

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

JOHN ROBERT SMITH, SHIRLEY HALL,  
and GENE WALKER

PLAINTIFFS

VS.

Civil Action No. 3:01-cv-855-HTW-DCB

DELBERT HOSEMANN, Secretary of State of Mississippi;  
JIM HOOD, Attorney General for the State  
of Mississippi; HALEY BARBOUR, Governor  
of Mississippi; MISSISSIPPI REPUBLICAN  
EXECUTIVE COMMITTEE; and MISSISSIPPI  
DEMOCRATIC EXECUTIVE COMMITTEE

DEFENDANTS

and

BEATRICE BRANCH, RIMS BARBER,  
L. C. DORSEY, DAVID RULE, JAMES  
WOODARD, JOSEPH P. HUDSON, and  
ROBERT NORVEL

INTERVENORS

**CONSOLIDATED WITH**

KELVIN BUCK, ET AL.

PLAINTIFFS

vs.

Civil Action No. 3:11-cv-717 HTW-LRA

HALEY BARBOUR, ET AL.

DEFENDANTS

MEMORANDUM OPINION

1           This matter is before us on the motion of the Mississippi Republican  
2   Executive Committee (“MREC”) to amend the final judgment we entered on  
3   February 26, 2002. That judgment implemented the four-district congressional  
4   redistricting plan we adopted in our order of February 4, 2002, and ordered use

## No. 3:01-CV-855HTW-DCB

5 of the court-drawn plan in every succeeding congressional primary and general  
6 election for the State of Mississippi until the State produced a constitutional and  
7 precleared plan of its own. To date, the State of Mississippi has not produced  
8 such a plan and, thus, every congressional primary and general election in  
9 Mississippi since February 26, 2002, has occurred under the court-drawn plan.

10 In 2010, the federal government conducted the usual decennial census,  
11 which indicated that the four districts in the court-drawn plan are now  
12 malapportioned. The MREC urges us to amend our final judgment to equalize  
13 the malapportioned districts in order to comply with the constitutional  
14 requirement of one person, one vote.

15 At a status conference on November 22, 2011, we advised the parties that  
16 we would defer ruling on this motion until after December 4, 2011, which was  
17 the deadline for the Mississippi Legislature's Standing Joint Congressional  
18 Redistricting Committee (the "Committee")<sup>1</sup> to present a reapportionment plan  
19 to the Governor and the Legislature. As we have emphasized throughout this  
20 litigation, the primary responsibility for reapportionment lies with the State of  
21 Mississippi; if the State of Mississippi can timely reapportion the districts in a  
22 constitutionally acceptable manner, the federal courts have no duties to draw the  
23 district lines. Once it became clear that the State of Mississippi could not have  
24 a precleared redistricting plan in place by January 13, 2012 (the deadline to  
25 qualify for candidacy for the United States House of Representatives in  
26 Mississippi, *see* Miss. Code Ann. § 23-15-299), we concluded that this court  
27 should assert its jurisdiction and craft a plan for reapportioning Mississippi's

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<sup>1</sup> Under Miss. Code Ann. § 5-3-123, "[t]he members of the [C]ommittee shall draw a plan to redistrict, according to constitutional standards, the United States congressional districts for the state of Mississippi no later than thirty (30) days preceding the convening of the next regular session of the legislature." Miss. Code Ann. § 5-3-123. The next regular session of the Mississippi Legislature after the release of the census data is set to convene on January 3, 2012.

No. 3:01-CV-855HTW-DCB

28 congressional districts in order to assure that the congressional election  
29 scheduled under the laws of the State of Mississippi is timely implemented  
30 under a plan that satisfies both the requirements of the Constitution and Section  
31 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

32 I.

33 The facts and procedural history of this case are set out in our previous  
34 orders and opinions. *See Smith v. Clark*, 189 F. Supp. 2d 503 (S.D. Miss. Jan.  
35 15, 2002); *Smith v. Clark*, NO. 3:01-CV-855WS (S.D. Miss. Feb. 19, 2002). In  
36 order to resolve the issues presently before us, we necessarily set out additional  
37 background facts.

