In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, APPELLANT

v.

BOARD OF SUPERVISORS OF WARREN COUNTY, MISSISSIPPI, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JURISDICTIONAL STATEMENT

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CITATIONS

Cases:

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OPINION BELOW

The findings, conclusions and order of the district court ~~plan~~ are not reported (App., *infra*, pp. 1a-9a).

JURISDICTION

The three-judge district court entered its "Findings of Fact, Conclusions of Law and Mandatory Injunction Directing Election on May 13, 1976 (App.,

infra, pp. 1a-9a),[1] a clarifying order on June 2, 1976 (App., *infra*, pp. 10a-12a), and a further modification, announced July 10, 1976, on July 19, 1976 (App., *infra*, pp. 19a-20a).[2]

The notice of appeal was filed on July 9, 1976 (App., *infra*, pp. 21a-22a), and an amended notice was filed August 13, 1976 (App., *infra*, pp. 23a-24a). On August 31, 1976, Mr. Justice Powell enlarged the United States' time for docketing the appeal to and including October 7, 1976.

The jurisdiction of this Court rests on 42 U.S.C. 1973c and 28 U.S.C. 1253. *Allen* v. *State Board of Elections*, 393 U.S. 544, 560-563; *Perkins* v. *Matthews*, 400 U.S. 379; *Georgia* v. *United States*, 411 U.S. 526.

QUESTION PRESENTED

Whether, in a suit by the United States to enjoin a redistricting plan implemented by a Mississippi county without preclearance under Section 5 of the Voting Rights Act, the district court has jurisdiction to pass upon the constitutional merits and to order a new plan into effect.

STATUTES INVOLVED

Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. (Supp. V) 1973c, provides:

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[1] On July 1, 1975, the district court had entered an injunction requiring appellant to submit a new plan (App., *infra*, pp. 13a-18a).

[2] Another clarifying order was filed on September 9, 1976 (App., *infra*, pp. 25a-26a).

Sec. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4 (a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect in November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color,

or in contravention of the guarantees set forth in section 4(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with

the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

Section 12(d) and (f) of the Voting Rights Act of 1965, 79 Stat. 444, 42 U.S.C. 1973j(d) and (f), provide:

> (d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.
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> * * * * *
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> (f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

STATEMENT

Section 5 of the Voting Rights Act, as amended, 42 U.S.C. (Supp. V) 1973c, bars a state or political subdivision covered by the Act from administering

"any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964," without obtaining preclearance. To do so it must carry the burden, in a declaratory judgment action before a three-judge district court in the United States District Court for the District of Columbia, of establishing that the proposed change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Alternatively, the jurisdiction may submit the change to the Attorney General, and implement it if the Attorney General has not objected to it within 60 days after its submission, or has affirmatively indicated that he will not object.

In November 1970, the Board of Supervisors of Warren County, Mississippi, submitted a county redistricting plan to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. (Supp. V) 1973c. The new plan was to replace the plan which had been in effect in that county since 1929. On April 4, 1971, after receiving additional information,[3] the Attorney General objected to the plan on

[3] After the United States brought suit, the Board filed a motion to dismiss, contending that the Attorney General's objection came more than 60 days after the original submission, and, thus, was not timely under Section 5. The United States argued that the submission was not complete until February 3, 1971, because earlier submissions contained inaccurate racial population statistics. The district court carried the motion with the case, and disposed of it by granting summary judgment in favor of the United States on June 19, 1975 (App., *infra*, p. 13a).

the ground that statistics submitted by the Board were inaccurate, and, therefore, a substantive determination could not be made. The Board nevertheless held primary and general elections in August and November 1971, respectively, pursuant to the 1970 plan. The Board had not filed a suit in the District Court for the District of Columbia for a declaratory judgment that the plan did not have the purpose or effect of denying or abridging the right to vote on account of race or color.

