCE TO OFFICIAL OPINIONS BY LOWER COURTS

Appellants appeal the final judgment and adverse decisions rendered by a three-judge District Court for the Southern District of Mississippi. The final judgment was rendered on December 17, 2012, and the adverse decisions were a memorandum opinion and order denying injunctive relief rendered on May 16, 2011, an order denying a motion to amend the memorandum opinion and order rendered on May 27, 2011, and an order denying appellants² motion to set aside the results of the 2011 legislative elections and order special elections rendered on November 19, 2012. The final judgment and decisions are unreported and are set out in full in the Appendix, at pages App. 1-32.



STATEMENT OF THE GROUNDS OF THE BASIS FOR JURISDICTION

This is a direct appeal from the final judgment rendered by a three-judge District Court for the Southern District of Mississippi. The final judgment was rendered on December 17, 2012. The three-judge District Court was convened pursuant to 28 U.S.C. § 2284 to decide the constitutionality of Mississippi's legislative districting scheme. Appellants timely filed a notice of appeal in the United States District Court

² Appellants were plaintiffs below.

for the Southern District of Mississippi on January 2, 2013. Jurisdiction was invoked in the District Court pursuant to 28 U.S.C. §§ 1331, 1343, and 2284. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1253 and 2284. This Court has jurisdiction of this appeal. *Florida Lime & Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73, 75-85 (1960); *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Chapman v. Meier*, 420 U.S. 1, 13-14 (1975); *N.A.A.C.P. v. New York*, 413 U.S. 345, 353-356 (1973).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, 28 U.S.C. § 2284, Article 4, Section 36 of the Constitution of the State of Mississippi, and Article 13, Section 254 of the Constitution for the State of Mississippi. The texts of these constitutional and statutory provisions are set out in App. 44-50.



STATEMENT OF THE CASE

This is a statewide legislative redistricting case for the State of Mississippi. The bicameral Mississippi Legislature consists of a 52 member Senate and a 122 member House of Representatives. App. 66. State

Senators and Representatives are elected from single-member districts and serve four-year terms. App. 66. Candidates for legislative office are nominated by party primaries or qualify as independents. App. 66. A general election is held in November, and any vacancy in office is filled by a special election called by the Governor. App. 56, 63, 67.

A primary election for current legislators was held on August 2, 2011 with run-offs held on August 23, 2011, and a general election held on November 8, 2011. App. 17. The candidate qualification deadline was June 1, 2011. App. 17. Winners of the November 8, 2011 general election took office in January, 2012 and will serve until January, 2016. App. 54.

The Mississippi Constitution³ requires the Legislature to redistrict by the end of the session in the second year following each decennial census. App. 13-14, 24. The Legislature is in session each year.⁴ The Legislature was redistricted in 2002 and again in 2012. App. 11, 54-56. The next regular election for legislators will occur in 2015. App. 54.

³ MISS. CONST. art. 13, § 254.

⁴ The legislative session begins in January of each year and lasts for either 90 or 125 days. MISS. CONST. art. 4, § 36.

The 2010 decennial census was released on February 3, 2011.⁵ App. 15. All parties agree that the Legislature is grossly malapportioned. App. 9, 53. The population variance⁶ is 69.08% in the Senate⁷ and 134.35%⁸ in the House of Representatives.⁹ App. 53, 67-70. A number of Senate and House districts exceed $\pm 5\%$ deviation.¹⁰ App. 67-70.

The Mississippi Legislature failed to redistrict in 2011, and appellants filed a complaint on March 17, 2011 challenging the 2002 districting scheme as violative of the one-person, one-vote mandate.¹¹ App. 17, 59-78. Appellants alleged that they were aggrieved voters¹² who would continue to be aggrieved

⁵ The state population, according to the 2010 census, consists of 2,967,297 persons. App. 66, 82, 87.

⁶ The ideal population for Senate districts is 57,063 persons. App. 67, 87.

⁷ The total range of population deviation is 39,422 persons in Senate districts. App. 68.

⁸ The ideal population for House districts is 24,322 persons. App. 69, 82.

⁹ The total range of population deviation is 32,677 persons in House districts. App. 70.

¹⁰ A total of 14 Senate and 38 House districts have a population deviation greater than 5%, and a total of 19 Senate and 58 House districts have a population deviation less than 5%. App. 67-70, 81-89.

¹¹ U.S. Const. amend. XIV, § 1.

¹² The NAACP has members who are aggrieved voters in overpopulated and under-represented Senate and House districts. App. 71. Plunkett is an aggrieved voter in overpopulated and under-represented Senate and House districts. App. 70-71.

(Continued on following page)

if elections were held in the malapportioned districts and persons elected allowed to serve a full four-year term of office. App. 54. Appellants requested a declaratory judgment declaring that the districting scheme violates the one-person, one-vote mandate, a preliminary injunction enjoining the 2011 elections, an injunction voiding the 2011 elections and scheduling special elections, and a districting scheme that was neither discriminatory nor retrogressive. App. 19, 51-78.

Appellee, Delbert Hosemann, Secretary of State for the State of Mississippi, filed a Rule 12(b)(1)¹³ motion to dismiss the complaint on April 1, 2011. App. 20. Hosemann argued that the action was not ripe because redistricting was not required before the end of the 2012 legislative session. App. 20. Hosemann also argued that it was not unconstitutional for the elections to be conducted in the malapportioned districts. App. 20.

A three-judge District Court was convened on April 13, 2011 and issued an order on April 29, 2011 indicating an inclination to order interim elections using the 2011 legislative plans.¹⁴ App. 33-36.

Woullard is an aggrieved voter in an overpopulated and under-represented House district. App. 71.

¹³ Fed. R. Civ. P. 12(b)(1).

¹⁴ The 2011 Senate plan had a maximum population deviation of 9.60%, and the 2011 House plan had a maximum population deviation of 9.96%. However, these plans were not approved by a majority of the members of both Houses of the

(Continued on following page)

However, the lower court subsequently decided not to use those plans and denied appellants' request for an injunction. App. 8-32. The lower court held that the Mississippi Constitution did not require redistricting before 2012. App. 8-32. Nevertheless, the lower court retained jurisdiction "to order appropriate relief, including special elections, if appropriate, upon motion of any party, following completion – or failure [to complete – the redistricting process] prescribed by Article 13, Section 254 of the Mississippi Constitution." App. 29. The lower court denied appellants' request for reconsideration of the denial of an injunction. App. 6-7. Appellants filed an interlocutory appeal, and this Court affirmed the District Court's decision on October 31, 2011. *Mississippi State Conference NAACP v. Barbour*, 565 U.S. ____ (2011). Legislative elections were held as scheduled in 2011. App. 51-57.

The Legislature redistricted both Chambers during the 2012 session and obtained administrative pre-clearance of the plans on September 14, 2012. App. 79-80. The Mississippi Attorney General gave notice of the preclearance to the lower court and all parties on September 17, 2012. Thereafter, on October 14, 2012, the appellants filed a motion requesting that the 2011 election results be set aside and special

Legislature as required by state law. App. 17. See MISS. CONST. art. 13, § 254.

elections ordered under a court ordered plan.¹⁵ App. 51-57. The District Court denied the motion on November 19, 2012. App. 3-5. A final judgment was entered on December 17, 2012. App. 1-2.

Appellants timely filed their notice of appeal on January 2, 2013. App. 37-43.

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ARGUMENT

I. A STATE CAN BE CONSTITUTIONALLY COMPELLED TO REDISTRICT IN TIME FOR THE FIRST ELECTION AFTER A CENSUS EVEN THOUGH THE EXISTING DISTRICTING SCHEME IS LESS THAN TEN YEARS OLD.

The one-person, one-vote mandate requires substantial population equality in legislative districts. *Reynolds v. Sims*, 377 U.S. 533 (1964). The mandate is generally satisfied when the total range of population deviation is less than 10%. *Brown v. Thomson*, 462 U.S. 835 (1983). The mandate is important because the right to vote is fundamental and “preservative of other basic civil and political rights.”

¹⁵ Although the 2012 legislative redistricting scheme was precleared by the United States Attorney General, appellants challenged that scheme as discriminatory under § 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973. The lower court dismissed the challenge. App. 3-5. The issue of whether this scheme is discriminatory is not involved in nor necessary for this appeal. App. 20, n. 2.

Reynolds v. Sims, supra, at 561-562. A citizen's vote can be infringed just as much by dilution as it can be by outright denial. *Reynolds v. Sims*, supra, at 554-556.

States may satisfy the one-person, one-vote mandate by adopting "some reasonable plan for periodic revision of their [districting] schemes." *Reynolds v. Sims*, supra, at 583. Decennial redistricting "appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth." *Ibid.* However, this Court has indicated that a State can "be compelled to [redistrict] itself more than once in a 10-year period." *Whitcomb v. Chavis*, 403 U.S. 124, 163 (1971). This Court has also affirmed a District Court's decision compelling legislative redistricting after a new census reflects a dramatic shift in a State's population. *Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 195 (1972) (Per Curiam) ("The 1966 Minnesota [redistricting] legislation, the court found, in the light of the 1970 census figures no longer provided a constitutionally acceptable [redistricting] of either house"). After all, it is a "legal fiction that even 10 years later, the plans are constitutionally apportioned." *Georgia v. Ashcroft*, 539 U.S. 461, 488, n. 2 (2003). After a census is released, "no districting plan is likely to be legally enforceable if challenged, given the shifts and changes in a population over 10 years." *Ibid.* When a new census "renders the current plan unusable, a court must undertake the 'unwelcome obligation' of creating an interim plan." *Perry v. Perez*, 565 U.S. ___, Slip Op., pp. 3-4 (2012), quoting, *Connor*

v. Finch, 431 U.S. 407, 415 (1977). Furthermore, when a “State has not redistricted in response to the new census figures, a federal court will ensure that the new districts comply with the one-person, one-vote mandate before the next election.” *Georgia v. Ashcroft*, *supra*, at 488, n. 2.

The District Court, below, held that the Mississippi Constitution did not require redistricting before 2012, and the Court could not compel the State to redistrict even though the census revealed that the 2002 scheme was grossly malapportioned. App. 8-32. However, this Court has held “that a state legislative apportionment scheme is no less violative of the Federal Constitution when it is based on state constitutional provisions which have been consistently complied with than when resulting from a noncompliance with state constitutional requirements.” *Reynolds v. Sims*, *supra*, at 584. The Supremacy Clause¹⁶ elevates the requirement to comply with the one-person, one-vote mandate for the next election after a census above any state constitutional provision that does not require such compliance. See *Reynolds v. Sims*, *supra*, at 584. “When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls.” *Ibid*. Therefore, the District Court erred by refusing to elevate compliance with the one-person, one-vote mandate before the 2011 elections over

¹⁶ U.S. Const. art. VI, cl. 2.

Mississippi's constitutional provision that allowed elections to be conducted in malapportioned districts. *Reynolds v. Sims*, supra, at 584.

The 2010 census was released on February 3, 2011, and appellants challenged the 2002 districting scheme as unconstitutionally malapportioned on March 17, 2011. The next elections following release of the census were the August, 2011 primaries and November, 2011 general election. The three-judge District Court refused to enjoin the elections. This refusal conflicts with decisions of this Court. See *Whitcomb v. Chavis*, supra, at 163; *Sixty-Seventh Minnesota State Senate v. Beens*, supra, at 195; *Georgia v. Ashcroft*, supra, at 488, n. 2; *Perry v. Perez*, supra.

The three-judge District Court's refusal to enjoin the elections also conflicts with a decision issued by a three-judge District Court for the State of Rhode Island. See *Farnum v. Burns*, 548 F. Supp. 769 (D. Rhode Island 1982) (three-judge court). In that case, the Rhode Island Legislature redistricted Senate districts in 1974 based on the 1970 census. *Farnum v. Burns*, supra, at 770. The 1980 census revealed that Senate districts were malapportioned. *Id.*, at 771. The Governor and Legislature enacted a bill that required the 1974 redistricting plan to be used in the 1982 elections. *Ibid.* The bill also required the implementation of a new plan beginning with the 1984 elections. *Ibid.* State citizens and voters filed suit prior to the 1982 elections seeking "a judgment declaring the proposed use of the 1974 senatorial lines in 1982 to

be unconstitutional.” *Ibid.* The three-judge District Court acknowledged that an argument could be made that “Rhode Island [was] not constitutionally compelled to [redistrict] its senate lines until 1984, because its last senatorial [redistricting] occurred in 1974.” *Farnum v. Burns*, *supra*, at 773. However, the three-judge District Court rejected this argument holding that “opinions of the Supreme Court indicate that a state can constitutionally be compelled to [redistrict] in time for the first election after a census, even where the existing [redistricting] scheme is less than ten years old.” *Ibid.* Furthermore, the three-judge District Court held that where a State’s election machinery is not fully engaged and the election districts are unconstitutionally malapportioned, a court is compelled to enjoin elections in those districts. *Farnum v. Burns*, *supra*, at 774-775. In this case, the State election machinery was not fully engaged when appellants requested an injunction. Notwithstanding, the lower court refused to enjoin the elections. In this regard, the refusal conflicts with the decision of the Rhode Island three-judge District Court. *Farnum v. Burns*, *supra*.

In sum, a State can be constitutionally compelled to redistrict in time for the first election after a census even though the existing districting scheme is less than ten years old. *Reynolds v. Sims*, *supra*; *Whitcomb v. Chavis*, *supra*, at 163; *Sixty-Seventh Minnesota State Senate v. Beens*, *supra*, at 195;

Georgia v. Ashcroft, supra, at 488, n. 2; *Perry v. Perez*, supra; *Farnum v. Burns*, supra.

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ARGUMENT

II. THE RESULTS OF AN ELECTION SHOULD BE SET ASIDE AND A NEW ELECTION ORDERED WHEN PRE-ELECTION RELIEF HAS BEEN DENIED AND THE ELECTION HAS BEEN CONDUCTED IN VIOLATION OF THE ONE-PERSON, ONE-VOTE MANDATE.

The 2010 census for Mississippi was released on February 3, 2011 and revealed that the 2002 legislative districts were malapportioned. App. 9, 15. Legislative elections were scheduled for August and November, 2011. App. 8-32. In March, 2011, before the State's election machinery became fully engaged, appellants requested a preliminary injunction enjoining the elections and ordering use of an interim scheme that satisfied federal constitutional and statutory requirements. App. 15-17, 59-78. The Legislature had an opportunity to redistrict prior to the election but failed to do so. App. 15-17. This Court has held that "judicial relief becomes appropriate . . . when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *White v. Weiser*, 412 U.S. 783, 794-795 (1973). Furthermore, it becomes the unwelcome obligation of the federal courts to fashion a remedy for malapportioned

districts if “the imminence of a state election makes it impractical” for the legislature to fashion a remedy. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). A court should enjoin the next election upon request if a State fails to reapportion after new census figures reveal that existing districts fail to comply with the one-person, one-vote mandate. *Georgia v. Ashcroft*, supra, at 488, n. 2; *Perry v. Perez*, supra, Slip Op., pp. 3-4. Appellants were entitled to an injunction requiring compliance with the one-person, one-vote mandate before the August, 2011 primaries and the November, 2011 general election. *Georgia v. Ashcroft*, supra, at 488, n. 2; *Perry v. Perez*, supra, Slip Op., pp. 3-4. As discussed below, when the requested relief was not granted, the lower court should have voided the election results and promptly ordered new elections.