38 On February 26, 2002, we entered a final judgment in this case that  
39 enjoined the use of Mississippi's then existing five-district congressional plan  
40 because the number of congressional representatives allotted to the state had  
41 been reduced from five to four as a result of the 2000 Decennial census. The  
42 five-district plan remains codified at Miss. Code Ann. § 23-15-1037, however.  
43 Our final judgment provided as follows:

44 For the reasons stated in our opinions of February 19, 2002, and  
45 February 26, 2002, the defendants are hereby enjoined from  
46 implementing the congressional redistricting plan adopted by the  
47 Chancery Court for the First Judicial District of Hinds County,  
48 Mississippi.

49  
50 It is further ordered that the defendants are enjoined from  
51 implementing the former five district congressional redistricting  
52 plan codified at Miss. Code Ann. § 23-15-1037.

53  
54 It is further ordered that the defendants implement the  
55 congressional redistricting plan adopted by this court in its order of  
56 February 4, 2002, for conducting congressional primary and general  
57 elections for the State of Mississippi in 2002.

58  
59 It is further ordered that the defendants shall use the congressional  
60 redistricting plan adopted by this court in its order of February 4,

## No. 3:01-CV-855HTW-DCB

61 2002, in all succeeding congressional primary and general elections  
62 for the State of Mississippi thereafter, until the State of Mississippi  
63 produces a constitutional congressional redistricting plan that is  
64 precleared in accordance with the procedures in Section 5 of the  
65 Voting Rights Act of 1965.

66  
67 This court shall retain jurisdiction to implement, enforce, and  
68 amend this order as shall be necessary and just.

69 *Smith v. Clark*, 189 F. Supp. 2d 548, 559 (S.D. Miss. Feb. 26, 2002), *aff'd sub.*  
70 *nom.*, *Branch v. Smith*, 538 U.S. 254 (2003). Since we entered this final  
71 judgment, the Mississippi Legislature has failed to produce any redistricting  
72 plan, let alone one that has obtained federal preclearance from either the United  
73 States District Court for the District of Columbia or the United States  
74 Department of Justice as required under Section 5 of the Voting Rights Act. As  
75 a result, under the terms of the final judgment, every subsequent congressional  
76 primary and general election has occurred under the four-district plan drawn by  
77 this court.

78 The federal government has now completed the 2010 Decennial census.  
79 Although the results of the census do not change the State of Mississippi's  
80 number of congressional representatives, the four districts now stand  
81 malapportioned because of population shifts among the districts. Thus, if these  
82 same districts are utilized in subsequent congressional primary and general  
83 elections, voters' rights will be violated under the Constitution and the Voting  
84 Rights Act.

85 On June 27, 2011, the Chairman of the MREC, Arnie Hederman, gave  
86 notice to the Mississippi Secretary of State, under Miss. Code Ann. § 23-15-1085,  
87 that the Republican Party intends to hold a presidential primary in 2012. Under  
88 Section 23-15-1085, the Secretary of State has the duty to "issue a proclamation  
89 setting every party's congressional and senatorial primary elections" for the date  
90 required by statute. *Id.* The presidential primary, set by Section 23-15-1081,

## No. 3:01-CV-855HTW-DCB

91 will be held on March 13, 2012, and under Section 23-15-1083, the party  
92 primaries for members of the United States House of Representatives will be  
93 held on the same day. And, under Section 23-15-299, candidates seeking to run  
94 for a congressional seat must qualify with the appropriate State Executive  
95 Committee sixty days before the primary date, which in this presidential election  
96 year will be January 13, 2012.