Appellees sought reconsideration of the Attorney General's objection, and on February 13, 1973, after sufficient data had been received, the Attorney General refused to withdraw the objection of April 4, 1971, on the ground that the 1970 plan would fragment areas of black population concentrations.[4]

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[4] Under Mississippi law (Mississippi Code Ann., § 23-5-11 (1972)), the Warren County Board of Supervisors has responsibility for setting the boundaries of the five election districts in the county. The voters of each district elect one member of the five-member board. According to 1970 census figures, blacks, who represent 41.1% of the total population of Warren County and are 38.5% of the voting age population, are primarily concentrated in Vicksburg and immediately north of Vicksburg.

Evidence adduced at the hearing on the plans submitted to the district court showed that the 1970 plan to which the Attorney General objected used irregularly shaped lines to divide the black concentration among all five supervisor districts, leaving no district with a clear black voting majority. Under the plan in effect prior to that time there had been at least one district with a clear black voting majority. (App., *infra*, p. 4a).

On October 31, 1973, the United States filed a complaint in the District Court for the Southern District of Mississippi alleging that the plan was unenforceable and that elections held pursuant to it violated Section 5. Named as defendants were the Board of Supervisors of Warren County, the individual members of the Board, the Election Commission of Warren County and its chairman, the Democratic Executive Committee of the County and the Committee Chairman.

The complaint prayed that a three-judge court be convened and that the court declare the implementation of the 1970 plan violative of Section 5 and enjoin the implementation of any plan that had not received clearance by the Attorney General or the District Court for the District of Columbia, as prescribed by Section 5. In addition, the complaint alleged that the election districts in effect immediately prior to the implementation of the 1970 plan were malapportioned under the Fourteenth Amendment.[5] The United States asked that the court order the Board to develop a new redistricting plan, to require appropriate preclearance of the plan under Section 5, and thereafter to require implementation of the plan according to a court-ordered schedule.

A three-judge court was convened and, on June 19, 1975, granted the motion of the United States for summary judgment and directed the parties to attempt to resolve the issue of relief. After meeting

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[5] That allegation was not disputed.

with appellees, the United States filed a proposed order, requesting the three-judge court to require the parties to adhere to the following procedures and timetable:

1. By March 1, 1976, the Board must submit a plan to the Attorney General for review under Section 5;

2. If the Attorney General interposed no objection, elections would be held in accordance with the schedule set forth in the proposed order;

3. If the Board failed to submit a plan to the Attorney General by March 1, or if the Attorney General interposed an objection, the United States would submit a plan to the court. The court, upon consideration of that plan and appellees' response thereto, would adopt a plan.[6]

On July 1, 1975, the three-judge court enjoined the 1975 county elections and ordered the parties to adhere to the procedures and timetable the Attorney General had proposed. In addition, the court held that if the Attorney General objected to a plan which, by March 1, 1976, had been submitted to him, "that plan as submitted to the Attorney General or as further modified by the defendants shall be submitted to this Court." The court would then adopt a plan (App., *infra*, pp. 16a-17a).

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[6] The United States also proposed that if, in the Attorney General's evaluation of the Board's plan, the Attorney General became aware of any Fourteenth Amendment one-man one-vote infirmities, the United States would report those infirmities to the court and submit a plan. The court, after considering this plan and appellees' response thereto, was to order the implementation of a plan (App., *infra*, p. 17a).

Appellees "informally" submitted two redistricting plans to the Department of Justice on December 24, 1975.[7] On February 9, 1976, the Department informally objected on the ground that it was unable to conclude that either plan would "not have a prohibited racially discriminatory effect in Warren County similar to that perceived in the plan to which the Attorney General previously objected." [8]

On March 11, 1976, the court advised appellees that "inasmuch as the Attorney General has objected to the County's plans on Section 5 grounds, * * * this remains a three-judge case," and the parties should now file proposed plans with the court. The United

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[7] Neither plan had been formally adopted by the Board. In order for a submission to be considered by the Attorney General under Section 5, the jurisdiction must have formally adopted the change. 28 C.F.R. 51.10(a). The parties had agreed that, prior to the deadline of March 1, 1976, appellees could submit a plan for informal consideration, so that the United States could advise them of potential problems.