The three-judge District Court held that after new redistricting plans were adopted and precleared, the Court would consider granting post-election relief upon a party’s timely request. App. 29-32. Appellants timely requested post-election relief of setting aside the 2011 election results and ordering special elections. App. 51-58. The three-judge District Court denied the request thus allowing legislators elected in malapportioned districts to serve a full four-year term. App. 51-58. Appellants are suffering a continuing injury by being represented by legislators elected from malapportioned districts. App. 51-78. The one-person, one-vote mandate “ensures that every person receives equal representation by his or her elected officials.” *Daly v. Hunt*, 93 F.3d 1212, 1216 (4th Cir.

1996). See also, *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1981). After all, “representational equality is at least as important as electoral equality in a representative democracy.” *Daly v. Hunt*, *supra*, at 1226-1227; *NAACP-Greensboro Branch v. Guilford County Board of Elections*, 858 F. Supp. 2d 516, at 523 (M. D. N. C. 2012).

This Court has held that legislators elected in malapportioned districts should not serve a full four-year term of office when pre-election relief has been wrongly denied. See *Swann v. Adams*, 383 U.S. 210, 211-212 (1966) (Per Curiam). Other lower courts, as well, have held that legislators elected in malapportioned districts should not be allowed to serve a full four-year term when pre-election relief was requested. See *Keller v. Gilliam*, 454 F.2d 55 (5th Cir. 1972); *Taylor v. Monroe County Bd. of Supervisors*, 394 F.2d. 333 (5th Cir. 1972); *Chavis v. Whitcomb*, 307 F. Supp. 1362, 1367 (Ind. 1969) (three-judge court) (Per Curiam); *Moore v. Leflore County Board of Election Commissioners*, 351 F. Supp. 848 (N. D. Miss.) (three-judge court); *Watkins v. Mabus*, 771 F. Supp. 789, 804 (S. D. Miss.) (three-judge court) (Per Curiam), *aff’d in part and vacated in part*, 502 U.S. 954 (1991); *Tucker v. Buford*, 603 F. Supp. 276 (N. D. Miss. 1985); *Chargois v. Vermillion Parish School Board*, 348 F. Supp. 498 (W. D. La. 1972); *Fain v. Caddo Parish Police Jury*, 312 F. Supp. 54 (W. D. La. 1970). The three-judge District Court committed reversible error by denying appellants’ pre-election

relief. *Farnum v. Burns*, supra. The lower court compounded this error by wrongly denying appellants' request to void the 2011 elections and order special elections. See *Swann v. Adams*, supra; *Keller v. Gilliam*, supra; *Taylor v. Monroe Cnty. Bd. of Supervisors*, supra; *Chavis v. Whitcomb*, supra; *Moore v. Leflore County Board of Election Commissioners*, supra; *Watkins v. Mabus*, supra; *Tucker v. Buford*, supra. Consequently, the three-judge District Court's order and judgment is erroneous and conflicts with a decision of this Court, *Swann v. Adams*, supra, and the decisions of other lower federal courts. *Keller v. Gilliam*, supra; *Taylor v. Monroe Cnty. Bd. of Supervisors*, supra; *Chavis v. Whitcomb*, supra; *Moore v. Leflore County Board of Election Commissioners*, supra; *Watkins v. Mabus*, supra; *Tucker v. Buford*, supra.

In sum, the results of the 2011 legislative elections should be set aside and new elections ordered because pre-election relief was denied and the elections were conducted in violation of the one-person, one-vote mandate. *Swann v. Adams*, supra; *Keller v. Gilliam*, supra; *Taylor v. Monroe Cnty. Bd. of Supervisors*, supra; *Chavis v. Whitcomb*, supra; *Moore v. Leflore County Board of Election Commissioners*, supra; *Watkins v. Mabus*, supra; *Tucker v. Buford*, supra.



CONCLUSION

Since the three-judge district court erroneously denied appellants' motion to enjoin the 2011 legislative elections and their motion to set aside the results of the 2011 legislative elections and order special elections, this Court should note probable jurisdiction, reverse the lower court judgment, and remand the case to the lower court.

Dated: February 8, 2013.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

MISSISSIPPI STATE CONFERENCE
OF THE NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED
PEOPLE, THOMAS PLUNKETT, ROD
WOULLARD, and HOLLIS WATKINS,
on behalf of themselves and others
similarly situated, PLAINTIFFS

VS. CIVIL ACTION NO.
3:11cv159-TSL-EGJ-LG-MTP

PHIL BRYANT, in his official
capacity as Governor of the State of
Mississippi, JIM HOOD, in his official
capacity as Attorney General of the
State of Mississippi, and DELBERT
HOSEMANN, in his official capacity
as Secretary of State of the State of
Mississippi, as members of the State
Board of Election Commissioners;
THE MISSISSIPPI REPUBLICAN
PARTY EXECUTIVE COMMITTEE;
THE MISSISSIPPI DEMOCRATIC
PARTY EXECUTIVE COMMITTEE;
and CONNIE COCHRAN, in her official
Capacity as Chairman of the Hinds
County, Mississippi Board of Election
Commissioners, on behalf of herself
and all others similarly situated, DEFENDANTS
and

APPORTIONMENT AND ELECTIONS
COMMITTEE OF THE MISSISSIPPI
HOUSE OF REPRESENTATIVES;
MISSISSIPPI STATE SENATE
DEMOCRATIC CAUCUS AND
STATE DEMOCRATIC SENATORS,
in their individual capacities;
TERRY C. BURTON, SIDNEY
BONDURANT, BECKY CURRIE,
and MARY ANN STEVENS, INTERVENORS

FINAL JUDGMENT

Having disposed of all matters pending before
this court, Final Judgment in [sic] hereby entered in
favor of the Defendants and against the Plaintiffs.

SO ORDERED this 17th day of December, 2012.

/s/ E. Grady Jolly
E. Grady Jolly
United States Circuit Judge

/s/ Tom S. Lee
Tom S. Lee
United States District Judge

/s/ Louis Guirola, Jr.
Louis Guirola, Jr.
Chief United States
District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

MISSISSIPPI STATE CONFERENCE
OF THE NATIONAL ASSOCIATION
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TERRY C. BURTON, SIDNEY
BONDURANT, BECKY CURRIE,
and MARY ANN STEVENS, INTERVENORS

ORDER

IT IS ORDERED that the Plaintiffs' Motion to Set Aside the 2011 Legislative Election Results and Order Special Legislative Elections for All Legislative Districts in 2013 [docket 140] is DENIED.

IT IS FURTHER ORDERED that the Plaintiffs' Motion for Leave to Amend Complaint [docket 142] is DENIED.

IT IS FURTHER ORDERED that the Motion to Intervene [docket 144] and the Amended Motion to Intervene [docket 147] filed by the Standing Joint Legislative Committee on Reapportionment of the Mississippi Legislature are DENIED.

SO ORDERED this 19th day of November, 2012.

/s/ E. Grady Jolly
E. Grady Jolly
United States Circuit Judge

/s/ Tom S. Lee
Tom S. Lee
United States District Judge

/s/ Louis Guirola, Jr.
Louis Guirola, Jr.
Chief United States
District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

MISSISSIPPI STATE CONFERENCE
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in their individual capacities;
TERRY C. BURTON, SIDNEY
BONDURANT, BECKY CURRIE,
and MARY ANN STEVENS, INTERVENORS

ORDER

IT IS ORDERED that the Plaintiffs' Amended Motion to Amend Memorandum Opinion and Order [docket 127] and the Plaintiffs' Amended Motion for Relief from Judgment of the Court's Memorandum Opinion and Order [docket 128] are DENIED.

SO ORDERED this 26th day of May, 2011.

/s/ E. Grady Jolly
E. Grady Jolly
United States Circuit Judge

/s/ Tom S. Lee
Tom S. Lee
United States District Judge

/s/ Louis Guirola, Jr.
Louis Guirola, Jr.
Chief United States
District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

MISSISSIPPI STATE CONFERENCE
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BONDURANT, BECKY CURRIE,
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MEMORANDUM OPINION AND ORDER

(Filed May 16, 2011)

The Plaintiffs ask us to declare that the Mississippi Senate and House of Representatives (collectively, the “Legislature”) are unconstitutionally malapportioned. The Plaintiffs further contend that an election this year under the present district boundaries will violate the one-person, one-vote requirement of the Equal Protection Clause. All of the parties acknowledge that shifts in population, reflected in the 2010 census, have resulted in the malapportionment of Mississippi’s existing legislative districts. Generally speaking, the parties have presented us with three options. The Democratic Party and others ask us to adopt as an interim remedy the respective plans passed this year by the House and the Senate, but not adopted by the full Legislature. The Republican Party and others agree that a remedy for malapportionment should be imposed, but they ask us to appoint an expert to draw a new plan, or to use the new plan that they have proposed. Third, the Secretary of State

and others assert that it is premature for this Court to impose any remedy, because neither the Mississippi Constitution nor the United States Constitution requires the Legislature to reapportion itself until next year. We agree with the Secretary of State's position that imposition of a remedy is premature and allow the 2011 legislative elections to proceed under the present districts.

We approach our decision today on the premise that federal courts should not order around a state legislature unless the legislature has acted in violation of the United States Constitution. Indeed, the Supreme Court has stated, time and again, that federal courts must defer to state redistricting policies so long as those policies are not inconsistent with federal constitutional and statutory law. *See Upham v. Seamon*, 456 U.S. 37, 41 (1982). The Mississippi Constitution, Section 254, provides that the Legislature must reapportion no later than ten years from the previous reapportionment following the decennial census. Section 254 applied here does not require reapportionment until next year, 2012. Unless this provision violates the United States constitutional requirements for reapportionment, we must respect its terms for reapportionment. We now turn to address this question, first in what might be called an executive summary, then more in detail.

We first look to *Reynolds v. Sims*, 377 U.S. 533 (1964), to inquire whether it is unconstitutional to postpone reapportionment until next year or whether the Legislature must be reapportioned this year. That

opinion established the constitutional duty of a state legislature to reapportion itself. Chief Justice Earl Warren, speaking for the Court, held that legislative reapportionment every ten years meets “the minimal requirements for maintaining a reasonably current scheme of legislative representation” under the Equal Protection Clause. 377 U.S. at 583-84. It is obvious that hardly a year passes after reapportionment that citizens are not denied their one-person, one-vote constitutional right. Hurricanes, floods, tornadoes, economic conditions, etc. constantly cause population shifts that leave the one-person, one-vote principle in shambles. Purity in protecting this constitutional right is, as the Supreme Court has recognized, so impractical as to be impossible. So, the Supreme Court has created a “fiction” to protect that right: A state legislature must reapportion itself only every ten years. *See League of United Latin American Citizens v. Perry*, 548 U.S. 399, 421 (2006) (plurality opinion of Kennedy, J.) (recognizing “that States operate under the legal fiction that their plans are constitutionally apportioned throughout the decade, a presumption that is necessary to avoid constant redistricting, with accompanying costs and instability”) (citing *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003), and *Reynolds*, 377 U.S. at 583). The Mississippi Legislature reapportioned itself in 2002. Only nine years have passed. Thus, the ten-year period to which *Reynolds* referred does not expire until 2012. The Legislature has one more year before it is required, under both the Supreme Court’s holding and under State law, to reapportion itself. We are mindful

in this case of *Reynolds*'s instruction that federal "judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." 377 U.S. at 586. And as we stated above, we are required to respect State law unless its application violates the United States Constitution or federal law. *See Upham*, 456 U.S. at 41. In this case, the ten years not having expired, it does not.

We initially expressed our inclination to impose an interim remedy, ordering the Mississippi Legislature to redistrict. Upon further consideration, we have concluded that, in the light of the fact that *no* party has argued, or even asserted, that Section 254 is unconstitutional on its face, or as applied, imposing an interim remedy would be premature and inconsistent with the Supreme Court's holdings in *Reynolds* (legislative reapportionment every ten years satisfies the one-person, one-vote principle) and *Upham* (federal courts must respect state law on reapportionment unless such law is unconstitutional). Because, however, Plaintiffs allege an injury with a federal remedy sufficient to invoke our Article III jurisdiction,¹ we will hold this case in abeyance until the Legislature completes the process for decennial reapportionment next year as set forth in Mississippi law. We retain jurisdiction to consider whether a

¹ *See infra* note 6.

federal remedy may be appropriate at that time for the undisputed malapportionment.

We further explain the reasons for this decision below:

I.

Facts

The Mississippi Constitution sets forth the procedures for redistricting of the Legislature:

The Legislature shall at its regular session in the second year following the 1980 decennial census and every ten (10) years thereafter, and may, at any other time, by joint resolution, by majority vote of all members of each house, apportion the state in accordance with the Constitution of the state and of the United States into consecutively numbered senatorial and representative districts of contiguous territory. . . . Should the Legislature adjourn without apportioning itself as required hereby, the Governor by proclamation shall reconvene the Legislature within thirty (30) days in special apportionment session which shall not exceed thirty (30) consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the Legislature to adopt a joint resolution of apportionment. Should a special apportionment session not adopt a joint resolution of apportionment as required hereby, a five-member commission consisting of the Chief Justice of the

Supreme Court as chairman, the Attorney General, the Secretary of State, the speaker of the House of Representatives and the president pro tempore of the Senate shall immediately convene and within one hundred eighty (180) days of the adjournment of such special apportionment session apportion the Legislature, which apportionment shall be final upon filing with the office of the Secretary of State. Each apportionment shall be effective for the next regularly scheduled elections of members of the Legislature.

MISS. CONST. art. 13, § 254.

Guidelines and standards for apportionment are set forth in Section 5-3-101 of the Mississippi Code:

In accomplishing the apportionment, the committee shall follow such constitutional standards as may apply at the time of the apportionment and shall observe the following guidelines unless such guidelines are inconsistent with constitutional standards at the time of the apportionment, in which event the constitutional standards shall control:

(a) Every district shall be compact and composed of contiguous territory and the boundary shall cross governmental or political boundaries the least number of times possible; and

(b) Districts shall be structured, as far as possible and within constitutional standards, along county lines; if county lines are

fractured, then election district lines shall be followed as nearly as possible.

MISS. CODE ANN. § 5-3-101 (1972-2002).

Thus in August and September 2010, in anticipation of the need for reapportionment of the Legislature, the Standing Joint Legislative Committee on Reapportionment and Redistricting of the Mississippi Legislature (“Joint Committee”) held hearings at various locations throughout the State. Data from the 2010 decennial census became available to the Legislature on February 3, 2011, while it was still in its regular session. After the Joint Committee received the 2010 census data, it conducted four additional public meetings. Thereafter, the Joint Committee unanimously voted to adopt reapportionment plans for the House and the Senate. The House plan that was approved by the Joint Committee was called “House Consensus 1.”