97 Asserting that the Mississippi Legislature had not produced a  
98 constitutionally acceptable and precleared congressional redistricting plan , and  
99 that it was not likely to do so before the qualifying date of January 13, 2012, the  
100 MREC filed a motion on September 12, 2011, requesting that we amend our final  
101 judgment under Federal Rule of Civil Procedure 60(b)(5) on the ground that  
102 applying the judgment prospectively is no longer equitable. Specifically, the  
103 MREC argued that there is no likelihood the Mississippi Legislature – which has  
104 not adopted a congressional redistricting plan since 1991 – will adopt a plan by  
105 statute, obtain the Governor’s signature, and obtain preclearance approval,  
106 between the time the Legislature convenes on January 3, 2012, and the  
107 qualifying date of January 13, 2012. Accordingly, the MREC requested that we  
108 modify the final judgment, to satisfy the Constitution and the Voting Rights Act.  
109 The Smith Plaintiffs and Governor Haley Barbour<sup>2</sup> joined in the MREC’s motion.

110 Attorney General Jim Hood<sup>3</sup> filed a response on September 29, 2011,  
111 objecting to the MREC’s motion on the grounds that it is premature, that the  
112 MREC lacks standing, and that this court lacks authority under Rule 60(b)(5)  
113 to amend the judgment.

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<sup>2</sup> Under Fed. R. Civ. P. 25(d), Governor Haley Barbour is substituted for former Governor Ronnie Musgrove.

<sup>3</sup> Under Fed. R. Civ. P. 25(d), Attorney General Jim Hood is substituted for former Attorney General Mike Moore.

## No. 3:01-CV-855HTW-DCB

114 On October 10, 2011, Secretary of State Delbert Hosemann<sup>4</sup> filed his  
115 response. He contended the legislative Committee should be allowed until  
116 December 4, 2011, to present a plan. In the event the Committee did not meet  
117 its deadline, Secretary Hosemann urged this court to “take whatever action it  
118 deems necessary” to insure the completion of the redistricting process by  
119 January 13, 2012. According to Secretary Hosemann, an untimely redistricting  
120 process could result in a special election at a cost to Mississippi taxpayers of  
121 approximately \$750,000.

122 On October 12, 2011, the Intervenor filed a response, arguing that  
123 redistricting should be addressed in a new lawsuit.

124 On November 8, 2011, we ordered the parties to appear for a status  
125 conference on November 22, 2011. On November 21, a class-action complaint  
126 was filed by seven African-American voting age persons representing each of the  
127 state’s four congressional districts (hereinafter the “Buck Plaintiffs”). The Buck  
128 Plaintiffs seek a declaratory judgment that the existing redistricting plan  
129 contains malapportioned districts violating one person, one vote. They submit  
130 their own plan and seek injunctive relief enjoining congressional elections to be  
131 conducted under their proposed plan.

132 On November 29, 2011, Chief Judge Jones of the Fifth Circuit appointed  
133 the members of this court to serve as the members of the three-judge district  
134 court to hear and resolve the Buck Plaintiffs’ lawsuit under 28 U.S.C. § 2284.  
135 On December 7, the Buck Plaintiffs filed an amended complaint asserting the  
136 same allegations and requesting identical relief. On December 19, we entered  
137 an order consolidating the Buck Plaintiffs’ lawsuit with the initial case in the  
138 interest of judicial economy and conflict preclusion.

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<sup>4</sup> Under Fed. R. Civ. P. 25(d), Secretary of State Delbert Hosemann is substituted for former Secretary of State Eric Clark.

## No. 3:01-CV-855HTW-DCB

139           During the status conference on November 22, 2011, the parties iterated  
140 the arguments made in their responses to the MREC's motion.<sup>5</sup> After the  
141 hearing, we saw no hope that the Mississippi Legislature would produce a timely  
142 plan. We explained, however, that we would take no action until the December  
143 4, 2011, deadline had passed for a proposed plan to be produced by the  
144 Committee. If the Committee failed to act timely, however, we informed the  
145 parties that we would move forward with drawing a new plan in order to have  
146 a final plan in place by January 13, 2012. We requested that the parties submit  
147 comments on the plan submitted by the Buck Plaintiffs by December 12, 2011.

