

## **Mississippi County Board of Supervisors Malapportionment**

*Madison County Board of Supervisors v. Mississippi  
(William H. Barbour, Jr., and Louis Guirola, Jr.,  
S.D. Miss. 3:11-cv-119), County Branches  
of the NAACP v. County Boards of Supervisors  
(Sharion Aycock, N.D. Miss. 1:11-cv-59 and 2:11-cv-40;  
Michael P. Mills, N.D. Miss. 1:11-cv-60, 2:11-cv-43,  
3:11-cv-27, and 3:11-cv-28; W. Allen Pepper, Jr.,  
N.D. Miss. 2:11-cv-41 and 2:11-cv-42; and  
Louis Guirola, Jr., S.D. Miss. 3:11-cv-121, 3:11-cv-122,  
3:11-cv-123, 3:11-cv-124, 4:11-cv-33, 5:11-cv-28,  
5:11-cv-29, and 5:11-cv-30), and Redd v. Westbrook  
(Louis Guirola, Jr., S.D. Miss. 3:11-cv-321)*

Four days in advance of the March 1, 2011, qualification deadline for county board of supervisor candidates in Mississippi, the Madison County Board of Supervisors and a voter filed a federal complaint in the Southern District of Mississippi seeking an injunction postponing the deadline to allow the county time to reapportion its board districts to reflect the 2010 census.<sup>1</sup> Named as defendants were the state, the county's circuit clerk and its registrar, and the county executive committees of the Republican and Democratic Parties.<sup>2</sup> Three days later, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>3</sup> After a March 1 telephone conference, Judge William H. Barbour, Jr., denied the plaintiffs a temporary restraining order and set a preliminary injunction hearing for April 1.<sup>4</sup>

On February 28, 16 Mississippi county branches of the NAACP filed federal board-of-supervisor malapportionment class-action complaints in the districts and divisions including their counties.<sup>5</sup> Each complaint also named a voter as a plain-

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1. Complaint, [Madison Cnty. Bd. of Supervisors v. Mississippi](#), No. 3:11-cv-119 (S.D. Miss. Feb. 25, 2011), D.E. 1.

2. *Id.*

3. Motion, No. [3:11-cv-119](#) (S.D. Miss. Feb. 25, 2011), D.E. 2.

4. Order, *id.* (Mar. 1, 2011), D.E. 3; *see Madison Supervisors Reject Call for Redistricting Delay*, Jackson Clarion-Ledger, Mar. 22, 2011, at A6.

5. Complaint, [Attala Cnty. Branch of the NAACP v. Attala Cnty. Bd. of Supervisors](#), No. 1:11-cv-60 (N.D. Miss. Mar. 1, 2011), D.E. 1 (docketed on March 1 instead of February 28); Complaint, [Winston Cnty. Branch of the NAACP v. Winston Cnty. Bd. of Supervisors](#), No. 1:11-cv-59 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Panola Cnty. Branch of the NAACP v. Panola Cnty. Bd. of Supervisors](#), No. 2:11-cv-43 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Tallahatchie Cnty. Branch of the NAACP v. Tallahatchie Cnty. Bd. of Supervisors](#), No. 2:11-cv-42 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Tunica Cnty. Branch of the NAACP v. Tunica Cnty. Bd. of Supervisors](#), No. 2:11-cv-41 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [DeSoto Cnty. Branch of the NAACP v. DeSoto Cnty. Bd. of Supervisors](#), No. 2:11-cv-40 (N.D. Miss. Feb.

tiff and named as defendants the county board of supervisors, the county party executive committees, the county board of election commissioners, and the circuit clerk.<sup>6</sup> In 13 of the cases, the plaintiffs filed motions for temporary restraining orders and preliminary injunctions: on February 28 in the Northern District<sup>7</sup> and on March 1 in the Southern District.<sup>8</sup>

In a 2010 case already pending before Judge Louis Guirola, Jr., in the Southern District, Mississippi's attorney general moved on March 1, 2011, to consolidate the new Southern District cases with the 2010 case.<sup>9</sup> The 2010 case was a malapportionment action filed on December 14, in advance of the release of 2010 census figures, by the Hancock County Board of Supervisors.<sup>10</sup> Judge Guirola consolidated the ten Southern District cases on March 23, 2011.<sup>11</sup> A key purpose of consolidation was to expedite resolution of these cases so that rulings could be presented promptly to the court of appeals.<sup>12</sup>