On March 1, 2011, Representative Reynolds, Chairman of the House Apportionment and Elections Committee, introduced a joint resolution (“J.R. 1”), which contained the plan unanimously adopted by the Joint Committee. The House adopted J.R. 1 on March 4, and it was transmitted to the Senate, where the Lieutenant Governor, as the presiding officer, referred it to the Elections and Rules Committees of the Senate. J.R. 1 died in the Senate Elections Committee.

On March 8, 2011, Senator Burton, the Chairman of the Senate Elections Committee, introduced a

joint resolution (“J.R. 201”) in the Senate, which contained the plan unanimously adopted by the Joint Committee. The Lieutenant Governor referred the resolution to the Elections and Rules Committees. J.R. 201 eventually passed the Senate, by a vote of 44-7, and it was referred to the House Apportionment and Elections Committee. The House Apportionment and Elections Committee reported the bill out with an amendment containing the entire House Plan that had been killed in the Senate Elections Committee. On March 15, 2011, the House adopted the amended J.R. 201, which contained both the House Plan and the Senate Plan. J.R. 201 was then returned to the Senate for concurrence. On March 17, the Senate declined to concur, and invited conference. The Lieutenant Governor named Senate conferees, but the Speaker of the House declined to do likewise. J.R. 201 died on the calendar on April 7 when the House and Senate adjourned.

On April 4, 2011, Senator Hewes, the President Pro Tempore of the Senate and Chairman of the Senate Rules Committee, introduced Senate Concurrent Resolution 692 (“S.C.R. 692”), to authorize the Lieutenant Governor and the Speaker of the House to extend the 2011 legislative session. S.C.R. 692 passed the Senate and was sent to the House. The House amended S.C.R. 692 by inserting the House and Senate Plans. S.C.R. 692 was transmitted to the Senate for concurrence, but the resolution died on the calendar on April 7, when the Senate adjourned.

According to the affidavit of Representative Reynolds, the House passed a modified plan known as “House Consensus 2” during the last week of the session but, because of a procedural ruling in the Senate, the Senate did not vote on this plan. House Consensus 2 changed some districts in House Consensus 1 in order to reduce fragmentation in the City of Starkville and Oktibbeha County.

Thus, the Legislature adjourned on April 7, without passing a joint resolution containing the plans proposed by the House and Senate. The current members’ terms expire on December 31, 2011. June 1, 2011 is the deadline for candidates to qualify to run for office for the four-year term beginning on January 1, 2012. Primary elections are scheduled to take place on Tuesday, August 2, 2011. Run-offs, if necessary, are scheduled to take place on August 23, 2011. The general election is scheduled for November 8, 2011.

II.

Description of Pleadings and Positions of Parties

On March 17, 2011, prior to the adjournment of the Legislature, the Mississippi State Conference of the National Association for the Advancement of Colored People (“NAACP”), Thomas Plunkett, Rod Woullard, and Hollis Watkins (collectively, the “Plaintiffs”) filed suit on behalf of themselves and a class defined as “all African-American citizens and voters in the State of Mississippi.” The defendants include

Governor Haley Barbour, Attorney General Jim Hood, and Secretary of State Delbert Hosemann, in their official capacities and as members of the State Board of Election Commissioners. Also named as defendants are the Mississippi Republican Party Executive Committee (“Republican Party”), the Mississippi Democratic Party Executive Committee (“Democratic Party”), and Connie Cochran, in her official capacity as Chairman of the Hinds County Board of Election Commissioners, and as representative of a class consisting of “all chairmen of county boards of election commissioners in the State of Mississippi.” The House Apportionment and Elections Committee, the Mississippi State Senate Democratic Caucus and State Democratic Senators in their individual capacities, Senator Burton, and Representatives Bondurant, Currie, and Stevens have all been granted leave to intervene.

The first district judge to whom this case was assigned recused himself on March 30. The district judge who replaced him granted the Plaintiffs’ motion for appointment of a three-judge court on April 1, and then recused himself on April 11. The case was assigned to Judge Lee on April 12. On April 13, approximately six weeks before the candidate qualification deadline, this three-judge Court was convened by Order of the Honorable Edith H. Jones, Chief Judge of the United States Court of Appeals for the Fifth Circuit. We have jurisdiction pursuant to the provisions of 28 U.S.C. § 2284(a) (stating that “[a] district court of three judges . . . shall be convened . . . when

an action is filed challenging the constitutionality of . . . the apportionment of any statewide legislative body”).

On April 18, this Court ordered the parties to appear at a status conference on Friday, April 22, and be prepared to discuss all matters relating to this case. On April 29, this Court issued an order stating that it was inclined to adopt the plans passed respectively by the House and Senate during the regular 2011 session (“the 2011 Plans”) as an interim remedy for the 2011 elections only. This Court scheduled a hearing for May 10, 2011, at which counsel for the parties were invited to present their views, comments, and objections to this proposed remedy. At the hearing on May 10, we received documentary evidence and heard testimony, comments, objections, and arguments of counsel, in response to our April 29 order. In the light of the testimony and statements of counsel at the status conference and May 10 hearing, and based on our review of the pleadings and motions, we understand the parties’ positions to be as follows.

The Plaintiffs seek a declaratory judgment that the current Mississippi House and Senate districts are unconstitutionally malapportioned, and an injunction prohibiting use of those districts in the 2011 elections. They have asked that we order the Mississippi Attorney General to submit the 2011 Plans to the United States Attorney General for preclearance and order those plans to be used, as an interim remedy,

for the 2011 elections.² The Plaintiffs acknowledge that, as a last resort, this Court may utilize the current districts as an interim remedy. However, they argue that if that happens, new elections must be ordered within a year.

Secretary of State Hosemann filed a motion to dismiss the complaint on the ground that it is premature, because, as we have said, the Mississippi Constitution allows the State until the end of the 2012 legislative session to complete redistricting of the Legislature. Although Secretary of State Hosemann does not dispute that the current legislative districts are malapportioned based on the 2010 census data, he argues that the State may nevertheless constitutionally use those districts for the 2011 elections. Intervenors Bondurant, Currie, and Stevens joined the Secretary of State's motion to dismiss.

The Republican Party and Governor Barbour argue that we should not enjoin use of the current

² Although in their complaint the Plaintiffs alleged claims for racial discrimination in violation of the Equal Protection Clause, for violation of Sections 2 and 5 of the Voting Rights Act, and for violation of the Mississippi Constitution, at the status conference on April 22, counsel for the Plaintiffs stated that there is no Section 2 claim in this lawsuit and that this is only a "one-person, one-vote" case. The Plaintiffs' counsel stated that the House and Senate Plans passed in 2011 would satisfy Section 2 and not be retrogressive. The Plaintiffs' request for a temporary restraining order until a three-judge panel could be convened, made in their complaint and in a separate motion filed on March 29, is moot.

districts unless we appoint an expert to draw a court-ordered plan for use in the 2011 elections. The Republican Party has also submitted its own proposed plan (“the One Percent Plan”), to which the Plaintiffs and others have objected. Further, the Republican Party and Governor Barbour object to use of the 2011 Plans as an interim remedy. They argue that those plans were not passed in accordance with State policy, as reflected in the Mississippi Constitution and statutes. They also argue that the plans are not constitutional under the stricter standards of population equality applicable to court-ordered plans. Finally, they contend that the plans systematically underpopulate districts currently represented by Democrats and systematically overpopulate districts currently represented by Republicans, and consequently are unconstitutional. See *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. Ga.), *summarily aff’d*, 542 U.S. 947 (2004) (holding that legislative plan with total population deviation of 9.98 percent was unconstitutional where certain districts were systematically underpopulated purely for partisan advantage).

Senator Burton argues that this Court should defer to the legislative process and use the 2011 Senate Plan as a component of any interim remedy if no joint resolution is adopted before June 1. He contends that the law does not require preclearance of a plan selected as an interim remedy, as opposed to a permanent one. Although he takes no position with respect to the 2011 House Plan, his counsel stated

that he believed the same arguments apply to both the 2011 House and Senate Plans.

Attorney General Hood, the Democratic Party, and the Senate Democratic Caucus and Individual Mississippi Democratic Senators have asked us to impose the 2011 House and Senate Plans as an interim remedy. It is not entirely clear whether all of these parties support the use of House Consensus 1 or House Consensus 2, although all of these parties apparently take the position that either of the 2011 House Plans is preferable to any other remedy. Counsel for the Plaintiffs stated that the Plaintiffs favor the second plan passed by the House in 2011 (House Consensus 2), because it splits fewer precincts.

Counsel for Intervenor, the House Apportionment and Elections Committee, stated at both the status conference and the May 10 hearing that there is a threshold question whether a state or local government is required to redistrict in the year that census data becomes available, but he took no position on the issue. He stated that the House Committee does not have any objection to the use of the 2011 Plans and that a special election would not be required if this Court adopted those plans as interim plans, because they satisfy the Voting Rights Act and the one-person, one-vote requirement, and there is no retrogression. Counsel, taking no position whether the Legislature must be reapportioned this year, stated that the 2011 Plans should be submitted for preclearance in the event that this Court adopts them as an interim remedy. Counsel stated that if the Legislature is not

required to redistrict in the same year that census data become available, then the 2002 districts should be used in these elections and there would be no basis for ordering special elections. In a supplemental submission following the May 10 hearing, the House Committee, still not contending that Section 254 of the Mississippi Constitution is unconstitutional, asserted that the better course is for the court to implement the 2011 Plans as an interim remedy for this election only.

Counsel for Election Commissioner Cochran stated that the Commissioners have not taken a position on the substantive issues involved in the lawsuit.

III.

Discussion of Issues

This challenge to the current apportionment of electoral districts in the Mississippi Legislature arises under the Equal Protection Clause of the Constitution.³ “The Equal Protection Clause requires that representatives to an elected body be drawn from voting districts of substantially equal population.” *Chen v. City of Houston*, 206 F.3d 502, 522 (5th Cir. 2000) (citing *Reynolds v. Sims*, 377 U.S. 533 (1964)). As we have earlier explained, all parties to this

³ An equal protection claim challenging the apportionment of seats in a state’s legislature presents a justiciable controversy subject to our adjudication. See *Baker v. Carr*, 369 U.S. 186 (1962).

litigation agree that, based on the 2010 census data, the current apportionment scheme does not satisfy this one-person, one-vote principle. *See Reynolds*, 377 U.S. at 558. The question is whether the federal courts should impose a remedy at this time. “Simply because an election law has become unconstitutional does not necessarily mean a federal court should step in to rewrite it.” *Arrington v. Elections Board*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (three-judge court). Instead, the Supreme Court has stated that “[a]bsent evidence that [a state legislature] will fail timely to perform [its] duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it.” *Grove v. Emison*, 507 U.S. 25, 34 (1993). So the question arises as to whether the State has failed “. . . timely to perform its duty. . . .”

Mississippi’s reapportionment policy is spelled out in Article 13, Section 254 of the Mississippi Constitution. Section 254 requires the Legislature to reapportion its electoral districts by the end of its regular session in the second year following the 2010 decennial census. The plain language of the Mississippi Constitution thus demonstrates that under State law the Legislature is not required to reapportion itself until its regular session in 2012. This constitutional provision clearly expresses the State policy, and the Supreme Court of the United States has made it clear that “whenever adherence to state policy does not detract from the requirements of the Federal Constitution,” a federal court should respect

that state policy. *Upham*, 456 U.S. at 41. *Reynolds* established that “state constitutional provisions should be deemed violative of the Federal Constitution only when validly asserted constitutional rights could not otherwise be protected and effectuated.” 377 U.S. at 584. Furthermore, because “reapportionment is primarily a matter for legislative consideration and determination, . . . judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.” *Upham*, 456 U.S. at 41 (internal quotation marks and citation omitted). The central question we must therefore decide is whether, *in its application to the facts before us*, Article 13, Section 254 of the Mississippi Constitution impairs the Equal Protection Clause’s principle of “one person, one vote.” We hold that it does not.

As Chief Justice Earl Warren established in *Reynolds v. Sims*, decennial reapportionment meets “the minimal requirements for maintaining a reasonably current scheme of legislative representation” under the Equal Protection Clause. 377 U.S. at 583-84. The Mississippi Legislature was last reapportioned in 2002, and under the State’s decennial reapportionment scheme, the Legislature has one more year before reapportionment and redistricting are required by the one-person, one-vote precedents.⁴

⁴ As the Supreme Court observed in *Reynolds*, some deviations from the equal-population standard are constitutionally
(Continued on following page)

In the wake of *Reynolds*, courts generally have accepted that some lag-time between the release of census data and the reapportionment of a state's legislative districts is both necessary and constitutionally acceptable, even when it results in elections based on malapportioned districts in the years that census data are released. See, e.g., *Fairley v. Forrest County, Mississippi*, 814 F. Supp. 1327 (S.D. Miss. 1993); *Ramos v. Illinois*, 781 F. Supp. 1353 (N.D. Ill. 1991), *aff'd*, 976 F.2d 335 (7th Cir. 1992). Notwithstanding the contention of several parties that the release of census data in an election year triggers the requirement to reapportion in advance of that election, none of the parties has asked us to declare that Section 254 of the Mississippi Constitution violates the United States Constitution. In the light of these considerations, we cannot conclude that a temporary delay in the implementation of new census data, as contemplated by the application of Section 254 to the facts of this case, renders the State's reapportionment policy unconstitutional. We therefore hold that federal interference in the Mississippi legislative redistricting process is premature at this time.

Counsel for several parties seemed to suggest at the May 10 hearing that we should ignore the holding of *Reynolds*, because the case has become obsolete. This argument has no support in Supreme Court

permissible, so long as they arise "incident to the effectuation of a rational state policy." 377 U.S. at 579. None of the parties assert that the policy embodied in Section 254 is not rational.

cases, or otherwise. *Reynolds* was cited favorably by Justice Kennedy as recently as 2006, in *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006) (“*LULAC*”), where he said:

Appellants do not contend that a decennial redistricting plan would violate equal representation three or five years into the decade if the State’s population had shifted substantially. As *they must*, they concede that States operate under the legal fiction that their plans are constitutionally apportioned *throughout the decade*, a presumption that is *necessary* to avoid constant redistricting, with accompanying costs and instability. See *Georgia v. Ashcroft*, 539 U.S. 461, 488 n. 2, 123 S.Ct. 2498, 156 L.Ed.2d 428 (2003); *Reynolds*, 377 U.S., at 583, 84 S.Ct. 1362.

Id. at 421 (plurality opinion of Kennedy, J.) (emphasis added).