148           As anticipated, the Committee did not produce a plan by December 4,  
149 2011. Thus, on December 6, in order to insure the timely election of  
150 congressional representatives, this court ordered the MREC to purchase  
151 redistricting software for the court to use in drafting a proposed plan  
152 reapportioning Mississippi's four congressional districts. In accordance with the  
153 terms of that Order, the MREC delivered the software to this court on December  
154 8.

155           On December 12, 2011, we received various responses and criticisms to the  
156 Buck Plaintiffs' plan. Relevant to the question of our authority to act under Rule  
157 60(b)(5), Attorney General Hood said that he no longer objects to this court  
158 modifying the final judgment, although he characterizes it as a "last resort."

159           On December 19, 2011, this court filed its proposed plan, attached hereto  
160 as an appendix. Included in the order were the factors considered in drawing

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<sup>5</sup> During the hearing, the Smith Plaintiffs proffered that they lived in the same districts as they did in 2002, when they filed the original complaint in this case. Attorney General Hood's argument that no one had standing to assert a one person, one vote challenge to the current plan was thus refuted. As no one disputes that all of Mississippi's four congressional districts stand malapportioned after the 2010 Decennial census, the Smith Plaintiffs' proffer is sufficient to establish their standing to initiate this challenge. Furthermore, the suggestion that the MREC, a defendant in this case, may not seek relief from the judgment under Rule 60(b)(5) is meritless.



## No. 3:01-CV-855HTW-DCB

161 the new plan, as well as an instruction to the parties that any and all objections,  
162 comments, and suggestions to the new plan were to be submitted to the court by  
163 December 22, 2011. On that date, no party objected to the proposed plan, nor  
164 did any party have any comments or suggestions. In short, all parties accepted  
165 the court-drawn plan.

## 166 II.

167 In explaining the action we have taken and are taking, we will first  
168 address our authority to amend the final judgment under Rule 60(b)(5). We then  
169 address our amendment of the final judgment in accordance with the December  
170 19, 2011, order proposing a new congressional redistricting plan.

## 171 A.

172 As we have set out above, the MREC, joined by the Plaintiffs, Governor  
173 Barbour, and Secretary Hosemann, have moved to amend the final judgment  
174 entered on February 26, 2002, which, among other things, implemented the  
175 current four-district plan adopted by this court in its order of February 2, 2002.  
176 The basis for the motion to amend is that applying the judgment prospectively  
177 is no longer equitable in the light of the currently malapportioned districts and  
178 the applicable law. Although no party now challenges our authority under Rule  
179 60(b)(5) to amend our final judgment, we *sua sponte* hold that, under Rule  
180 60(b)(5), we have jurisdictional and procedural authority to amend the final  
181 judgment and draw a new plan.

182 Under Rule 60(b)(5) a court, on motion and just terms, “may relieve a  
183 party . . . from a final judgment, order, or proceeding” if applying the judgment  
184 “prospectively is no longer equitable.” The language is clear and authoritative.  
185 To obtain relief, the movant must show that: “(1) the judgment has prospective  
186 application and (2) it is no longer equitable that it should so operate.” *Kirksey*  
187 *v. City of Jackson*, 714 F.2d 42, 43 (5th Cir. 1983).



## No. 3:01-CV-855HTW-DCB

188 “Like the traditional equity rule on which it is based, [R]ule 60(b)(5)  
189 applies only to judgments that have prospective effect as contrasted with those  
190 that offer a present remedy for a past wrong.” *Cook v. Birmingham News*, 618  
191 F.2d 1149, 1152 (5th Cir. 1980) (internal quotation marks omitted). The phrase  
192 is not defined in the text of Rule 60(b)(5) or in its accompanying Advisory  
193 Committee Notes. Extrapolating from the Supreme Court’s holdings in  
194 *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421, 431 (1855), and  
195 *United States v. Swift & Co.*, 286 U.S. 106, 114, 114–15 (1932), however, the  
196 D.C. Circuit has held that “whether an order or judgment has prospective  
197 application within the meaning of Rule 60(b)(5) [depends on] whether it is  
198 ‘executory’ or involves ‘the supervision of changing conduct or conditions.’”  
199 *Twelve John Does v. District of Columbia*, 841 F.2d 1133, 1139 (D.C. Cir. 1988).  
200 Under either definition of prospective application examined in *Twelve John*  
201 *Does*, our final judgment has prospective application.