On March 2, 2011 (on March 4 for the Attala County case), Mississippi's attorney general moved to intervene to defend the state in the new actions.<sup>13</sup> From

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28, 2011), D.E. 1; Complaint, [Grenada Cnty. Branch of the NAACP v. Grenada Cnty. Bd. of Supervisors](#), No. 3:11-cv-28 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Webster Cnty. Branch of the NAACP v. Webster Cnty. Bd. of Supervisors](#), No. 3:11-cv-27 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Amite Cnty. Branch of the NAACP v. Amite Cnty. Bd. of Supervisors](#), No. 3:11-cv-124 (S.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Simpson Cnty. Branch of the NAACP v. Simpson Cnty. Bd. of Supervisors](#), No. 3:11-cv-123 (S.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Pike Cnty. Branch of the NAACP v. Pike Cnty. Bd. of Supervisors](#), No. 3:11-cv-122 (S.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Hazlehurst Branch of the NAACP v. Copiah Cnty. Bd. of Supervisors](#), No. 3:11-cv-121 (S.D. Miss. Feb. 28, 2011), D.E. 1 (branched named for the county seat); Complaint, [Wayne Cnty. Branch of the NAACP v. Wayne Cnty. Bd. of Supervisors](#), No. 4:11-cv-33 (S.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Adams Cnty. Branch of the NAACP v. Adams Cnty. Bd. of Supervisors](#), No. 5:11-cv-30 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Claiborne Cnty. Branch of the NAACP v. Claiborne Cnty. Bd. of Supervisors](#), No. 5:11-cv-29 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, [Vicksburg Branch of the NAACP v. Warren Cnty. Bd. of Supervisors](#), No. 5:11-cv-28 (N.D. Miss. Feb. 28, 2011), D.E. 1 (branch named for the county seat).

6. *Id.*

7. Motions, Nos. [1:11-cv-59](#), [2:11-cv-40](#), [2:11-cv-41](#), [2:11-cv-42](#), [2:11-cv-43](#), [3:11-cv-27](#), and [3:11-cv-28](#) (N.D. Miss. Feb. 28, 2011), D.E. 2.

8. Motions, Nos. [3:11-cv-121](#), [3:11-cv-122](#), [3:11-cv-123](#), [4:11-cv-33](#), [5:11-cv-29](#), and [5:11-cv-30](#) (S.D. Miss. Mar. 1, 2011), D.E. 3.

9. Consolidation Motion Supplement, [Hancock Cnty. Bd. of Supervisors v. Ruhr](#), No. 1:10-cv-564 (S.D. Miss. Mar. 2, 2011), D.E. 27; Consolidation Motion, *id.* (Mar. 1, 2011), D.E. 26; *see* Notice, No. [3:11-cv-119](#) (S.D. Miss. Mar. 2, 2011), D.E. 6; Notice, No. [3:11-cv-121](#) (S.D. Miss. Mar. 2, 2011), D.E. 11; Notices, Nos. [3:11-cv-122](#), [3:11-cv-123](#), [4:11-cv-33](#), and [5:11-cv-29](#) (S.D. Miss. Mar. 2, 2011), D.E. 5; Notices, Nos. [3:11-cv-124](#), [5:11-cv-28](#), and [5:11-cv-30](#) (S.D. Miss. Mar. 2, 2011), D.E. 4.

Tim Reagan interviewed Judge Guirola for this report by telephone on December 2, 2013.

10. Complaint, No. [1:10-cv-564](#) (S.D. Miss. Dec. 14, 2010), D.E. 1.

11. Order, *id.* (Mar. 23, 2011), D.E. 33; *see* Emily Lane, *Attorney Wants NAACP Lawsuit Tossed*, Natchez Democrat, Mar. 25, 2011.

12. Interview with Hon. Louis Guirola, Jr., Dec. 2, 2013.

13. Intervention Motion, No. [1:11-cv-60](#) (N.D. Miss. Mar. 4, 2011), D.E. 3; Intervention Motions, Nos. [1:11-cv-59](#), [2:11-cv-40](#), [2:11-cv-41](#), [2:11-cv-42](#), [3:11-cv-27](#), and [3:11-cv-28](#) (N.D. Miss. Mar. 2, 2011), D.E. 4; Intervention Motion, No. [2:11-cv-43](#) (N.D. Miss. Mar. 2, 2011), D.E.