We heard further arguments that *Reynolds* has been undermined by the Supreme Court’s statement in *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003), that “[w]hen the decennial census numbers are released, States must redistrict to account for any changes or shifts in population” and that “if the State has not redistricted in response to the new census figures, a federal court will ensure that the districts comply with the one-person, one-vote mandate before the next election.” This statement must be placed in context. As an initial matter, we note that this same footnote was cited, along with *Reynolds*, in Justice

Kennedy’s opinion in the *LULAC* case, quoted above. Furthermore, *Georgia v. Ashcroft* involved an appeal from a denial of Section 5 preclearance, and the footnote at issue was in response to the dissent’s rejection of “any inquiry into the benchmark plan using the census numbers in effect at the time the redistricting plan was passed.” 539 U.S. at 488 n.2. The Court did not hold that a state must redistrict to account for changes or shifts in population in the same year that census numbers are released, nor did it hold that a state’s plan for decennial reapportionment would not be adequate to maintain a reasonably current scheme of legislative representation. Indeed, the Court in *Georgia v. Ashcroft* recognized that states operate under the legal fiction that plans are constitutionally apportioned for ten years. 539 U.S. at 488 n.2.⁵ The Supreme Court has made it very clear that lower

⁵ None of the other cases cited to us suggests that we are not bound to follow *Reynolds. McDaniel v. Sanchez*, 452 U.S. 130 (1981), presented the question whether a reapportionment plan submitted to a district court by a legislative body to remedy an unconstitutional apportionment must be precleared. *Id.* at 131-32. *McDaniel* certainly did not overrule, nor did it undermine *Reynolds. Wyche v. Madison Parish Police Jury*, 635 F.2d 1151 (5th Cir. 1981), does not support an argument that a state legislature must act within six months after receiving census data. In that case, the six-month deadline from receipt of census data was derived from a state statute. *Id.* at 1157. Finally, our decision is not inconsistent with *Watkins v. Mabus*, 771 F. Supp. 789 (S.D. Miss.) (three-judge court), *aff’d in part and vacated in part*, 502 U.S. 954 (1991), because the court in *Watkins* was not presented with the question whether Article 13, Section 254 of the Mississippi Constitution required the court to stay its hand.

courts “should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions.” *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). We therefore are compelled to follow *Reynolds* until it is overruled by the Supreme Court of the United States.

IV.

Conclusion

We retain jurisdiction of this case to order appropriate relief, including special elections, if appropriate, upon motion of any party, following completion – or failure – of the process for redistricting of the Mississippi Legislature prescribed by Article 13, Section 254 of the Mississippi Constitution.⁶ If a

⁶ By retaining jurisdiction rather than dismissing the case as unripe, we act consistently with what the Supreme Court required in *Grove v. Emison*, 507 U.S. at 34 (stating that “reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court” and that “[a]bsent evidence that these state branches will fail *timely* to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it”) (internal quotation marks and citation omitted; emphasis added). We also act consistently with what was done in *Smith v. Clark*, 189 F. Supp. 2d 503, 504 (S.D. Miss. 2002) (three-judge court), where the court deferred acting in order to give State authorities an opportunity to timely carry out their duty to reapportion Mississippi’s congressional districts. The Supreme Court approved that practice, stating that “unlike in *Grove*, there is no suggestion

(Continued on following page)

legislative reapportionment plan is adopted by the end of the 2012 session, in accordance with Section 254 of the Mississippi Constitution, and that plan is precleared by the Department of Justice or the United States District Court for the District of Columbia, this Court, upon motion of any party, will consider whether special elections are required using such a plan. Any such motions must be filed no later than 30 days after the Mississippi Attorney General receives official notification of preclearance from the Department of Justice. The Mississippi Attorney General is ordered to file a notice with this Court, copying all counsel, upon receipt of such official notification from the Department of Justice. If no party moves for a special election within 30 days of notification of preclearance, a final judgment shall be entered at that time.

If at the end of the process prescribed by the Mississippi Constitution, there is no plan that has been adopted in accordance with State law and precleared as required by Section 5 of the Voting Rights Act, the Mississippi Attorney General shall promptly notify this Court. This Court shall then schedule hearings and proceed to draw a new plan. That plan

that the District Court failed to allow the state court adequate opportunity to develop a redistricting plan.” *Branch v. Smith*, 538 U.S. 254, 262 (2003). *See also Arrington v. Elections Board*, 173 F. Supp. 2d at 862-67 (discussing ripeness in redistricting cases and noting that “previous courts faced with arguably premature redistricting lawsuits have retained jurisdiction, but entered stays so the state legislatures could act”).

will then be in effect until the Legislature passes a plan that is precleared in accordance with Section 5 of the Voting Rights Act.

Finally, we observe that our order today seems to comport with everyone's "second choice." That – perhaps irrelevant – point aside, we are certain that it is the most respectful of all proposals to the principles of federalism, to the unchallenged laws of the State of Mississippi, to the holdings of the Supreme Court of the United States, and to the proper placement of responsibility for reapportionment – the Legislature of the State of Mississippi. The Legislature can adopt a plan and seek to have it precleared prior to the June 1 qualifying deadline for the 2011 elections; or the 2011 elections can go forward in the present districts as scheduled. The 2012 Legislature then can try to craft a plan that can be passed by joint resolution, in accordance with Mississippi law and the United States Constitution's principle of one person, one vote. If the process for redistricting set out in the Mississippi Constitution results in the enactment of a plan that is precleared and no party requests special elections, this Court will have no further involvement or duty. Our duty to act will arise only if that process fails. We retain jurisdiction, not in the expectation of failure, but only so that we may do our limited duty if we must.

We reiterate: Absent a plan adopted by the Mississippi Legislature and precleared by the Justice Department, the elections in 2011 for the Senate and House of Representatives of the State of Mississippi

will be conducted under the districts as they are presently configured. This Court retains jurisdiction of this case as noted above.

SO ORDERED, this 16th day of May, 2011.

/s/ E. Grady Jolly
E. Grady Jolly
United States Circuit Judge

/s/ Tom S. Lee
Tom S. Lee
United States District Judge

/s/ Louis Guirola, Jr.
Louis Guirola, Jr.
Chief United States
District Judge

APPORTIONMENT AND ELECTIONS
COMMITTEE OF THE MISSISSIPPI
HOUSE OF REPRESENTATIVES;
MISSISSIPPI STATE SENATE
DEMOCRATIC CAUCUS AND
STATE DEMOCRATIC SENATORS,
in their individual capacities;
TERRY C. BURTON, SIDNEY
BONDURANT, BECKY CURRIE,
and MARY ANN STEVENS, INTERVENORS

ORDER AND NOTICE

(Filed Apr. 29, 2011)

After consideration of the pleadings and the various positions of the multiple parties, notice is hereby given that if the Mississippi Legislature fails to enact and obtain preclearance for a legislative redistricting plan before June 1, 2011, this Court is inclined to issue an order that the redistricting plans adopted respectively by the House of Representatives and the Senate during the regular 2011 session (“the 2011 Plans”), shall be adopted as the interim court-ordered plan for use in the 2011 elections. This proposed interim remedy appears to be necessary in the light of the acknowledgment of all parties that the existing state legislative districts are unconstitutionally malapportioned, and because of the exigent circumstances of this case, including the June 1, 2011 deadline for candidates to qualify to run for office in the Mississippi House of Representatives and the Mississippi Senate. Reasons for such decision as the court shall reach shall be filed following a hearing to

be conducted before this three-judge court on Tuesday, May 10, 2011, at 9:00 a.m. At that hearing, the respective parties, through counsel, may present their views, comments, and objections to this proposed remedy. If the parties have evidence that they wish to present, they must detail, in specific terms, such evidence, the relevance of such evidence, and specifically the points they intend to establish, all in a written document filed with this court on or before May 5, 2011.

We reiterate that we are inclined to issue an interim remedy only, not a permanent one, and that, under such circumstances, the 2011 Plans would be used only for the 2011 elections. After the 2011 elections have been conducted, the 2011 Plans would not be used again for any other election, unless and until, either they are enacted in accordance with State law and precleared pursuant to Section 5 of the Voting Rights Act, or they are adopted as part of a permanent injunctive remedy in some future order of this Court after a full trial on the merits has been conducted.

This Court proposes to retain jurisdiction of this case to order further appropriate relief, upon motion of any party, following completion of the process for redistricting of the Mississippi Legislature prescribed by Article 13, Section 254 of the Mississippi Constitution.

This 29th day of April, 2011.

/s/ E. Grady Jolly
E. Grady Jolly
United States Circuit Judge

/s/ Tom S. Lee
Tom S. Lee
United States District Judge

/s/ Louis Guirola, Jr.
Louis Guirola, Jr.
Chief United States
District Judge

**APPORTIONMENT AND ELECTIONS
COMMITTEE OF THE MISSISSIPPI
HOUSE OF REPRESENTATIVES;
MISSISSIPPI STATE SENATE
DEMOCRATIC CAUCUS AND
STATE DEMOCRATIC SENATORS,
in their individual capacities;
TERRY C. BURTON, SIDNEY
BONDURANT, BECKY CURRIE,
and MARY ANN STEVENS, INTERVENORS**

NOTICE OF APPEAL

(Filed Jan. 2, 2013)

COME NOW the plaintiffs, the Mississippi State Conference of the National Association for the Advancement of Colored People (“NAACP”), Thomas Plunkett, Rod Woullard, and Hollis Watkins, on behalf of themselves and all others similarly situated, pursuant to 28 U. S. C. §§ 1253 and 2284 and U. S. Sup. Ct. Rule 18, and hereby file their Notice of Appeal to the United States Supreme Court from the Final Judgment entered by the three-judge District Court for the Southern District of Mississippi on December 17, 2012 [Doc. 160], the Order denying plaintiffs’ motion to set aside the 2011 legislative election results and order special legislative elections for all legislative districts in 2013 [Doc. 159], the Memorandum Opinion and Order entered by the three-judge District Court for the Southern District of Mississippi on May 16, 2011 denying plaintiffs’ motion for a preliminary injunction and finding that plaintiffs’ claim was not ripe for adjudication [Doc. 124], and the

Order entered by the three-judge District Court for the Southern District of Mississippi on May 26, 2011 and filed for record on May 27, 2011 denying plaintiffs' motion to alter or amend the Memorandum Opinion and Order and plaintiffs' motion for relief from the Memorandum Opinion and Order [Doc. 130].

This the 31st day of December, 2012.

Respectfully submitted,

MISSISSIPPI STATE
CONFERENCE OF THE
NATIONAL ASSOCIATION
FOR THE ADVANCEMENT
OF COLORED PEOPLE,
THOMAS PLUNKETT,
ROD WOULLARD, and
HOLLIS WATKINS, on behalf
of themselves and all others
similarly situated

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CERTIFICATE OF SERVICE

I, Carroll Rhodes, do hereby certify that I have this date filed the above and foregoing Notice of Appeal with the Clerk of this Court who electronically served a true and correct copy of the foregoing Notice of Appeal on counsel listed below using the ECF system which sent notification of such filing to the following:

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BONDURANT, BECKY CURRIE, and MARY
ANN STEVENS**

This the 31st day of December, 2012.

/s/ Carroll Rhodes
CARROLL RHODES

28 U.S.C. § 2284. Three-judge court; when required; composition; procedure

(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.

(b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

(1) Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State.

(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may

grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment.

ARTICLE VI
DEBTS VALIDATED, SUPREME LAW
OF THE LAND, OATH OF OFFICE

* * *

2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
-

AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE 4

LEGISLATIVE DEPARTMENT

Section 36. Sessions.

The Legislature shall meet at the seat of government in regular session on the Tuesday after the first Monday of January of the year A. D., 1970, and annually thereafter, unless sooner convened by the Governor, provided, however, that such session shall be limited to a period of one hundred twenty-five (125) calendar days for regular 1972 session and every fourth year thereafter, but ninety (90) calendar days for every other regular session thereafter. Provided further that the House of Representatives by resolution with the Senate concurring therein, and by a two-thirds ($\frac{2}{3}$) vote of those present and voting in each house, may extend such limited session for a period of thirty (30) days with no limit on the number of extensions to each session.

ARTICLE 13

APPORTIONMENT

Section 254. Senatorial and representative districts.

The legislature shall at its regular session in the second year following the 1980 decennial census and every ten (10) years thereafter, and may, at any other time, by joint resolution, by majority vote of all members of each house, apportion the state in accordance with the constitution of the state and of the United States into consecutively numbered senatorial and representative districts of contiguous territory. The senate shall consist of not more than fifty two (52) senators, and the house of representatives shall consist of not more than one hundred twenty-two (122) representatives, the number of members of each house to be determined by the legislature. Should the legislature adjourn, without apportioning itself as required hereby, the governor by proclamation shall reconvene the legislature within thirty (30) days in special apportionment session which shall not exceed thirty (30) consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment. Should a special apportionment session not adopt a joint resolution of apportionment as required hereby, a five-member commission consisting of the chief justice of the supreme court as chairman, the attorney general, the secretary of state, the speaker of

the house of representatives and the president pro tempore of the senate shall immediately convene and within one hundred eighty (180) days of the adjournment of such special apportionment session apportion the legislature, which apportionment shall be final upon filing with the office of the secretary of state. Each apportionment shall be effective for the next regularly scheduled elections of members of the legislature.

**APPORTIONMENT AND ELECTIONS
COMMITTEE OF THE MISSISSIPPI
HOUSE OF REPRESENTATIVES;
MISSISSIPPI STATE SENATE
DEMOCRATIC CAUCUS AND
STATE DEMOCRATIC SENATORS,
in their individual capacities;
TERRY C. BURTON, SIDNEY
BONDURANT, BECKY CURRIE,
and MARY ANN STEVENS, INTERVENORS**

**PLAINTIFFS' MOTION TO SET ASIDE THE
2011 LEGISLATIVE ELECTION RESULTS AND
ORDER SPECIAL LEGISLATIVE ELECTIONS
FOR ALL LEGISLATIVE DISTRICT IN 2013**

COME NOW the plaintiffs, the Mississippi State Conference of the National Association for the Advancement of Colored People (“NAACP”), Thomas Plunkett, Rod Woullard, and Hollis Watkins, on behalf of themselves and all others similarly situated,¹ pursuant to the Memorandum Opinion and Order [Doc. 124] entered by the Court on May 16, 2011, and move the Court to enter an Order setting aside the 2011 legislative election results and scheduling special legislative elections for all legislative districts in 2013 on the following grounds:

1. This Court noted and all parties agreed that the legislative apportionment scheme under the Benchmark

¹ Plaintiffs filed the case as a class action. However, plaintiffs have not filed a formal motion for class certification yet.

plans for the Mississippi Senate and the Mississippi House of Representatives when the instant case was filed were malapportioned.

2. Legislative elections for members of the Mississippi Senate and the Mississippi House of Representatives were held in 2011 using the malapportioned Benchmark plans in existence when the elections were held.