202 First, the final judgment is executory by its terms. It *orders* the  
203 defendants to perform a future act, i.e., to use the court-drawn congressional  
204 redistricting plan in all succeeding elections. Although the order is in effect  
205 until the State of Mississippi produces its own plan, that does not undermine its  
206 executory character. Indeed, the Supreme Court of Mississippi has recognized  
207 that because the Legislature failed to produce a congressional redistricting plan,  
208 the State “is currently under a federal court injunction ordering that the State  
209 use the congressional districts drawn by the three-judge court,” which “will  
210 remain in place *until* that court vacates it or the Legislature draws a  
211 redistricting plan which is then federally precleared under § 5.” *Mauldin v.*  
212 *Branch*, 866 So.2d 429, 435–36 (Miss. 2003) (emphasis added).

213 Second, the final judgment requires this court to supervise changing  
214 conditions between the parties. *See Swift*, 286 U.S. at 114 (“The distinction is  
215 between restraints that give protection to rights fully accrued upon facts so

## No. 3:01-CV-855HTW-DCB

216 nearly permanent as to be substantially impervious to change, and those that  
217 *involve the supervision of changing conduct or conditions* and are thus  
218 provisional and tentative.” (emphasis added)). The conditions underlying the  
219 final judgment, the population of the districts, are not nearly so permanent as  
220 to be substantially impervious to change. It is a fact of life that populations shift  
221 over time, and as a result, we are now required to supervise amendment of the  
222 final judgment on the basis of changed conditions. Our express retention of  
223 “jurisdiction to implement, enforce, and amend [the] order as shall be necessary  
224 and just” supports our conclusion regarding the prospective nature of the final  
225 judgment. In *Cook v. Birmingham News*, the Fifth Circuit explained that the  
226 consent decree in question did not have prospective application, in part, because  
227 “unlike the district court that had approved the decree at issue in the *Swift* case,  
228 [the district court here] did not state that it *reserved power to modify the decree*  
229 *or that it retained jurisdiction* over the case. It would have been natural for the  
230 decree to have contained such a provision if it had been intended that the court  
231 supervise the parties’ compliance.” *Cook*, 618 F.2d at 1153 (emphasis added)  
232 (internal citation omitted). Our language retaining jurisdiction in the final  
233 judgment, far from being superfluous as has been suggested, demonstrates that  
234 we intended to continue to supervise the parties’ compliance with the order and  
235 any changed conditions that could make the defendants’ compliance with the  
236 final judgment problematic.<sup>6</sup> Indeed, we were effectively ordering a sovereign

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<sup>6</sup> Our reservation of jurisdiction takes into account Judge Rubin’s observations in footnote one in *Jackson v. DeSoto Parish School Board*, 585 F.2d 726 (5th Cir. 1978). In *Jackson*, a class of African-America citizens challenged the constitutionality of a reapportionment scheme for the election of the parish police jury and the local school board, which had been formulated as a result of prior litigation. *Id.* at 728. In footnote one of the opinion Judge Rubin stated:

The plaintiffs might have moved under Rule 60(b)(5), F.R.C.P., for relief from the prior judgment on the grounds that it “is no longer equitable that the judgment should have prospective application.” Plaintiffs did not seek to

## No. 3:01-CV-855HTW-DCB

237 state in precise terms to perform, and to continue to perform, certain acts to  
 238 comply with the federal Constitution and statutes – no light thing for us or it.  
 239 It is not the sort of thing to say, then to cast aside and allow to rot in our  
 240 presence.