[8] The plan provided for only one district with a majority black voting age population. The letter of informal objection stated:

> Our evaluation of these redistricting plans indicates that the effect of either plan is to fragment areas of black population and add those fragments to larger areas of white population, thereby minimizing the number of blacks in each district, and thus unnecessarily diluting black voting strength in Warren County. * * * Because these beat [*i.e.*, district] lines do not appear to be drawn because of any compelling governmental need and do not respect population concentrations or considerations of district compactness, we must advise you of our reservations concerning the validity of such plans under Section 5.

States filed two plans, to which appellees filed objections, and the United States, in turn, filed objections to the plan appellees had filed with the court.

Following a hearing, the three-judge district court on May 13, 1976, entered its Findings of Fact, Conclusions of Law and Mandatory Injunction (App., *infra*, pp. 1a-9a). It held that the Board's plan "neither dilutes black voting strength nor is deficient in one-man, one-vote considerations * * * [and] will provide the most efficient operation of the county government in Warren County" (App., *infra*, p. 6a). The court ordered a timetable for holding county elections under the new plan.

THE QUESTION IS SUBSTANTIAL

The three-judge district court in the Southern District of Mississippi did not have jurisdiction to review or adopt the Board's redistricting plan, which had not received prior clearance under Section 5 of the Voting Rights Act, as amended, 42 U.S.C. (Supp. V) 1973c. By so doing, the court below performed a function that has been relegated by statute to the exclusive jurisdiction of the District Court for the District of Columbia.

Section 5 of the Voting Rights Act requires that, prior to implementing any change affecting voting rights since November 1964, jurisdictions which, by operation of Section 4 are covered by the Act, must apply to a three-judge court in the District of Colum-

bia for a declaratory judgment that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Alternatively, jurisdictions may implement changes which they have submitted to the Attorney General under Section 5 if he does not interpose an objection within 60 days of the submission. Reapportionment and redistricting plans are subject to the preclearance procedures of the Voting Rights Act, *Georgia* v. *United States*, 411 U.S. 526, and the procedures established by the Act are constitutional exercises of Congress' power to enforce the Fifteenth Amendment. *South Carolina* v. *Katzenbach*, 383 U.S. 301.

This suit, brought by the United States to enjoin the enforcement of appellees' redistricting plan because of appellees' failure to obtain Section 5 preclearance, was a suit brought "under" Section 5 and, thus, was properly heard by the three-judge court in the Southern District of Mississippi. *Allen* v. *State Board of Elections*, 393 U.S. 544, 561-563; *Georgia* v. *United States*, *supra*. However, the Court has held that in such a suit a local district court (*i.e.*, one other than the District Court for the District of Columbia) may determine only whether a proposed change is subject to Section 5 and is empowered to do no more than prevent the implementation of a covered change without prior approval by the District Court for the District of Columbia or the Attorney General. *Perkins* v. *Matthews*, 400 U.S. 379, 385. As the Court there noted (*ibid.*):

> What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General—the determination whether a covered change does or does not have the purpose or effect "of denying or abridging the right to vote on account of race or color."

Similarly, in reversing *per curiam* a determination by a local three-judge court that state reapportionment plans were not subject to the preclearance procedures of Section 5, this Court held in *Connor* v. *Waller*, 421 U.S. 656, that "[t]he District Court accordingly also erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination." See also *Allen* v. *State Board of Elections*, *supra*, 393 U.S. at 570; *Bond* v. *White*, 508 F.2d 1397, 1400 (C.A. 5); *Pitts* v. *Carter*, 380 F. Supp. 4 (N.D. Ga.) (three-judge court), on remand to single judge, 380 F. Supp. 8 (N.D. Ga.), reversed *sub nom.* *Pitts* v. *Busbee*, 511 F. 2d 126 (C.A. 5), on remand, 395 F. Supp. 35 (N.D. Ga.); *Moore* v. *Leflore County Board of Election Commissioners*, 351 F. Supp. 848, 851 (N.D. Miss.).