3. This Court followed Supreme Court precedent² and held that since the Legislature was reapportioned in 2002 and the Mississippi Constitution did not require reapportionment until the regular session of the Legislature in the second year following the decennial census, legislative redistricting would not be required until 2012. *Mississippi State Conference of N.A.A.C.P. v. Barbour*, 2011 WL 1870222 (S. D. Miss. 2011) (three-judge court), *aff'd*, ___ U. S. ___, 132 S. Ct. 542, 181 L. Ed. 2d 343 (2011).

4. Legislative elections were held using grossly malapportioned districts in 2011. The overall deviation percentage for districts in the Mississippi Senate is 69.08%, and the overall deviation percentage for districts in the Mississippi House of Representatives is 134.35%.

² This Court followed the holding of the Supreme Court in *Reynolds v. Sims*, 377 U. S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

5. Members of the Mississippi Senate and Mississippi House of Representatives who were elected in 2011 took office in January, 2012, and another regular legislative election will not occur under state law until 2015 with persons elected taking office in January, 2016.

6. Plaintiffs will be injured and suffer dilution of their vote and voting strength if Legislators who were elected to office in grossly malapportioned districts serve for a full four-year term in those grossly malapportioned districts.

7. The Mississippi Senate reapportioned itself in 2012 and obtained preclearance of its plan from the United States Department of Justice on September 14, 2012.³

8. The Mississippi House of Representatives reapportioned itself in 2012 and obtained preclearance of its plan from the United States Department of Justice on September 14, 2012. The Mississippi Attorney General has filed a copy of the preclearance letter in this case.

9. The Mississippi Attorney General was notified of the preclearance of the reapportionment plans

³ The Mississippi Attorney General has filed a copy of the preclearance letter in this case.

for the Mississippi Senate and Mississippi House of Representatives on September 17, 2012.⁴ [Doc. 139].

10. Although the legislatively enacted 2012 Senate Plan complies with the one-person, one-vote principle,⁵ that Plan⁶ dilutes African-American voting strength⁷ and results in discrimination against African-American voters in violation of § 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973. Therefore, the 2012 Senate Plan should not be used for special elections.

11. Although the legislatively enacted 2012 House Plan complies with the one-person, one-vote principle,⁸ that Plan⁹ dilutes African-American voting strength¹⁰ and results in discrimination against

⁴ The Mississippi Attorney General filed notice of the pre-clearance on September 17, 2012. [Doc. 139].

⁵ The total range of deviation in the 2012 Senate Plan is 9.30%.

⁶ A copy of the 2012 Senate Plan is attached hereto as Exhibit A3 and incorporated herein.

⁷ The 2012 Plan contains 12 majority black districts and 12 majority black voting age population districts when compared to the Benchmark Plan that contains 14 black majority districts and 13 black voting age majority districts and the 2011 Interim Plan offered by plaintiffs that contained 15 black majority districts and 15 black voting age majority districts.

⁸ The total range of deviation in the 2012 House Plan is 9.98%.

⁹ A copy of the 2012 House Plan is attached hereto as Exhibit A4 and incorporated herein.

¹⁰ The 2012 Plan contains 39 majority black districts and 39 majority black voting age population districts when compared to

(Continued on following page)

African-American voters in violation of § 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973. Therefore, the 2012 House Plan should not be used for special elections.

12. The Court should draw a plan that complies with the one-person, one-vote principle of the 14th Amendment's Equal Protection Clause and § 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973.

13. The Court should not allow Legislators elected under a districting scheme that is grossly malapportioned to remain in office a full four-year term.

14. Plaintiffs request the Court to void and set aside the 2011 legislative election results and order special legislative elections for 2013¹¹ under a Court drawn plan that complies with the one-person, one-vote principle of the 14th Amendment's Equal Protection Clause and § 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973.

WHEREFORE, PREMISES CONSIDERED, plaintiffs request the Court to void and set aside the 2011 legislative election results and order special

the Benchmark Plan that contains 41 black majority districts and 41 black voting age majority districts and the 2011 Interim Plan offered by plaintiffs that contained 44 black majority districts and 44 black voting age majority districts.

¹¹ Generally, special elections are held in November. See, § 23-15-833, Miss. Code Ann.

legislative elections for 2013¹² under a Court drawn plan that complies with the one-person, one-vote principle of the 14th Amendment's Equal Protection Clause and § 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973.

This the 14th day of October, 2012.

Respectfully submitted,

MISSISSIPPI STATE
CONFERENCE OF THE
NATIONAL ASSOCIATION
FOR THE ADVANCEMENT
OF COLORED PEOPLE,
THOMAS PLUNKETT,
ROD WOULLARD, and
HOLLIS WATKINS, on behalf
of themselves and all others
similarly situated

/s/ Carroll Rhodes
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¹² Generally, special elections are held in November. See, § 23-15-833, Miss. Code Ann.

CERTIFICATE OF SERVICE

I, Carroll Rhodes, do hereby certify that I have this date electronically filed the foregoing Motion with the Clerk of Court using the ECF system which sent notification of such filing to the following:

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This the 14th day of October, 2012.

/s/ Carroll Rhodes
CARROLL RHODES

COMPLAINT

(Filed Mar. 17, 2011)

JURISDICTION

1. This is an action for declaratory and injunctive relief for violation of rights secured to plaintiffs by the United States Constitution, federal laws, the Mississippi Constitution (1890), and state laws. The federal question and supplemental jurisdiction of this Court is invoked pursuant to the 14th amendment to the United States Constitution, 28 U. S. C. §§ 1331, 1343, 1967, 2201, 2202, and 2284, and 42 U. S. C. §§ 1973, 1973c, and 1983.

VENUE

2. The venue for this action is proper in the Jackson Division of the United States District Court for the Southern District of Mississippi because some of the actions and inactions complained of occurred in this venue and because some of the defendants reside within this venue.

PARTIES

3. Plaintiff, the Mississippi State Conference of the National Association for the Advancement of Colored People (“NAACP”) is a civil rights organization which has members who are citizens and registered voters throughout the State of Mississippi and in every Mississippi Senate and Mississippi House Districts including Senate Districts 1, 19, 25, 27, 24,

27, 41, and 44, and Mississippi House Districts 6, 25, 68, 74, 101, and 103.

4. The Mississippi State Conference of the NAACP has organizational and associational standing to represent the interests of its members who have been injured by violation of their constitutional and statutory rights in the current apportionment plans for the Mississippi Senate and Mississippi House of Representatives and the actions and inactions of the Mississippi Legislature.

5. Plaintiffs, Thomas Plunkett, Rod Woullard, and Hollis Watkins, are adult African-American resident citizens and registered voters in the following counties, House of Representative Districts, and Senate Districts in the State of Mississippi:

<u>Plaintiff's Name</u>	<u>County of Residences</u>	<u>House District</u>	<u>Senate District</u>
a. Thomas Plunkett	Desoto	25	1
b. Rod Woullard	Forrest	103	41
c. Hollis Watkins	Hinds	68	27

6. Plaintiffs bring this action individually and, pursuant to *Fed. R. Civ. P. 23(a), (b)(2), and (c)*, on behalf of all others similarly situated as a class action with the class defined as “all African-American citizens and voters in the State of Mississippi.”

7. With respect to the class, (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law and fact common to

the class, (c) the claims of the representative parties are typical of the claims of the class, (d) the representative parties will fairly and adequately protect the interests of the class, and (e) the parties opposing the class have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

8. Defendant, Haley Barbour, is an adult resident citizen of the State of Mississippi who is the duly elected Governor of the State of Mississippi and as such is a member of the State Board of Election Commissioners for the State of Mississippi. This defendant is sued in this action in his official capacity only, and the process of this Court may be served on this defendant at the Governor's Office, Walter Sillers Building, 550 High Street, Suite 1900, Jackson, Mississippi 39201.

9. Defendant, Jim Hood, is an adult resident citizen of the State of Mississippi who is the duly elected Attorney General of the State of Mississippi and as such is a member of the State Board of Election Commissioners for the State of Mississippi. This defendant is sued in this action in his official capacity only, and the process of this Court may be served on this defendant at the Attorney General's Office, Walter Sillers Building, 550 High Street, Suite 1200, Jackson, Mississippi 39201.

10. Defendant, Delbert Hosemann, is an adult resident citizen of the State of Mississippi who is the

duly elected Secretary of State of the State of Mississippi and as such is a member of the State Board of Election Commissioners for the State of Mississippi. This defendant is sued in this action in his official capacity only, and the process of this Court may be served on this defendant at the Secretary of State's Office, 401 Mississippi Street, Jackson, Mississippi 39201-1004.

11. Defendants, Haley Barbour, Governor of Mississippi; Jim Hood, Attorney General of Mississippi; and Delbert Hosemann, Secretary of State of Mississippi, pursuant to § 23-15-211, Miss. Code Ann. (1972), comprise the State Board of Election Commissioners, and are responsible for certifying candidates and general election and special election ballots as well as election results for general and special elections.

12. Defendant, the Mississippi Republican Party Executive Committee, is a political party which was created and registered with the Secretary of State for the State of Mississippi pursuant to §§ 23-15-1051, et. seq., Miss. Code Ann. (1972), and which is charged by statutes, §§ 23-15-171, et. seq., Miss. Code Ann. (1972); §§ 23-15-291, et. seq., Miss. Code Ann. (1972); §§ 23-15-331, et. seq., Miss. Code Ann. (1972); §§ 23-15-597, et. seq., Miss. Code Ann. (1972); §§ 23-15-911, et. seq., Miss. Code Ann. (1972); §§ 23-15-921, et. seq., Miss. Code Ann. (1972); and §§ 23-15-961, et. seq., Miss. Code Ann. (1972), with conducting primary nominations and elections for the Mississippi Republican Party in the State of Mississippi. This defendant

may be served with the process of this Court by serving the Chairman of the Mississippi Republican Party Executive Committee, Arnie Henderson, whose address is the Mississippi Republican Party Executive Committee, 415 Yazoo Street, Jackson, Mississippi 39201.

13. Defendant, the Mississippi Democratic Party Executive Committee, is a political party which was created and registered with the Secretary of State for the State of Mississippi pursuant to §§ 23-15-1051, et. seq., Miss. Code Ann. (1972), and which is charged by statutes, §§ 23-15-171, et. seq., Miss. Code Ann. (1972); §§ 23-15-291, et. seq., Miss. Code Ann. (1972); §§ 23-15-331, et. seq., Miss. Code Ann. (1972); §§ 23-15-597, et. seq., Miss. Code Ann. (1972); §§ 23-15-911, et. seq., Miss. Code Ann. (1972); §§ 23-15-921, et. seq., Miss. Code Ann. (1972); and §§ 23-15-961, et. seq., Miss. Code Ann. (1972), with conducting primary nominations and elections for the Mississippi Democratic Party in the State of Mississippi. This defendant may be served with the process of this Court by serving the Chairman and Executive Director of the Mississippi Democratic Party Executive Committee, Sam Hall, whose address is the Mississippi Democratic Party Executive Committee, 832 North Congress Street, Jackson, Mississippi 39202.

14. Defendant, Connie Cochran, is an adult resident citizen and duly elected Election Commissioner and the Chairman of the Board of Election Commissioners for Hinds County, Mississippi, who is charged by statutes, § 23-15-351, and § 23-15-603, Miss. Code

Ann. (1972), with printing all necessary ballots for use in elections for the Mississippi House of Representatives and the Mississippi Senate, as well as certifying and transmitting election results to the Secretary of State. This defendant is sued in her official capacity only as Chairman of the Board of Election Commissioners for Hinds County, Mississippi. This defendant may be served with the process of this Court at the Hinds County Courthouse, 407 East Pascagoula Street, Jackson, Mississippi.

15. Plaintiffs bring this action against defendant, Connie Cochran, in her official capacity as Chairman of the Board of Election Commissioners for Hinds County, Mississippi, as a class action, pursuant to *Fed. R. Civ. P. 23(a), (b)(3), and (c)*, with the defendant class defined as “all chairmen of county boards of election commissioners in the State of Mississippi.”

16. With respect to the class, (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law and fact common to the class, (c) the claims of the representative parties are typical of the claims of the class, (d) the representative parties will fairly and adequately protect the interests of the class, and (e) the questions of law and fact common to the class members predominate over any questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

FACTS

17. The population for the State of Mississippi according to the 2010 federal decennial census is 2,967,297 persons of whom 1,754,684 (or 59.14%) are white and 1,098,385 (or 37%) are black. A copy of the U. S. Census Bureau's 2010 Redistricting Data for Mississippi is attached hereto as Exhibit "A" and incorporated herein.

18. The voting age population for the State of Mississippi according to the 2010 federal decennial census is 2,211,742 persons of whom 1,370,641 (or 61.97%) are white and 767,499 (or 34.70%) are black.

19. The State of Mississippi has a bicameral legislative body consisting of a Senate and House of Representatives.

20. According to the Constitution of the State of Mississippi, there are 122 House of Representative Districts and 52 Senate Districts.

21. Members of the Mississippi House and [sic] Representatives and the Mississippi Senate are elected by popular vote to four year terms of office from single-member districts.

22. The term of office for current members of the Mississippi House of Representatives and the Mississippi Senate expires December 31, 2011.

23. The next four year term of office for members of the Mississippi House of Representatives and the Mississippi Senate begin on January 1, 2012.

24. The deadline for persons to qualify as candidates for the Mississippi House of Representatives and the Mississippi Senate for the term of office that begins on January 1, 2012 is Wednesday, June 1, 2011.

25. Political party primary nomination elections for the next term of office for members of the Mississippi House of Representatives and Mississippi Senate are scheduled for Tuesday, August 2, 2011.

26. A majority vote is required for political party nomination elections in Mississippi.

27. Political party second primary nomination or run-off elections for the next term of office for members of the Mississippi House of Representatives and Mississippi Senate are scheduled for Tuesday, August 23, 2011 if no candidate receives a majority vote during the primary nomination election.

28. A general election and regular special elections are scheduled for Tuesday, November 8, 2011.

29. The ideal population for each Mississippi Senate District is 57,063 persons according to the 2010 federal decennial census.

30. Mississippi Senate District 1 has a total population of 78,258 persons according to the 2010 federal decennial census and the Mississippi Joint Legislative Committee on Redistricting and Reapportionment, with a deviation from the ideal population of 21,195 persons and a deviation percentage of +37.14%. A true and correct copy of the Benchmark

Report for the Mississippi State Senate prepared by the Mississippi Joint Legislative Committee on Redistricting and Reapportionment is attached hereto as Exhibit "A-1" and incorporated here.

31. Mississippi Senate District 19 has a total population of 82,994 persons according to the 2010 federal decennial census and the Mississippi Joint Legislative Committee on Reapportionment, with a deviation from the ideal population of 25,931 persons and a deviation percentage of +45.44%.

32. Mississippi Senate District 12 has a total population of 43,572 persons according to the 2010 federal decennial census and the Mississippi Joint Legislative Committee on Reapportionment, with a deviation from the ideal population of 13,491 persons and a deviation percentage of -23.64%.

33. The total range of population deviation in Mississippi Senate Districts according to the 2010 federal decennial census is 39,422 persons.