March 3 through March 7, Chief District Judge Michael P. Mills<sup>14</sup> and Magistrate Judges David A. Sanders,<sup>15</sup> Jerry A. Davis,<sup>16</sup> and S. Allan Alexander<sup>17</sup> granted the attorney general's intervention motions. Judge Guirola had granted intervention to the attorney general in the 2010 Southern District case on February 22.<sup>18</sup>

The Northern District's court assigned four of its eight cases to Oxford Judge Mills: the two Oxford Division cases, one Aberdeen Division case, and one Delta Division case.<sup>19</sup> On March 2, the attorney general filed a motion in one of Judge Mills's Oxford Division cases to consolidate the seven Northern District cases in which motions for temporary restraining orders had been filed.<sup>20</sup>

Judge Mills's March 7 order declining to issue temporary restraining orders was docketed in his Delta Division and Oxford Division cases.<sup>21</sup>

The court sees no reason why the issues in this case can not be resolved, as part of the normal political process, in time for the 2011 Board of Supervisor elections this fall. . . . Part of the court's skepticism on this issue arises from the fact that this case is merely one of several such redistricting cases, containing very similar allegations, which were filed by different county branches of the NAACP at the same time. This raises doubts in this court's mind as to whether each of these cases truly represents a case in need of immediate injunctive relief, or whether they instead represent a more generalized effort to exercise political leverage throughout the state.<sup>22</sup>

One Aberdeen Division case and one Delta Division Case were assigned to Aberdeen Judge Sharion Aycock, who declined on March 10 to issue temporary restraining orders because the plaintiffs had not shown that later-issued preliminary injunctions would not suffice.<sup>23</sup>

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5; Intervention Motion, No. [3:11-cv-121](#) (S.D. Miss. Mar. 2, 2011), D.E. 10; Intervention Motions, Nos. [3:11-cv-122](#), [3:11-cv-123](#), [4:11-cv-33](#), [5:11-cv-29](#) (S.D. Miss. Mar. 2, 2011), D.E. 4; Intervention Motion, Nos. [3:11-cv-124](#), [5:11-cv-28](#) (S.D. Miss. Mar. 2, 2011), D.E. 3; Intervention Motion, No. [5:11-cv-30](#) (S.D. Miss. Mar. 2, 2011), D.E. 5.

14. Orders, Nos. [3:11-cv-27](#) and [3:11-cv-28](#) (N.D. Miss. Mar. 3, 2011), D.E. 7.

15. Order, No. [2:11-cv-40](#) (N.D. Miss. Mar. 4, 2011), D.E. 7; Order, No. [2:11-cv-43](#) (N.D. Miss. Mar. 4, 2011), D.E. 8.

16. Order, No. [1:11-cv-59](#) (N.D. Miss. Mar. 7, 2011), D.E. 7; Order, No. [1:11-cv-60](#) (N.D. Miss. Mar. 7, 2011), D.E. 5.

17. Order, No. [2:11-cv-41](#) (N.D. Miss. Mar. 7, 2011), D.E. 7; Order, No. [2:11-cv-42](#) (N.D. Miss. Mar. 7, 2011), D.E. 7.

18. Order, No. [1:10-cv-564](#) (S.D. Miss. Feb. 22, 2011), D.E. 16.

19. Docket Sheet, No. [1:11-cv-60](#) (N.D. Miss. Mar. 1, 2011); Docket Sheets, Nos. [2:11-cv-43](#), [3:11-cv-27](#), and [3:11-cv-28](#) (N.D. Miss. Feb. 28, 2011).

20. Consolidation Motion, No. [3:11-cv-27](#) (N.D. Miss. Mar. 2, 2011), D.E. 5; *see* Notice, No. [1:11-cv-59](#) (N.D. Miss. Mar. 2, 2011), D.E. 5 (notice to Judge Aycock of consolidation motion filed with Judge Mills); Notice, No. [2:11-cv-41](#) (N.D. Miss. Mar. 2, 2011), D.E. 5 (notice to Judge Pepper of consolidation motion filed with Judge Mills); Notice, No. [2:11-cv-42](#) (N.D. Miss. Mar. 2, 2011), D.E. 5 (same).

21. Order, No. [2:11-cv-43](#) (N.D. Miss. Mar. 7, 2011), D.E. 13; Order, No. [3:11-cv-27](#) (N.D. Miss. Mar. 7, 2011), D.E. 15; Order, No. [3:11-cv-28](#) (N.D. Miss. Mar. 7, 2011), D.E. 9.