241 Now that we have determined that we have the power to amend or modify  
 242 the final judgment under Rule 60(b)(5) because the final judgment has  
 243 prospective application, we turn to the second question posed: whether legal or  
 244 factual circumstances have changed that make applying the final judgment  
 245 prospectively no longer equitable. “The party seeking to modify an injunction  
 246 bears the burden of establishing that a significant change in factual conditions  
 247 or the law warrants revision of the injunction.” *United States v. Texas*, 601 F.3d  
 248 354, 373 (5th Cir. 2010) (citing *Rufo v. Inmates of the Suffolk Cnty. Jail*, 502  
 249 U.S. 367, 383–84 (1992)). It is undisputed that factual conditions have changed  
 250 since we entered the final judgment in 2002. The parties are all in agreement  
 251 that the results of the 2010 Decennial census show that the four districts are  
 252 now malapportioned, violating the constitutional one person, one vote

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overtake elections that took place under the challenged apportionment scheme, but to secure a modification of the plan before any more elections were held. A Rule 60(b) motion would have allowed the judge to consider within a single action all issues relating to the DeSoto Parish apportionment plan. We note, however, that in reapportionment, unlike school desegregation and institutional reform cases, the court’s jurisdiction is not continuing, and the plan, once adopted and acted upon, does not require further judicial supervision.

*Id.* at 730 n.1 (internal citation omitted).

This footnote is dicta in a case that did not present a question relating to Rule 60(b)(5). Even if it were not dicta the case does not bar our proceeding under Rule 60(b)(5) here because we expressly reserved jurisdiction, unlike the district court’s original order in *Jackson*. Indeed, other courts have relied, in part, on this footnote to deny motions to amend in cases concerning reapportionment schemes, but again, our proceeding here is consistent with those courts to the extent they have relied on the absence of any express reservation of jurisdiction. See *Perry-Bey v. City of Norfolk, Va.*, 678 F. Supp. 2d 348, 382 (E.D. Va. 2009); *King v. State Bd. of Elections*, 979 F. Supp. 582, 590 (N.D. Ill.), *vacated on other grounds*, 519 U.S. 978 (1996).

## No. 3:01-CV-855HTW-DCB

253 requirement. As the deadline for the Committee to submit a plan has passed,  
254 all parties agree that the plan must be modified and redrafted by this court in  
255 order to comply with the statutory deadlines for candidate qualifying and  
256 primary elections. Thus, we hold that the moving parties have demonstrated a  
257 significant change in factual conditions warranting revision of the final  
258 judgment.

259 B.

260 Accordingly, attached hereto is the court-drafted and party-accepted  
261 congressional redistricting plan for the State of Mississippi under the 2010  
262 Decennial census. This court proposed this plan to the parties in an order  
263 entered on December 19, 2011. No party objected to the proposed plan.

264 At the status conference on November 22, 2011, all of the parties  
265 expressed a preference for using this court's current plan, with only such  
266 modifications as were necessary to equalize the population among the four  
267 districts. That is what we have done. All of the factors that we considered in  
268 crafting our previous plan, set out in our order of February 4, 2002, and our  
269 opinion of February 19, 2002, were taken into account in making the changes  
270 necessary to equalize population among the districts, except that we did not have  
271 to consider combining two existing districts, as we did ten years ago. The factors  
272 we considered are specifically addressed in the explanation accompanying the  
273 December 19, 2011 order and below.

274 C.

275 In drafting the plan, this Court considered many of the same factors that  
276 we considered when we drafted Mississippi's congressional redistricting plan ten  
277 years ago. During the past ten years, Mississippi's population grew from  
278 2,844,658 to 2,967,297. That growth was not, however, consistent among the  
279 four congressional districts. The population of District 1 grew more than  
280 Districts 3 and 4, and District 2 lost population during the last ten years. In

## No. 3:01-CV-855HTW-DCB

281 order to equalize the population among the districts, approximately 46,000  
282 people had to be removed from District 1; 27,000 people had to be removed from  
283 Districts 3 and 4 (combined); and 73,000 people had to be moved into District 2.  
284 Nevertheless, we made as few changes as possible to the current districts. Some  
285 changes were inevitable, however. Yet, the core constituencies of each district  
286 were substantially preserved, as reflected in the attached Core Constituencies  
287 Report.