34. The maximum population deviation percentage in Mississippi Senate Districts according to the 2010 federal decennial census is 69.08%.

35. The following 14 Senate Districts have a population deviation percentage greater than 5% of the ideal population for Senate Districts: Senate District Numbers 1, 6, 9, 10, 18, 19, 20, 25, 29, 30, 40, 43, 44, and 51.

36. The following 19 Senate Districts have a population deviation percentage less than 5% of the

ideal population for Senate Districts: Senate District Numbers 7, 8, 11, 12, 13, 16, 17, 21, 22, 22, 23, 24, 26, 27, 28, 32, 36, 38, 48, and 50.

37. The ideal population for each Mississippi House of Representative District is 24,322 persons according to the 2010 federal decennial census.

38. Mississippi House District 25 has a total population of 29,000 persons according to the 2010 federal decennial census and the Mississippi Joint Legislative Committee on Redistricting and Reapportionment, with a deviation from the ideal population of 4,678 persons and a deviation percentage of +19.23%. A true and correct copy of the Benchmark Report for the Mississippi House Districts prepared by the Mississippi Joint Legislative Committee on Redistricting and Reapportionment is attached hereto as Exhibit "A-2" and incorporated here.

39. Mississippi House District 103 has a total population of 25,555 persons according to the 2010 federal decennial census, with a deviation from the ideal population of 1,233 persons and a deviation percentage of +5.07%.

40. Mississippi House District 6 has a total population of 46,182 persons according to the 2010 federal decennial census, with a deviation from the ideal population of 21,860 persons and a total range deviation percentage of 89.88%.

41. Mississippi House District 115 has a total population of 13,505 persons according to the 2010

federal decennial census, with a deviation from the ideal population of 10,817 persons and a deviation percentage of -44.47%.

42. The total range of population deviation in Mississippi House Districts according to the 2010 federal decennial census is 32,677 persons.

43. The maximum population deviation percentage in Mississippi House Districts according to the 2010 federal decennial census is 134.35%.

44. The following 38 House Districts have a population deviation percentage greater than 5% of the ideal population for House Districts: House District Numbers 6, 7, 8, 10, 12, 15, 17, 18, 19, 29, 37, 40, 52, 56, 57, 58, 59, 60, 61, 62, 73, 74, 92, 93, 95, 99, 100, 101, 103, 104, 106, 107, 108, 109, 112, 114, 116, and 118.

45. The following 58 House Districts have a population deviation percentage less than 5% of the ideal population for House Districts: House District Numbers 5, 9, 11, 16, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 38, 41, 42, 43, 44, 46, 48, 49, 50, 51, 53, 55, 63, 65, 66, 67, 68, 69, 70, 72, 75, 76, 78, 79, 80, 81, 82, 85, 86, 87, 91, 94, 96, 110, 111, 115, 117, 119, 120, 121, and 122.

46. Plaintiff Thomas Plunkett, is a citizen and voter in a Mississippi Senate District that is overpopulated and under represented, and the plaintiff is aggrieved by that under representation.

47. Plaintiffs, Thomas Plunkett and Rod Woullarld [sic], are citizens and voters in Mississippi House Districts that are overpopulated and under represented, and the plaintiffs are aggrieved by that under representation.

48. The Mississippi State Conference of the NAACP has members who are registered voters in Mississippi Senate Districts and Mississippi House Districts that are overpopulated and under represented, and the members of the Mississippi State Conference of the NAACP who are citizens and voters in those districts are aggrieved by that under representation.

49. The State of Mississippi is a jurisdiction covered by the preclearance requirements of § 5 of the Voting Rights Act of 1975, as amended and extended, 42 U. S. C. § 1973c, that has a long and official history of racial discrimination against African-American citizens and voters that has affected their right to register, vote, and participate in the political process.

50. The official population for each Mississippi Senate District, including the population by race and racial percentage, voting age population by race and racial percentage according to the 2010 federal decennial census and the 2000 federal decennial census is attached hereto as Exhibit "B" and incorporated herein.

51. The official population for each Mississippi House District, including the population by race and racial percentage, voting age population by race and

racial percentage according to the 2010 federal decennial census and the 2000 federal decennial census is attached hereto as Exhibit "C" and incorporated herein.

52. There is racially polarized voting in each Senate and House District in Mississippi in elections for public office.

53. African-American voters are politically cohesive in Mississippi.

54. The African-American population in the State of Mississippi is geographically large and insular.

55. The current apportionment scheme for the Mississippi Senate and Mississippi House of Representatives dilute black voting strength.

56. White bloc voting in elections in the State of Mississippi is statistically significant.

57. African-American citizens and voters in the State of Mississippi suffer from the lingering effects of gross disparities in socioeconomic factors that adversely affect their ability to effectively participate in the political process and elect candidates of their choice to elective office.

58. There have been overt and subtle racial appeals in elections in Mississippi.

59. The Mississippi House of Representatives has adopted a redistricting plan for the Mississippi House of Representatives twice that the Mississippi Senate has refused to concur in on account of race.

60. The Mississippi Senate has adopted a re-districting plan for the Mississippi Senate that the Mississippi House of Representatives has concurred in.

61. The redistricting plans for the Mississippi Senate and Mississippi House of Representatives contain voting changes that must be administratively or judicially precleared pursuant to the requirements of § 5 of the Voting Rights Act of 1965, 42 U. S. C. § 1973c.

62. The redistricting plans adopted by the Mississippi Senate and Mississippi House of Representatives have not been administratively or judicially precleared.

63. The defendants, the members of the State Board of Election Commissioners, are responsible for obtaining administrative or judicial preclearance of the voting changes implemented contained in legislative redistricting plans.

64. African-American voters in the State of Mississippi have been denied equal opportunity to participate in the political process and to elect representatives of their choice under the totality of the circumstances.

65. All of the actions and inactions of the defendants, as mentioned above, have been intentional, deliberate, and invidious or have resulted in discrimination against the plaintiffs.

66. The Mississippi Senate and Mississippi House of Representatives have refused to adopt legislative redistricting plans that do not result in discrimination against the plaintiffs.

67. The unprecleared voting changes are retrogressive.

68. As a proximate results of the actions and inactions of the defendants, as mentioned above, the plaintiffs have suffered a violation of their constitutional and statutory rights.

CAUSES OF ACTION

COUNT I - 14th AMENDMENT EQUAL PROTECTION (ONE PERSON ONE VOTE)

69. The existing redistricting plans for the Mississippi Senate and Mississippi House of Representatives are unconstitutionally malapportioned and violate rights secured to plaintiffs by the Equal Protection Clause of the 14th Amendment to the United States Constitution and 42 U. S. C. § 1983.

COUNT II - 14TH AMENDMENT EQUAL PROTECTION (RACE)

70. The actions and inactions of the defendants, as mentioned above, in intentionally discriminating against plaintiffs on account of race, violate rights secured to plaintiffs by the Equal Protection Clause of the 14th amendment to the United States Constitution and 42 U. S. C. § 1983.

**COUNT III – SECTION 5 OF
THE VOTING RIGHTS ACT**

71. The actions of the defendants, as mentioned above, in enacting and implementing unprecleared voting changes, violate rights secured to plaintiffs by Section 5 of the Voting Rights Act of 1965, 42 U. S. C. § 1973c.

**COUNT IV – SECTION 2 OF
THE VOTING RIGHTS ACT**

72. The actions and inactions of the defendants, as mentioned above, result in discrimination against African-American voters in the State of Mississippi, and violate rights secured to plaintiffs by § 2 of the Voting Rights Act of 1965, 42 U. S. C. § 1973.

COUNT V – MISSISSIPPI CONSTITUTION (1890)

73. The actions and inactions of the defendants, as mentioned above, violate rights secured to plaintiffs by Art. 12, § 254, Miss. Const. (1890) and Art. 3, § 14, Miss. Const. (1890).

CAUSATION AND INJURY

74. As a proximate results [sic] of the actions and inactions of the defendants, as mentioned above, plaintiffs have been injured and suffered a violation of their federal and state constitutional rights, and plaintiffs have incurred expenses, attorney fees, and court costs.

EQUITABLE RELIEF

DECLARATORY JUDGMENT

75. Plaintiffs request a declaratory judgment, pursuant to 28 U. S. C. §§ 2201 and 2202, that the defendants have violated rights secured to plaintiffs by the 14th amendment to the United States Constitution, 42 U. S. C. §§ 1973, 1973c and 1983, Art. 3, § 14 of the Miss. Const. (1890), and Art. 12, § 254 of the Miss. Const. (1890). Plaintiffs specifically request a declaratory judgment that the existing redistricting plans for the Mississippi Senate and Mississippi House of Representatives are unconstitutionally malapportioned and violate rights secured to plaintiffs by the Equal Protection Clause of the 14th Amendment to the United States Constitution and 42 U. S. C. § 1983 and that the plans adopted by the Mississippi Senate and Mississippi House of Representatives are unenforceable as a matter of law unless and until they are precleared.

INJUNCTIVE RELIEF

76. Plaintiffs request that a single district judge issue a temporary restraining order until a three-judge panel can be convened, and plaintiffs request the convening of a three-judge district court pursuant to the provisions of 28 U. S. C. § 2284 and 42 U. S. C. § 1973c., and that upon convening the three-judge district court enter a preliminary injunction and permanent injunction enjoining elections under the existing legislative redistricting plans, and implement a court-ordered plan that does not dilute black voting

strength and order an election schedule including candidate qualification deadline, election dates, a deadline for the preparation of ballots, and any other appropriate relief the court deems necessary.

OTHER EQUITABLE RELIEF

77. Plaintiffs request an award of court costs and attorney fees and litigation expenses pursuant to 42 U. S. C. §§ 1973l(e), and 1988.

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully requests [sic] the following legal and equitable relief:

a. A declaratory judgment, pursuant to 28 U. S. C. §§ 2201 and 2202, that the defendants have violated rights secured to plaintiffs by the 14th amendment to the United States Constitution, 42 U. S. C. §§ 1973, 1973c and 1983, Art. 3, § 14 of the Miss. Const. (1890), and Art. 12, § 254 of the Miss. Const. (1890).

b. A temporary restraining order, preliminary injunction, and/or a permanent injunction enjoining the defendants from conducting elections under the existing redistricting plans for the Mississippi Senate and Mississippi House of Representatives and enjoining the defendants from enacting and implementing unprecleared voting changes, and enjoin the defendants from violating rights secured to plaintiffs by the 14th and 15th amendments to the United States Constitution, 42 U. S. C. § 1983, §§ 2 and 5 of the Voting Rights Act of 1965, as amended

and extended, 42 U. S. C. §§ 1973 and 1973c, Art. 3, § 14, Miss. Const. (1890), and Art. 12, § 254, Miss. Const. (1890);

c. Award plaintiffs court costs and a reasonable attorney's fee pursuant to 42 U. S. C. §§ 1973l(e), and 1988; and

d. Grant plaintiffs general relief.

This the 17th day of March, 2011.

Respectfully submitted,

MISSISSIPPI STATE
CONFERENCE OF THE
NATIONAL ASSOCIATION
FOR THE ADVANCEMENT
OF COLORED PEOPLE,
THOMAS PLUNKETT,
ROD WOULLARD, and
HOLLIS WATKINS, on behalf
of themselves and all others
similarly situated

/s/ Carroll Rhodes
CARROLL RHODES, ESQ.,
MSB # 5314
LAW OFFICES OF
CARROLL RHODES
POST OFFICE BOX 588
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[SEAL]

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*
SEP 14 2012

The Honorable Chris McDaniel
Chairperson, Mississippi Senate Elections Committee
P.O. Box 1018
Jackson, Mississippi 39215-1018

The Honorable William C. Denny, Jr.
Chairperson, Mississippi House of Representatives
Apportionment and Elections Committee
P.O. Box 12185
Jackson, Mississippi 39236-2185

Dear Senator McDaniel and Representative Denny:

This refers to Joint Resolution No. 201 (2012), which provides the 2012 redistricting plan for the Senate, and Joint Resolution No. 1 (2012), which provides the 2012 redistricting plan for the House of Representatives, for the State of Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on July 16, 2012; additional information was received through September 11, 2012.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the

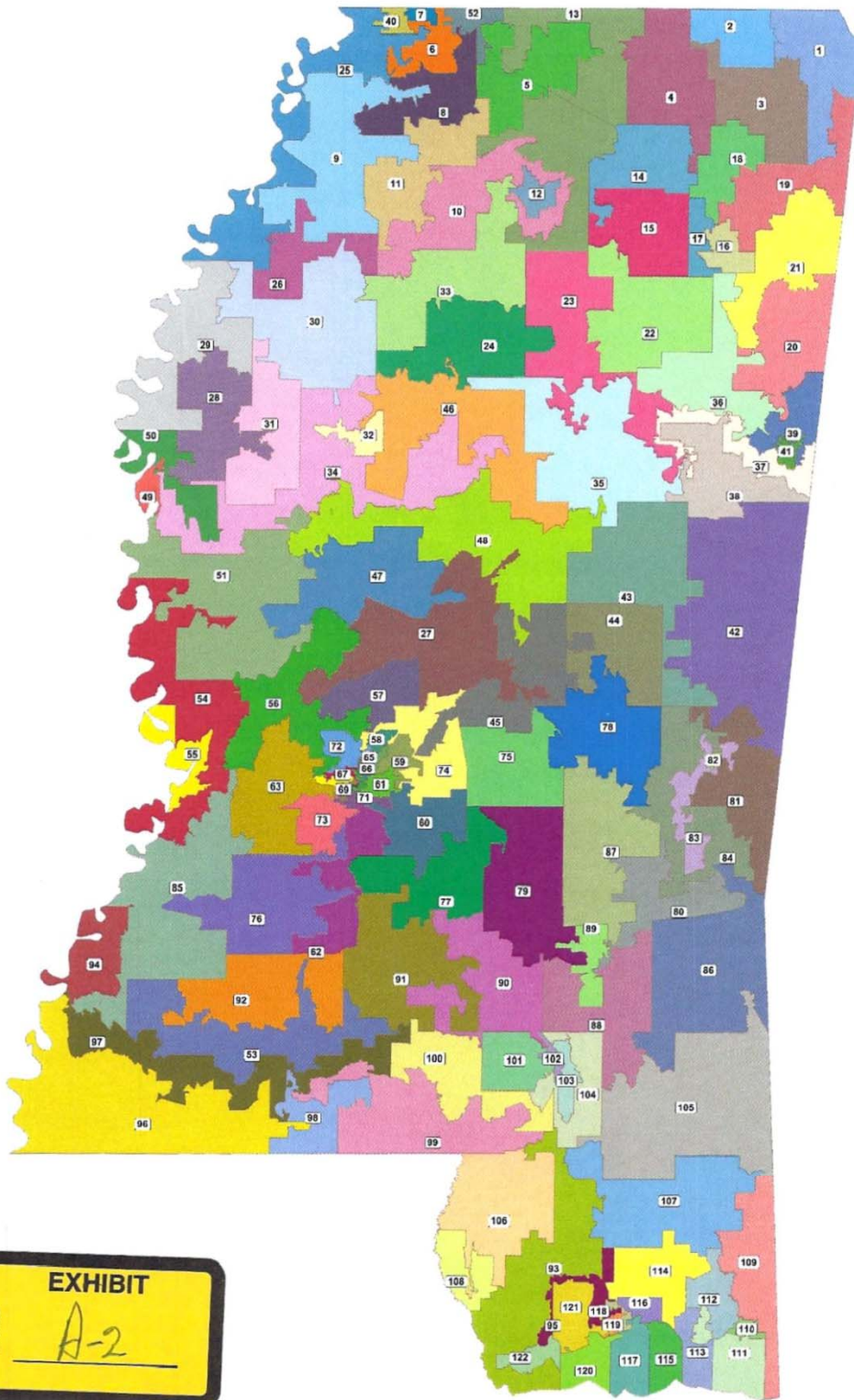
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changes. *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C.F.R. 51.41.

