

## **Malapportionment for Mississippi's County Boards of Supervisors**

*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)*

Every twenty years, the interval of time between the decennial census and elections to county boards of supervisors in Mississippi is so short that it is difficult to redistrict the county boards in time for the elections. Among the federal lawsuits filed in 2011 because of this in Mississippi's two districts, seventeen sought court intervention to enable redistricting before the election and one sought court intervention to prevent redistricting before the election. Five district judges denied immediate judicial relief. The court of appeals determined that the 2011 elections mooted the cases.

*Subject:* District lines. *Topics:* Malapportionment; intervention; case assignment.

Four days before the March 1, 2011, qualification deadline for county board-of-supervisor candidates in Mississippi, Madison County's 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>

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

2. *Id.*

3. Motion, *id.* (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.

Judge Barbour died on January 8, 2021. Federal Judicial Center Biographical Directory of Article III Federal Judges [hereinafter FJC Biographical Directory], [www.fjc.gov/history/](http://www.fjc.gov/history/)

On February 28, sixteen 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 plaintiff 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 thirteen 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

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judges.

5. Complaint, Attala Cty. Branch of the NAACP v. Attala Cty. 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 Cty. Branch of the NAACP v. Winston Cty. Bd. of Supervisors, No. 1:11-cv-59 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, Panola Cty. Branch of the NAACP v. Panola Cty. Bd. of Supervisors, No. 2:11-cv-43 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, Tallahatchie Cty. Branch of the NAACP v. Tallahatchie Cty. Bd. of Supervisors, No. 2:11-cv-42 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, Tunica Cty. Branch of the NAACP v. Tunica Cty. Bd. of Supervisors, No. 2:11-cv-41 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, DeSoto Cty. Branch of the NAACP v. DeSoto Cty. Bd. of Supervisors, No. 2:11-cv-40 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, Grenada Cty. Branch of the NAACP v. Grenada Cty. Bd. of Supervisors, No. 3:11-cv-28 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, Webster Cty. Branch of the NAACP v. Webster Cty. Bd. of Supervisors, No. 3:11-cv-27 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, Amite Cty. Branch of the NAACP v. Amite Cty. Bd. of Supervisors, No. 3:11-cv-124 (S.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, Simpson Cty. Branch of the NAACP v. Simpson Cty. Bd. of Supervisors, No. 3:11-cv-123 (S.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, Pike Cty. Branch of the NAACP v. Pike Cty. 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 Cty. Bd. of Supervisors, No. 3:11-cv-121 (S.D. Miss. Feb. 28, 2011), D.E. 1 (branch named for the county seat); Complaint, Wayne Cty. Branch of the NAACP v. Wayne Cty. Bd. of Supervisors, No. 4:11-cv-33 (S.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, Adams Cty. Branch of the NAACP v. Adams Cty. Bd. of Supervisors, No. 5:11-cv-30 (N.D. Miss. Feb. 28, 2011), D.E. 1; Complaint, Claiborne Cty. Branch of the NAACP v. Claiborne Cty. 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 Cty. 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 Cty. 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,

case was a malapportionment action filed on December 14, in advance of the release of 2010 census figures, by Hancock County's 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 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>

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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. 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.

Judge Davis retired on July 1, 2011. *See Judge Davis Settling Down*, *N.E. Miss. Daily J.*, June 25, 2011.

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.

Judge Alexander retired on September 30, 2016. *Judicial Milestones*, [www.uscourts.gov/judicial-milestones/susie-allan-alexander](http://www.uscourts.gov/judicial-milestones/susie-allan-alexander).

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).

Judge Mills's March 7 order declining to issue temporary restraining orders was docketed in his Delta Division and Oxford Division cases:

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>21</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>22</sup>

Judge Guirola heard his cases on May 13.<sup>23</sup> His chambers were 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>24</sup> The lawyers for the various counties heeded his request not to repeat arguments already made.<sup>25</sup> On May 16, Judge Guirola dismissed all of the Southern District cases.<sup>26</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>27</sup>

Judge Guirola also identified the following standing defects: (1) the boards of supervisors for Madison and Hancock Counties 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>28</sup>

Seven Madison County voters, including potential candidates, filed a Southern District complaint on May 27, alleging that it was improper for the

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

23. 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).

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

25. *Id.*

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

27. May 16, 2011, Guirola Opinion, *supra* note 26, 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 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination).

28. May 16, 2011, Guirola Opinion, *supra* note 26.

county to adopt a redistricting plan on May 23, more than three weeks after the close of the qualification period for the ballot.<sup>29</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order.<sup>30</sup> The court assigned the case to Judge Daniel P. Jordan III, but he recused himself because of his connections to defense attorneys.<sup>31</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>32</sup> The plaintiffs voluntarily dismissed their action on June 10.<sup>33</sup>

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>34</sup>

While Judge Guirola's decision was on appeal, the Northern District court stayed the Attala,<sup>35</sup> Webster,<sup>36</sup> Grenada,<sup>37</sup> DeSoto,<sup>38</sup> and Winston<sup>39</sup> County cases. On October 14, the parties in the Panola County case stipulated dismissal.<sup>40</sup> Judge Aycok granted the parties in the DeSoto County case a stipulated dismissal on May 8, 2012.<sup>41</sup>

The board-of-supervisor plaintiffs did not appeal the dismissal of their two cases.<sup>42</sup> On August 31, 2012, the court of appeals vacated Judge Guirola's

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29. 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.

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

31. Recusal, *id.* (June 1, 2011), D.E. 4 (“[T]he 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.”).

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

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

34. 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. FJC Biographical Directory, *supra* note 4; *see Federal Judge Pepper Dies*, Delta Democrat-Times, Jan. 25, 2012.

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

36. 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.

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

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

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

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

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

42. *Hancock Cty. 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) (text order, 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.

decision, holding that the NAACP and voters in overpopulated districts had standing to seek relief from malapportionment.<sup>43</sup> The court remanded the case for a determination of whether the passing of the 2011 election had mooted the cases.<sup>44</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>45</sup> The court of appeals agreed on May 16, 2014.<sup>46</sup> Judge Mills, therefore, dismissed the Northern District cases on July 16.<sup>47</sup>

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43. *Hancock Cty. Bd. of Supervisors*, 487 F. App’x at 196–99.

44. *Id.* at 199–201.

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

46. *Hancock Cty. Bd. of Supervisors v. Ruhr*, 568 F. App’x 295 (5th Cir. 2014).

47. Opinion, No. 1:11-cv-59 (N.D. Miss. July 16, 2014), D.E. 54, 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) (Atala); 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).