22. Order, No. [2:11-cv-43](#) (N.D. Miss. Mar. 7, 2011), D.E. 13; Order, No. [3:11-cv-27](#) (N.D. Miss. Mar. 7, 2011), D.E. 15; Order, No. [3:11-cv-28](#) (N.D. Miss. Mar. 7, 2011), D.E. 9.

23. Orders, Nos. [1:11-cv-59](#) and [2:11-cv-40](#) (N.D. Miss. Mar. 10, 2011), D.E. 13.

Judge Guirola heard his cases on May 13.<sup>24</sup> His chambers are in Gulfport, but he held the hearing in Jackson, which is the state’s capital 180 miles away, for the convenience of the attorneys as part of his effort to rule quickly.<sup>25</sup> The lawyers for the various counties heeded his request not to repeat arguments already made.<sup>26</sup> On May 16, Judge Guirola dismissed all of the Southern District cases.<sup>27</sup> It would not be improper for 2011 elections to be based on 2000 census data, because “each county’s board of supervisors must have adequate time to formulate a redistricting plan and obtain preclearance from the Department of Justice before its failure to do so results in a declaration that elections held using the existing plan are unconstitutional.”<sup>28</sup>

Judge Guirola also identified the following standing defects: (1) The Madison and Hancock County Boards of Supervisors did not have standing to sue other state subdivisions for Fourteenth Amendment violations, (2) voters in districts that were too small did not have standing to complain that other districts were too big, and (3) there was not enough time before the 2011 election to provide the plaintiffs with relief.<sup>29</sup>

Seven Madison County voters, including potential candidates filed a Southern District complaint on May 27, alleging that it was improper for the county to adopt a redistricting plan on May 23, more than three weeks after the close of the qualification period for the ballot.<sup>30</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order.<sup>31</sup> The court assigned the case to Judge Daniel P. Jordan III, but he recused himself because of his connections to defense attorneys.<sup>32</sup> Judge Guirola held a telephone conference with the parties on May 31 and scheduled a hearing for June 2, at which he denied immediate relief.<sup>33</sup> The plaintiffs voluntarily dismissed their action on June 10.<sup>34</sup>

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24. Transcript, No. [1:10-cv-564](#) (S.D. Miss. May 13, 2011, filed Sept. 11, 2013), D.E. 250; Docket Sheet, *id.* (Dec. 14, 2010).

25. Interview with Hon. Louis Guirola, Jr., Dec. 2, 2013.

26. *Id.*

27. Opinion, No. [1:10-cv-564](#) (S.D. Miss. May 16, 2011), D.E. 143 [hereinafter Guirola May 16, 2011, Opinion]; see *Existing County Maps OK’d for Elections*, Jackson Clarion-Ledger, May 18, 2011, at B1.

28. Guirola May 16, 2011, Opinion, *supra* note 27, at 16; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304, *formerly* 42 U.S.C. § 1973c (2013) (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination).

29. Guirola May 16, 2011, Opinion, *supra* note 27.

30. Complaint, [Redd v. Westbrook](#), No. 3:11-cv-321 (S.D. Miss. May 27, 2011), D.E. 1 (noting Justice Department preclearance on May 24, 2011); see Amended Complaint, *id.* (June 1, 2011), D.E. 5.

31. Temporary Restraining Order Motion, *id.* (May 27, 2011), D.E. 3.

32. Recusal, *id.* (June 1, 2011), D.E. 4 (“the undersigned’s former law firm represents one of the named defendants. Aside from this general conflict, more specific conflicts exist with respect to the two attorneys representing that party—one is a close personal friend and the other worked in chambers last year”).

33. Docket Sheet, *id.* (May 27, 2011).

34. Notice, *id.* (June 10, 2011), D.E. 7.

On September 14, Judge W. Allen Pepper, Jr., relied on Judge Guirola's decision to dismiss the two Northern District, Delta Division, cases before him.<sup>35</sup>

While Judge Guirola's decision was on appeal, the Northern District court stayed the Attala,<sup>36</sup> Webster,<sup>37</sup> Grenada,<sup>38</sup> DeSoto,<sup>39</sup> and Winston<sup>40</sup> County cases. On October 14, the parties in the Panola County case stipulated to a dismissal.<sup>41</sup> Judge Aycock granted the parties in the DeSoto County case a stipulated dismissal on May 8, 2012.<sup>42</sup>