Sincerely,

/s/ Thomas E. Perez
Thomas E. Perez
Assistant Attorney General

MS HOUSE BENCHMARK



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Although the information contained on this map is believed to be accurate, the Standing Joint Legislative Committee on Reapportionment makes no warranties as to the completeness, accuracy, reliability, or suitability of the data for any use, or for any conclusions derived from this map.



Source: THE STANDING JOINT LEGISLATIVE COMMITTEE ON REAPPORTIONMENT, US BUREAU OF THE CENSUS - 2010
Output/Revision: MSHSE_BENCHMARK
Output/Revision Date: 03/16/11
Analyst: Ben Collins, M.S.
P.O. Box 1284
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**Mississippi House
Of
Representatives Districts
BENCHMARK PLAN
2002 Geography
With 2010 Population
Report Date: 02/26/2011**

**BENCHMARK HOUSE SUMMARY
POPULATION OF DISTRICTS – PLAN
BENCHMARKHOUSE**

Plan Geography: Statewide Precinct Year: 2008

Total Plan Population:	Number of Districts:	Ideal District Size:
2,967,297	122	24,322

Summary Statistics

	DISTRICT	TOTAL	DEVN	% DEVN.
Highest Deviation	6	46,182	21,860	89.88
Highest Deviation	74	35,304	10,982	45.15
Highest Deviation	101	34,987	10,665	43.85
Lowest Deviation	26	18,014	-6,308	-25.94
Lowest Deviation	49	18,326	-5,996	-24.65
Lowest Deviation	115	13,505	-10,817	-44.47

DISTRICTS WITH 50 PERCENT OR MORE BLACK POPULATION

DISTRICT	TOTAL	DEVN	% DEVN.	Black	%Black	[18+_Pop]	[18+_Blk]	%18+Blk
5	23,098	-1,224	-5.03	14,616	63.28%	17,628	10,908	61.88%
9	20,516	-3,806	-15.65	14,716	71.73%	14,761	10,107	68.47%
11	21,994	-2,328	-9.57	14,206	64.59%	15,708	9,651	61.44%
26	18,014	-6,308	-25.94	14,600	81.05%	12,542	9,754	77.77%
27	22,463	-1,859	-7.64	16,056	71.48%	16,138	11,106	68.82%
29	18,559	-5,763	-23.69	13,954	75.19%	13,590	9,838	72.39%
30	19,921	-4,401	-18.09	14,315	71.86%	16,025	10,924	68.17%
31	19,331	-4,991	-20.52	14,815	76.64%	13,885	10,174	73.27%
32	21,738	-2,584	-10.62	17,905	82.37%	15,757	12,590	79.90%
34	21,017	-3,305	-13.59	13,094	62.30%	15,376	8,971	58.34%
36	21,886	-2,436	-10.02	14,441	65.98%	15,992	10,139	63.40%
38	22,341	-1,981	-8.14	12,255	54.85%	17,660	8,955	50.71%
41	21,929	-2,393	-9.84	16,019	73.05%	16,054	11,041	68.77%
42	20,974	-3,348	-12.77	14,951	71.28%	15,562	10,760	69.14%
47	23,662	-660	-2.71	17,848	75.43%	17,821	12,642	70.94%
49	18,236	-5,996	-24.65	14,016	76.48%	13,195	9,727	73.72%
50	20,010	-4,312	-17.73	16,289	81.40%	14,030	10,948	78.03%
51	19,142	-5,180	-21.30	14,480	75.65%	13,572	9,883	72.82%
55	21,996	-2,236	-9.56	15,286	69.49%	16,051	10,566	65.83%
57	28,102	3,780	15.54	18,818	66.96%	19,708	12,703	64.46%
63	21,249	-3,073	-12.63	14,893	70.09%	15,775	10,647	67.49%
65	21,169	-3,153	-12.96	16,469	77.80%	15,972	12,065	75.54%
66	22,287	-2,035	-8.37	13,700	61.47%	16,747	9,548	57.01%
67	19,286	-5,036	-20.71	16,075	83.35%	14,470	11,805	81.58%
68	19,799	-4,523	-18.60	15,551	78.54%	13,878	10,544	75.98%
69	22,795	-1,527	-6.28	20,752	91.04%	16,217	14,431	88.99%
70	19,816	-4,506	-18.53	16,585	83.69%	14,347	11,455	79.84%
71	24,028	-294	-1.21	17,540	73.00%	17,387	11,729	67.46%
72	22,350	-1,972	-8.11	16,906	75.64%	16,677	12,347	74.04%
76	22,859	-1,463	-6.02	15,888	69.50%	16,953	11,293	66.61%
80	20,996	-3,326	-13.67	14,637	69.71%	15,098	10,153	67.25%
82	20,939	-3,383	-13.91	15,344	73.28%	15,164	10,597	69.88%
83	23,784	-538	-2.21	13,292	55.89%	17,771	9,095	51.18%
85	20,021	-4,301	-17.68	13,562	67.74%	15,302	10,045	65.65%
91	20,672	-3,650	-15.01	11,478	55.52%	15,392	8,144	52.91%
94	20,820	-3,502	-14.40	13,632	65.48%	16,209	9,908	61.13%
96	22,142	-2,180	-8.96	14,038	63.40%	16,896	10,360	61.32%
98	24,143	-179	-0.74	16,745	69.36%	17,293	11,394	65.89%
103	25,555	1,233	5.07	16,564	64.82%	18,444	11,346	61.52%
110	19,564	-4,758	-19.56	13,538	69.20%	14,913	9,990	66.99%
119	20,182	-4,140	-17.02	12,886	63.85%	14,908	9,059	60.77%

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DISTRICTS WITH 50 PERCENT OR MORE THAT DID NOT HAVE 50% IN 2002

DISTRICT	TOTAL	DEVN	% DEVN.	Black	%Black	[18+_Pop]	[18+_Blk]	%18+Blk
71	24,028	-294	-1.21	17,540	73.00%	17,387	11,729	67.46%
83	23,784	-538	-2.21	13,292	55.89%	17,771	9,095	51.18%

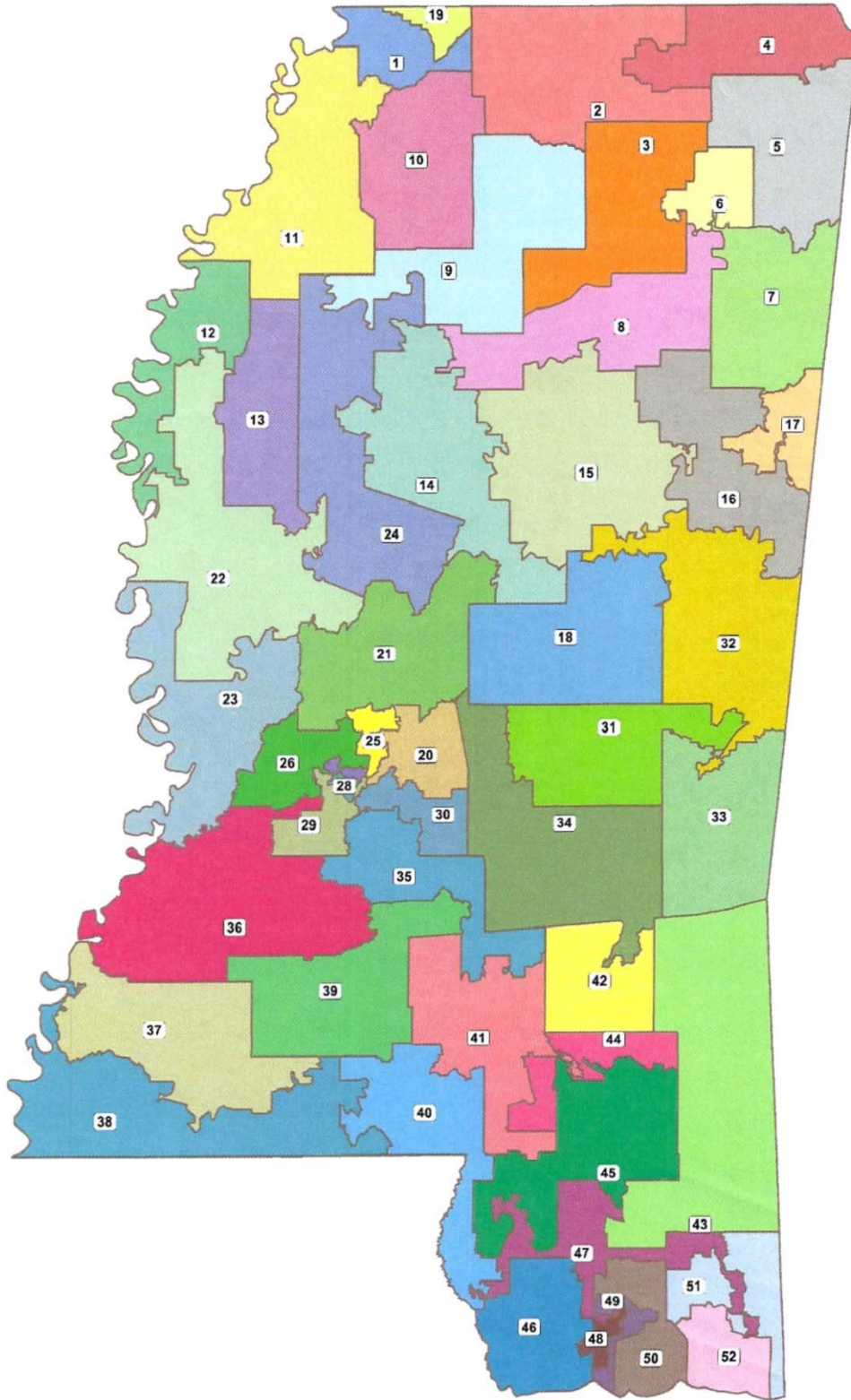
TOTAL POPULATION BY DISTRICT

DISTRICT	TOTAL	DEVN	% DEVN.	Black	%Black	[18+_Pop]	[18+_Blk]	%18+Blk
1	24,463	141	0.58	454	1.86%	18,692	322	1.72%
2	24,615	293	1.20	3,840	15.60%	18,658	2,667	14.29%
3	23,523	-799	-3.29	2,326	9.89%	18,157	1,805	9.94%
4	23,894	-428	-1.76	3,584	15.00%	17,817	2,516	14.12%
5	23,098	-1,224	-5.03	14,616	63.28%	17,628	10,908	61.88%
6	46,182	21,860	89.88	6,867	14.87%	33,301	4,624	13.89%
7	30,501	6,179	25.40	6,851	22.46%	22,234	4,306	19.37%
8	27,100	2,778	11.42	5,903	21.78%	20,113	4,203	20.90%
9	20,516	-3,806	-15.65	14,716	71.73%	14,761	10,107	68.47%
10	25,832	1,510	6.21	5,687	22.02%	19,614	3,956	20.17%
11	21,994	-2,328	-9.57	14,206	64.59%	15,708	9,651	61.44%
12	26,165	1,843	7.58	6,157	23.53%	22,199	4,637	20.89%
13	23,868	-454	-1.87	5,779	24.21%	18,169	4,185	23.03%

14	25,011	689	2.83	3,887	15.54%	18,570	2,745	14.78%
15	27,519	3,197	13.14	4,079	14.82%	20,092	2,864	14.25%
16	22,500	-1,822	-7.49	9,813	43.61%	16,424	6,607	40.23%
17	25,981	1,659	6.82	7,947	30.59%	18,958	5,105	26.93%
18	26,666	2,344	9.64	5,549	20.81%	19,605	3,869	19.73%
19	26,670	2,348	9.65	986	3.70%	20,035	725	3.62%
20	23,327	-995	-4.09	4,499	19.29%	17,684	3,185	18.01%
21	23,452	-870	-3.58	3,925	16.74%	18,075	2,883	15.95%
22	21,435	-2,887	-11.87	7,837	36.56%	15,721	5,498	34.97%
23	21,543	-2,779	-11.43	8,116	37.67%	16,323	5,681	34.80%
24	20,572	-3,750	-15.42	8,739	42.48%	15,539	6,362	40.94%
25	29,000	4,678	19.23	11,010	37.97%	20,927	7,360	35.17%
26	18,014	-6,308	-25.94	14,600	81.05%	12,542	9,754	77.77%
27	22,463	-1,859	-7.64	16,056	71.48%	16,138	11,106	68.82%
28	20,377	-3,945	-16.22	9,298	45.63%	15,748	6,728	42.72%
29	18,559	-5,763	-23.69	13,954	75.19%	13,590	9,838	72.39%
30	19,921	-4,401	-18.09	14,315	71.86%	16,025	10,924	68.17%
31	19,331	-4,991	-20.52	14,815	76.64%	13,885	10,174	73.27%
32	21,738	-2,584	-10.62	17,905	82.37%	15,757	12,590	79.90%
33	23,807	-515	-2.12	10,051	42.22%	18,106	7,160	39.54%
34	21,017	-3,305	-13.59	13,094	62.30%	15,376	8,971	58.34%
35	21,308	-3,014	-12.39	4,272	20.05%	16,314	3,069	18.81%
36	21,886	-2,436	-10.02	14,441	65.98%	15,992	10,139	63.40%
37	28,330	4,008	16.48	6,735	23.77%	23,301	5,162	22.15%
38	22,341	-1,981	-8.14	12,255	54.85%	17,660	8,955	50.71%
39	25,400	1,078	4.43	5,745	22.62%	19,441	4,132	21.25%
40	32,431	8,109	33.34	10,011	30.87%	22,733	6,260	27.54%
41	21,929	-2,393	-9.84	16,019	73.05%	16,054	11,041	68.77%
42	20,974	-3,348	-13.77	14,951	71.28%	15,562	10,760	69.14%
43	21,530	-2,792	-11.48	9,249	42.96%	16,184	6,514	40.25%
44	22,792	-1,530	-6.29	5,630	24.70%	16,363	3,666	22.40%
45	25,090	768	3.16	7,926	31.59%	17,331	5,024	28.99%
46	21,810	-2,512	-10.33	5,189	23.79%	16,883	3,652	21.63%
47	23,662	-660	-2.71	17,848	75.43%	17,821	12,642	70.94%
48	21,455	-2,867	-11.79	10,064	46.91%	15,771	6,930	43.94%
49	18,326	-5,996	-24.65	14,016	76.48%	13,195	9,727	73.72%
50	20,010	-4,312	-17.73	16,289	81.40%	14,030	10,948	78.03%
51	19,142	-5,180	-21.30	14,480	75.65%	13,572	9,883	72.82%
52	33,377	9,055	37.23	6,931	20.77%	24,109	4,551	18.88%
53	22,266	-2,056	-8.45	8,854	39.76%	16,411	6,287	38.31%
54	25,105	783	3.22	7,682	30.60%	18,825	5,188	27.56%
55	21,996	-2,326	-9.56	15,286	69.49%	16,051	10,566	65.83%
56	30,709	6,387	26.26	5,861	19.09%	22,833	4,082	17.88%
57	28,102	3,780	15.54	18,818	66.96%	19,708	12,703	64.46%
58	28,391	4,069	16.73	4,768	16.79%	21,094	3,333	15.80%
59	32,404	8,082	33.23	3,458	10.67%	24,586	2,359	9.59%
60	30,191	5,869	24.13	7,009	23.22%	21,851	4,794	21.94%
61	26,604	2,282	9.38	5,976	22.46%	20,173	4,046	20.06%
62	28,658	4,336	17.83	4,688	16.36%	21,101	3,224	15.28%
63	21,249	-3,073	-12.63	14,893	70.09%	15,775	10,647	67.49%
64	25,444	1,122	4.61	9,956	39.13%	19,650	6,971	35.48%
65	21,169	-3,153	-12.96	16,469	77.80%	15,972	12,065	75.54%
66	22,287	-2,035	-8.37	13,700	61.47%	16,747	9,548	57.01%
67	19,286	-5,036	-20.71	16,075	83.35%	14,470	11,805	81.58%
68	19,799	-4,523	-18.60	15,551	78.54%	13,878	10,544	75.98%
69	22,795	-1,527	-6.28	20,752	91.04%	6,217	14,431	88.99%
70	19,816	-4,506	-18.53	16,585	83.69%	14,347	11,455	79.84%
71	24,028	-294	-1.21	17,540	73.00%	17,387	11,729	67.46%
72	22,350	-1,972	-8.11	16,906	75.64%	16,677	12,347	74.04%
73	32,192	7,870	32.36	15,655	48.63%	24,294	11,103	45.70%
74	35,304	10,982	45.15	5,279	14.95%	25,822	3,693	14.30%
75	22,303	-2,019	-8.30	8,135	36.47%	16,300	5,616	34.45%
76	22,859	-1,463	-6.02	15,888	69.50%	16,953	11,293	66.61%
77	24,592	270	1.11	6,717	27.31%	18,155	4,518	24.89%