Thus, the court below reached the limits of the jurisdiction when it entered summary judgment in favor of the United States and enjoined, for lack of preclearance under Section 5, implementation of the redistricting plan to which the Attorney General had interposed an objection.[9] It follows that, contrary to

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[9] This Court noted last Term in *Beer* v. *United States*, No. 73-1869, decided March 30, 1976, slip op. 8, that Section 5

the position below of both the United States and the appellees in this Court, the district court did not have jurisdiction to consider the Fifteenth Amendment merits of any redistricting plan, whether proposed by the United States or appellees.[10]

Such a procedure would invite circumvention of Section 5. For, instead of seeking preclearance in the District of Columbia court, or from the Attorney General, covered jurisdictions could, as in this case, simply implement changes in voting procedures in order to induce a suit before a local three-judge district court to restrain their violation of Section 5. Then, in that suit, they could seek judicial approval of the changes under the Fifteenth Amendment, thereby completely escaping Section 5's preclearance requirements.

The Court's recent decision in *East Carroll Parish School Board and East Carroll Parish Police Jury* v. *Marshall*, No. 73-861, decided March 8, 1976, is not to the contrary. In *East Carroll*, the Court noted that a plan ordered by a district court in the course

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does not provide a remedy for voting procedures existing prior to November 1964. Accordingly, the United States no longer seeks such orders in cases it brings solely under Section 5. See *United States* v. *Grenada County, Mississippi*, No. WC 75-44 K (N.D. Miss.).

[10] The jurisdictional question is properly raised in this Court, *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583, 588, and the responsibility of any appellate court to correct jurisdictional errors is not altered by the fact that the parties and the trial court assumed that jurisdiction was proper. *Potomac Passengers Assn.* v. *Chesapeake & Ohio Ry. Co.*, 520 F. 2d 91, 95, n. 22 (C.A. D.C.).

of a private reapportionment suit does not require submission under Section 5 (slip op. 3-4, n. 6):

> [C]ourt-ordered plans resulting from equitable jurisdiction over adversary proceedings are not controlled by § 5. * * * Since the reapportionment scheme was submitted and adopted pursuant to court order, the preclearance procedures of § 5 do not apply.

The three-judge court here, convened solely to enforce compliance with Section 5, did not have jurisdiction to order the implementation of any plan. *Perkins* v. *Matthews*, *supra*; *Connor* v. *Waller*, *supra*. Thus, the question whether the plan adopted by the court was a "court-ordered" plan, not subject to Section 5, does not arise. Moreover, *East Carroll* was not a Section 5 compliance suit. It would be anomalous indeed if, in a suit by the United States to remedy a failure to comply with Section 5, a local district court could authorize a covered jurisdiction to circumvent the operation of the statute by adopting a voting change which had not been precleared.

CONCLUSION

For the foregoing reasons, the Court should note probable jurisdiction and reverse and remand the case for entry of an order limited to an injunction against the implementation of any redistricting plan which has not received clearance under Section 5.

Respectfully submitted.

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OCTOBER 1976.

APPENDIX

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Civil Action No. 73W-48(N)

[Filed May 13, 1976, Southern District of Mississippi, Harvey G. Henderson, Clerk]

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE BOARD OF SUPERVISORS OF WARREN COUNTY, MISSISSIPPI, ET AL., DEFENDANTS

FINDINGS OF FACT, CONCLUSIONS OF LAW and MANDATORY INJUNCTION DIRECTING ELECTION

A hearing was held in the above-named matter on April 29, 1976. After consideration of the evidence presented at that hearing, the arguments of counsel and the submitted briefs, the court adopts the apportionment plan submitted by the Warren County Board of Supervisors and directs that a new election process to fill the offices affected should be promptly held.