The board-of-supervisor plaintiffs did not appeal the dismissal of their two cases.<sup>43</sup> On August 31, 2012, the court of appeals vacated Judge Guirola's decision, holding that the NAACP and voters in overpopulated districts had standing to seek relief from malapportionment.<sup>44</sup> The court remanded the case for a determination of whether the passing of the 2011 election had mooted the cases.<sup>45</sup>

On August 20, 2013, Judge Guirola held that "when the qualifying deadline passed, and the elections were held, plaintiffs' claims seeking to enjoin those events became moot."<sup>46</sup> The court of appeals agreed on May 16, 2014.<sup>47</sup> Judge Mills, therefore, dismissed the Northern District cases on July 16.<sup>48</sup>

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35. Judgment, No. 2:11-cv-41 (N.D. Miss. Sept. 14, 2011), D.E. 27; Judgment, No. 2:11-cv-42 (N.D. Miss. Sept. 14, 2011), D.E. 31.

Judge Pepper died on January 24, 2012. Federal Judicial Center Biographical Directory of Federal Judges, <http://www.fjc.gov/history/home.nsf/page/judges.html>; see *Federal Judge Pepper Dies*, Delta Democrat-Times, Jan. 25, 2012.

36. Orders, No. 1:11-cv-60 (N.D. Miss. Jan. 10 and July 31, 2012), D.E. 27, 28.

37. Minutes, No. 3:11-cv-27 (N.D. Miss. Nov. 29, 2011), D.E. 50.

Judge Mills vacated a consent decree upon notice that the attorney general did not consent to it. Order, *id.* (June 3, 2011), D.E. 39; see Consent Decree, *id.* (June 2, 2011), D.E. 38.

38. Order, No. 3:11-cv-28 (N.D. Miss. Dec. 12, 2011), D.E. 23.

39. Orders, No. 2:11-cv-40 (N.D. Miss. Dec. 13, 2011, and May 8, 2012), D.E. 35, 36.

40. Orders, No. 1:11-cv-59 (N.D. Miss. Jan. 5 and July 31, 2012), D.E. 26, 29.

41. Stipulation, No. 2:11-cv-43 (N.D. Miss. Oct. 14, 2011), D.E. 49.

42. Order, No. 2:11-cv-40 (N.D. Miss. May 8, 2012), D.E. 36.

43. *Hancock Cnty. Bd. of Supervisors v. Ruhr*, 487 F. App'x 189, 193 n.1 (5th Cir. 2012).

The Justice Department precleared new district lines for Madison County on May 25, 2011. See *Madison Supervisors Using New Districts for Election*, Jackson Clarion-Ledger, May 25, 2011, at B1. Judge Guirola denied a motion by the Madison County Republican Executive Committee for an order requiring Madison County to use the old district lines. Docket Sheet, No. 1:10-cv-564 (S.D. Miss. Dec. 14, 2010) (noting a text order on May 23, 2011); see Clarification Motion, *id.* (May 19, 2011), D.E. 144; see also *Madison Co. Can Use New Districts for Primaries*, Jackson Clarion-Ledger, June 3, 2011.

44. *Hancock Cnty. Bd. of Supervisors*, 487 F. App'x at 196–99.

45. *Id.* at 199–201.

46. Opinion, No. 1:10-cv-564 (S.D. Miss. Aug. 20, 2013), D.E. 246, available at 2013 WL 4483376.

47. *Hancock Cnty. Bd. of Supervisors v. Ruhr*, 568 F. App'x 295 (5th Cir. 2014).

48. Opinion, No. 1:11-cv-59 (N.D. Miss. July 16, 2014), D.E. 54, available at 2014 WL 3545762; see Order, No. 1:11-cv-59 (N.D. Miss. Jan. 4, 2013), D.E. 41 (Winston, noting reassignment following Judge Aycock's recusal); Docket Sheet, No. 1:11-cv-60 (N.D. Miss. Mar. 1, 2011) (Attala); Docket Sheet, No. 2:11-cv-42 (N.D. Miss. Feb. 28, 2011) (Tallahatchie, noting reassignment on October 5, 2012, because of Judge Pepper's January 24 death); Docket Sheet, No. 3:11-cv-27 (N.D. Miss. Feb. 28, 2011) (Webster); Docket Sheet, No. 3:11-cv-28 (N.D. Miss. Feb. 28, 2011) (Grenada).