78	22,341	-1,981	-8.14	4,814	21.55%	16,380	3,389	20.69%
79	22,592	-1,730	-7.11	7,294	32.29%	16,623	5,035	30.29%
80	20,996	-3,326	-13.67	14,637	69.71%	15,098	10,153	67.25%
81	22,670	-1,652	-6.79	4,195	18.50%	17,304	3,003	17.35%
82	20,939	-3,383	-13.91	15,344	73.28%	15,164	10,597	69.88%
83	23,784	-538	-2.21	13,292	55.89%	17,771	9,095	51.18%
84	25,092	770	3.17	3,529	14.06%	19,231	2,491	12.95%
85	20,021	-4,301	-17.68	13,562	67.74%	15,302	10,045	65.65%
86	21,915	-2,407	-9.90	7,456	34.02%	16,216	5,051	31.15%
87	21,109	-3,213	-13.21	9,098	43.10%	15,935	6,349	39.84%
88	25,071	749	3.08	1,617	6.45%	18,812	1,189	6.32%
89	24,228	-94	-0.39	6,584	27.18%	18,381	4,408	23.98%
90	24,031	-291	-1.20	7,664	31.89%	18,108	5,301	29.27%
91	20,672	-3,650	-15.01	11,478	55.52%	15,392	8,144	52.91%
92	26,069	1,747	7.18	5,405	20.73%	19,642	3,896	19.84%
93	28,717	4,395	18.07	3,506	12.21%	21,186	2,424	11.44%
94	20,820	-3,502	-14.40	13,632	65.48%	16,209	9,908	61.13%
95	30,262	5,940	24.42	4,677	15.46%	22,611	3,104	13.73%
96	22,142	-2,180	-8.96	14,038	63.40%	16,896	10,360	61.32%
97	25,156	834	3.43	6,401	25.45%	19,246	4,478	23.27%
98	24,143	-179	-0.74	16,745	69.36%	17,293	11,394	65.89%
99	26,927	2,605	10.71	7,990	29.67%	19,791	5,562	28.10%
100	25,804	1,482	6.09	7,394	28.65%	19,419	5,196	26.76%
101	34,987	10,665	43.85	6,801	19.44%	25,679	4,502	17.53%
102	24,569	247	1.02	9,017	36.70%	20,700	6,823	32.96%
103	25,555	1,233	5.07	16,564	64.82%	18,444	11,346	61.52%
104	28,940	4,618	18.99	3,065	10.59%	21,187	2,068	9.76%
105	24,574	252	1.04	6,811	27.72%	18,843	5,337	28.32%
106	25,958	1,636	6.73	4,647	17.90%	19,561	3,366	17.21%
107	29,901	5,579	22.94	3,530	11.81%	22,326	2,588	11.59%
108	28,687	4,365	17.95	2,334	8.14%	21,638	1,535	7.09%
109	26,604	2,282	9.38	1,935	7.27%	19,829	1,306	6.59%
110	19,564	-4,758	-19.56	13,538	69.20%	14,913	9,990	66.99%
111	22,709	-1,613	-6.63	4,609	20.30%	16,511	2,909	17.62%
112	27,137	2,815	11.57	5,882	21.68%	19,949	3,788	18.99%
113	25,381	1,059	4.35	2,016	7.94%	19,145	1,422	7.43%
114	29,403	5,081	20.89	2,536	8.62%	21,996	1,705	7.75%
115	13,505	-10,817	-44.47	3,523	26.09%	10,978	2,589	23.58%
116	29,749	5,427	22.31	3,952	13.28%	22,282	2,609	11.71%
117	22,979	-1,343	-5.52	4,785	20.82%	17,830	3,270	18.34%
118	27,220	2,898	11.92	5,186	19.05%	20,712	3,575	17.26%
119	20,182	-4,140	-17.02	12,886	63.85%	14,908	9,059	60.77%
120	19,033	-5,289	-21.75	1,725	9.06%	14,621	1,171	8.01%
121	22,585	-1,737	-7.14	4,387	19.42%	16,602	2,957	17.81%
122	20,228	-4,094	-16.83	2,291	11.33%	15,314	1,594	10.41%

MS SENATE BENCHMARK



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Although the information contained on this map is believed to be accurate, the Standing Joint Legislative Committee on Reapportionment makes no warranties as to the completeness, accuracy, reliability, or suitability of the data for any use, or for any conclusions derived from this map.



Sources: THE STANDING JOINT LEGISLATIVE COMMITTEE ON REAPPORTIONMENT, US BUREAU OF THE CENSUS - 2010
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**Mississippi
State Senate
Districts**

**BENCHMARK PLAN
2002 Geography
With 2010 Population**

Report Date: 02/26/2011

BENCHMARK HOUSE SUMMARY

**POPULATION OF DISTRICTS –
PLAN BENCHMARKSENATE**

Plan Geography: Statewide Precinct Year: 2008

Total Plan Population:	Number of Districts:	Ideal District Size:
2,967,297	52	57,063

Summary Statistics

	DISTRICT	TOTAL	DEVN	% DEVN.
Highest Deviation	19	82,994	25,931	45.344
Highest Deviation	1	78,258	21,195	37.14
Highest Deviation	25	72,122	15,059	26.39
Lowest Deviation	13	46,404	-10,659	-18.68
Lowest Deviation	24	45,527	-11,536	-20.22
Lowest Deviation	12	43,572	-13,491	-23.64

DISTRICTS WITH 50 PERCENT OR MORE BLACK POPULATION

DISTRICT	TOTAL	DEVN	% DEVN.	Black	%Black	[18+_Pop]	[18+_Blk]	%18+Blk
11	48,319	-8,744	-15.32	34,115	70.60%	34,384	22,918	66.65%
12	43,572	-13,491	-23.64	34,736	79.72%	31,052	23,849	76.80%
13	46,404	-10,659	-18.68	34,742	74.87%	34,512	24,793	71.84%
16	49,681	-7,382	-12.94	32,065	64.54%	37,166	22,751	61.21%
21	51,160	-5,903	-10.34	35,601	69.59%	36,529	24,166	66.16%
22	48,806	-8,257	-14.47	26,124	53.53%	37,392	18,630	49.82%
24	45,527	-11,536	-20.22	36,330	79.80%	33,112	25,283	76.36%
26	48,347	-8,716	-15.27	36,597	75.70%	35,541	26,196	73.71%
27	48,068	-8,995	-15.76	37,117	77.22%	36,010	27,020	75.03%
28	52,105	-4,958	-8.69	46,651	89.53%	35,769	31,153	87.09%
29	65,135	8,072	14.15	35,632	54.70%	48,251	24,303	50.37%
32	49,900	-7,163	-12.55	33,814	67.76%	36,632	23,601	64.43%
36	50,974	-6,089	-10.67	32,772	64.29%	38,915	24,264	62.35%
38	52,716	-4,347	-7.62	34,348	65.16%	38,538	24,227	62.87%

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DISTRICTS WITH 50 PERCENT OR MORE THAT DID NOT HAVE 50% IN 2002

DISTRICT	TOTAL	DEVN	% DEVN.	Black	%Black	[18+_Pop]	[18+_Blk]	%18+Blk
22	48,806	-8,257	-14.47	26,124	53.53%	37,397	18,630	49.82%
29	65,135	8,072	14.15	35,632	54.70%	48,251	24,303	50.37%

TOTAL POPULATION BY DISTRICT

DISTRICT	TOTAL	DEVN	% DEVN.	Black	%Black	[18+_Pop]	[18+_Blk]	%18+Blk
1	78,258	21,195	37.14	16,984	21.70%	56,240	11,165	19.85%
2	57,319	256	0.45	22,256	38.83%	43,587	16,347	37.50%
3	59,708	2,645	4.64	8,727	14.62%	43,997	6,125	13.92%
4	56,514	-549	-0.96	6,353	11.24%	42,838	4,416	10.31%
5	55,465	-1,598	-2.80	4,582	8.26%	42,558	3,470	8.15%
6	59,938	2,875	5.04	10,493	17.51%	44,516	7,056	15.85%
7	52,118	-4,945	-8.67	16,500	31.66%	39,051	11,688	29.93%
8	52,845	-4,218	-7.39	22,328	42.25%	38,771	15,391	39.70%
9	65,085	8,022	14.06	19,053	29.27%	51,876	13,824	26.65%
10	60,426	3,363	5.89	24,909	41.22%	44,524	17,156	38.53%
11	48,319	-8,744	-15.32	34,115	70.60%	34,384	22,918	66.65%
12	43,572	-13,491	-23.64	34,736	79.72%	31,052	23,849	76.80%
13	46,404	-10,659	-18.68	34,742	74.87%	34,512	24,793	71.84%
14	55,962	-1,101	-1.93	24,698	44.13%	42,174	17,469	41.42%
15	57,328	265	0.46	14,158	24.70%	46,048	10,607	23.03%
16	49,681	-7,382	-12.94	32,065	64.54%	37,166	22,751	61.21%
17	51,767	-5,296	-9.28	19,080	36.86%	38,921	13,229	33.99%
18	60,602	3,539	6.20	18,415	30.39%	42,995	11,972	27.85%
19	82,994	25,931	45.44	18,282	22.03%	59,387	11,837	19.93%
20	68,638	11,575	20.28	9,142	13.32%	50,847	6,312	12.41%
21	51,160	-5,903	-10.34	35,601	69.59%	36,529	24,166	66.16%
22	48,806	-8,257	-14.47	26,124	53.53%	37,392	18,630	49.82%
23	51,680	-5,383	-9.43	24,006	46.45%	38,411	16,604	43.23%
24	45,527	-11,536	-20.22	36,330	79.80%	33,112	25,283	76.36%
25	72,122	15,059	26.39	22,392	31.05%	54,287	15,805	29.11%
26	48,347	-8,716	-15.27	36,597	75.70%	35,541	26,196	73.71%
27	48,068	-8,995	-15.76	37,117	77.22%	36,010	27,020	75.03%
28	52,105	-4,958	-8.69	46,651	89.53%	35,769	31,153	87.09%
29	65,135	8,072	14.15	35,632	54.70%	48,251	24,303	50.37%
30	67,810	10,747	18.83	14,803	21.83%	51,233	10,843	21.16%
31	57,968	905	1.59	17,536	30.25%	42,866	12,289	28.67%
32	49,900	-7,163	-12.55	33,814	67.76%	36,632	23,601	64.43%
33	56,120	-943	-1.65	20,147	35.90%	42,760	14,131	33.05%
34	55,501	-1,562	-2.74	22,684	40.87%	41,240	15,863	38.47%
35	55,228	-1,835	-3.22	18,225	33.00%	40,691	12,582	30.92%
36	50,974	-6,089	-10.67	32,772	64.29%	38,915	24,264	62.35%
37	55,722	-1,341	-2.35	21,779	39.09%	43,155	15,573	36.09%
38	52,716	-4,347	-7.62	34,348	65.16%	38,538	24,227	62.87%

39	56,401	-662	-1.16	17,408	30.86%	41,638	12,176	29.24%
40	62,702	5,639	9.88	13,564	21.63%	46,957	9,406	20.03%
41	56,638	-425	-0.74	21,691	38.30%	42,222	15,360	36.38%
42	57,263	200	0.35	12,379	21.62%	42,875	8,342	19.46%
43	62,195	5,132	8.99	13,843	22.26%	46,414	10,122	21.81%
44	71,264	14,201	24.89	16,386	22.99%	52,393	11,045	21.08%
45	57,871	808	1.42	13,561	23.43%	45,446	9,771	21.50%
46	56,319	-744	-1.30	4,327	7.68%	42,731	3,095	7.24%
47	58,112	1,049	1.84	21,704	37.35%	43,487	15,697	36.10%
48	51,159	-5,904	-10.35	19,946	38.99%	37,630	13,632	36.23%
49	59,022	1,959	3.43	10,578	17.92%	45,225	7,263	16.06%
50	51,017	-6,046	-10.60	8,023	15.73%	39,034	5,613	14.38%
51	62,901	5,838	10.23	6,496	10.33%	47,174	4,481	9.50%
52	56,601	-462	-0.81	10,303	18.20%	41,740	6,588	15.78%