288 When the proposed map is compared to the 2002 Court Plan now in effect,  
289 the major changes are summarized as follows:

290 Panola, Yalobusha, and Grenada Counties were moved from District 1 to  
291 District 2. Leake County is no longer split between Districts 2 and 3, but the  
292 entire county is now in District 2. Winston and Webster Counties are no longer  
293 split between Districts 1 and 3, but they are entirely in District 1. We found it  
294 necessary to split Oktibbeha County between Districts 1 and 3. Jasper County  
295 is no longer split, but is now all in District 3. Marion and Jones Counties are no  
296 longer split, but are wholly in District 4. Finally, Clarke County had to be split  
297 between Districts 3 and 4.

298 All of these changes were necessary in order to equalize the population  
299 among districts and to prevent retrogression in District 2, while maintaining the  
300 research universities in separate districts and not extending travel distance  
301 within the current elongated District 2. A retrogression inquiry under Section  
302 5, by definition, requires a comparison of a jurisdiction's new voting plan with  
303 its existing plan to determine whether the new plan preserves current minority  
304 voting strength. Undermining the current exercise of the electoral franchise by  
305 racial minorities would amount to "backsliding." This, the court cannot allow.  
306 *Georgia v. Ashcroft*, 539 U.S. 461, 477-78 (2003).

307 Other minor changes were made in order to balance the population in  
308 Districts 2 and 3, and to avoid splitting municipalities other than the City of

## No. 3:01-CV-855HTW-DCB

309 Jackson, which was split under the 2002 Court Plan. These changes include  
310 moving the Gluckstadt precinct in Madison County from District 2 to District 3.  
311 This change was necessary to avoid dividing the City of Madison, which annexed  
312 a portion of that precinct after the 2002 Court Plan went into effect. Two  
313 precincts in northern Madison County (Cedar Grove and Ratliff's Ferry) were  
314 moved from District 3 to District 2, and several precincts in the downtown  
315 Jackson area in Hinds County were shifted from District 2 to District 3, which  
316 already had a presence in the City of Jackson.

317 1.

318 Population Equality

319 The United States Constitution mandates a good-faith effort to ensure, as  
320 nearly as is practicable, that a State's congressional districts reflect equal  
321 population. This Court achieved substantial population equality while splitting  
322 only four of eighty-two counties and without splitting any precincts or any cities  
323 other than the City of Jackson, which already had been split under the 2002  
324 Court Plan, with the approbation of Mayor Harvey Johnson.<sup>7</sup> The population  
325 deviation range is from +38 people in District 2 to -48 people in District 4. This  
326 slight deviation is de minimis, necessary, and acceptable in order to avoid  
327 dividing community interests, voter confusion and government expense that  
328 burdens the governments and the governed when counties and municipalities  
329 are split between congressional districts.

330 2.

331 Majority-Minority District

332 The Voting Rights Act requires that one congressional district in  
333 Mississippi be maintained with an appropriate majority of African-American  
334 voting-age residents. This district is represented on the map as District 2.

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<sup>7</sup> We note that this Court is not required to adopt the preferences of politicians, but may consider any of their suggestions recognized by the jurisprudence of Section 5.



## No. 3:01-CV-855HTW-DCB

335 Under the 2002 Court Plan, African-Americans constituted 59.20% of the voting-  
336 age population. District 2 under the 2002 Court Plan now has an African-  
337 American voting-age population of 63.3%. Under this Court's proposed plan,  
338 African-Americans constitute 61.36% of the voting-age population in District 2.  
339 This result prevents retrogression of the voting rights of African-American  
340 residents of District 2 under Section 5 of the Voting Rights Act.

341 3.

342 Compactness

343 This Court has attempted to achieve, as nearly as possible, four compact  
344 districts. As we observed ten years ago, the ability to create compact districts  
345 is limited by the distribution of population and the need to prevent retrogression  
346 in District 2. Thus, sparsely populated districts necessarily will be  
347 geographically larger than heavily populated districts.

348 4.

349 County and Municipal Boundaries

350 The proposed plan splits only four counties: Hinds, Madison, Oktibbeha,  
351 and Clarke. Eight counties were split under this Court's 2002 plan. We think  
352 this fact is a significant improvement over the former plan.

353 The large population in Hinds and Madison Counties, as well as the need  
354 to prevent retrogression in District 2, necessitated the splitting of those counties  
355 between Districts 2 and 3. Clarke County is split only because it is necessary to  
356 equalize the population between Districts 3 and 4. Oktibbeha County is split to  
357 equalize the population in District 1 and to maintain a major university in  
358 District 3. The only municipality that is split is the City of Jackson, which was  
359 split under the 2002 Plan. Ten years ago, Mayor Johnson testified that he  
360 preferred that the City of Jackson be represented by two congressmen.<sup>8</sup> Because

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<sup>8</sup> See *supra* footnote 7.



No. 3:01-CV-855HTW-DCB

361 Jackson is the State's largest city, it would be difficult to devise a plan that does  
362 not split Jackson while at the same time respecting the one person, one vote  
363 principle and preventing retrogression in District 2.

364 5.

365 Historical and Regional Interests

366 The plan preserves as much as possible, given the constraints of  
367 population equality and Section 5 of the Voting Rights Act, the core historical  
368 and regional interests of the Mississippi River/Delta region, East Central  
369 Mississippi, Southwest Mississippi, North Mississippi, and the Gulf Coast  
370 region.

371 6.

372 Universities and Military Bases

373 The plan is drawn to continue to assure that the four major research  
374 universities are in separate districts. The military bases located in Lowndes,  
375 Lauderdale, and Harrison Counties remain in separate districts under this  
376 Court's plan.<sup>9</sup>

377 7.

378 Growth Areas

379 This Court has continued to make an effort to place the most rapidly  
380 growing areas of the State into separate districts as much as possible given the  
381 legal constraints that determine the configurations of each district.

382 8.

383 Incumbent Residences

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<sup>9</sup> We note that this Court is not required to assure that the military bases and major research universities are in separate districts, but may consider this factor in drawing the districts.



No. 3:01-CV-855HTW-DCB

411           Having determined that the final judgment we entered on February 26,  
412 2002 has prospective application and that the movants have shown a significant  
413 change in factual conditions warranting amendment of the final judgment, we  
414 hold that, under Rule 60(b)(5), the final judgment shall be amended in  
415 accordance with the order of December 19, 2011 and in accordance with this  
416 opinion.

417           Accordingly, the MREC's motion to amend is granted, and the Buck  
418 Plaintiffs' motion for preliminary and permanent injunctive relief is denied as  
419 moot. The congressional redistricting plan proposed by this court in its Order  
420 of December 19, 2011, shall be implemented for conducting congressional  
421 primary and general elections for the State of Mississippi in 2012, and in all  
422 succeeding congressional primary and general elections for the State of  
423 Mississippi thereafter, until the State of Mississippi produces a constitutional  
424 congressional redistricting plan that is precleared in accordance with the  
425 procedures in Section 5 of the Voting Rights Act of 1965.

426           This court shall retain jurisdiction to implement, enforce, and amend this  
427 judgment as shall be necessary and just.

428           SO ORDERED, this 30th day of December, 2011.

429

430   E. GRADY JOLLY  
431   UNITED STATES CIRCUIT JUDGE

432  
433   HENRY T. WINGATE  
434   UNITED STATES DISTRICT JUDGE

435  
436   DAVID C. BRAMLETTE  
437   UNITED STATES DISTRICT JUDGE