I. Apportionment

At the outset of this hearing the court was presented with three apportionment plans: two by the Government and one by the Warren County Board

of Supervisors. The court did not consider itself bound to choose between these three plans but proceeded on the premise that if Fourteenth and Fifteenth Amendment protections had not been accorded by any plan proposed, the court could have instituted its own plan or modified any of the three plans submitted. The court did, however, conclude from the face of the plans that only Plan 2 submitted by the Government should be considered.[1]

The plan submitted by Warren County Board of Supervisors was drawn taking into consideration *only* five elements: (1) road mileage, (2) population, (3) land area, (4) existing voting precincts, and (5) 1970 U.S. census enumeration district boundaries within the city. The Board of Supervisors' expert witness testified that the racial makeup of the city and the county was not considered during the drafting of the original Board of Supervisors' plan. On the other hand, this same expert testified that Plan 2 submitted by the Government appeared to have been constructed so as to maximize black voting strength in at least one of the five districts. On cross examination, the witness admitted he had no

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[1] At the court's direction, the Government's Plan 1 was not the subject of any evidence taken during this hearing. This plan drew two districts entirely within the city limits of Vicksburg. Because of the substantial county responsibilities of the Board of Supervisors, the court determined that the parties should concentrate their proof on Government Plan 2 and the Board of Supervisors' plan, in both of which all proposed districts embraced urban and rural areas. Neither party objected to this procedure.

knowledge of the Government's actual intent in fixing the configuration of the districts, but was relying solely upon the placement of district boundary lines and his analysis of the racial effect of such placement.

The Government assailed the Board of Supervisors' plan on three grounds: (A) it is deficient in the one-man, one-vote concept; (B) it has diluted black voting strength; and (C) there should be no substantial consideration given to the equalization of road mileage. The court considered all three attacks before deciding to accept this plan.

A. One-Man, One-Vote

Chapman v. *Meier*, 95 S.Ct. 751 (1975), requires that court-ordered apportionment plans not allow a significant variation from the ideal population size of each district. The overall variation in predicted voting age population in the Board of Supervisors' plan is ±7.3%. Although this is a larger variation than is included in either of the Government plans, it is in the order of only 200 to 300 predicted potential voters in the district with the largest variance. The court concludes that this is not significant enough to require the modification of this plan. All three plans are drawn with census figures now 6 years old. Although this appears to be the best information available, the estimated voting age population projection could contain numerical errors of a substantial order. In addition, this minor variation in projected voters derives some justification from the

attempt of this plan to balance other considerations including road mileage and total area.

B. Dilution

The Government argues that *Beer* v. *United States*, 44 U.S.L.W. 4435 (U.S. March 30, 1976), would condemn as retrogressive the adoption of a plan that reduces the number of districts containing black voting age majorities. The Government points out that the invalid apportionment plan now in effect in Warren County includes three districts with majority black population—two of which contain black voting age population majorities of 60.2% and 50.5%.[2] The plan suggested by the Warren County Board of Supervisors provides for only one district with a majority black voting age population. The Government claims the adoption of this plan would be *per se* retrogressive and, therefore, its adoption is proscribed by *Beer*. *Beer*, however, is distinguishable. It involves § 5 of the Voting Rights Act and relies on the language of that statute for its holding.

More significantly, the court does not consider the plan it adopts to violate the spirit of *Beer*. Obviously the districts as now laid out must be reapportioned to meet one-man, one-vote requirements. Such reapportionment plans, however, cannot include districts which have been gerrymandered either to maximize or to minimize the racial composition of a particular

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[2] Five tenths of one percent in this district equates with less than 25 people.

district. Gilbert v. Sterret, 509 F.2d 1389, 1394 (5th Cir. 1975); Turner v. McKeithen, 490 F.2d 191, 197 (5th Cir. 1973). In redistricting to equalize numbers of voters, other considerations, such as equalization of road mileage and area, were apportionately integrated in producing the district lines as drawn. The results are not significantly dilutive of black voting strength. Under the plan adopted, blacks in Warren County will have a 60% total population majority in one of the five districts and a population minority of over 40% in two others. The majority district will have a majority black voting age population and in the other two districts the black voting age population will approximate 40%. The Board's plan originally was drawn without regard to race. In future general elections where there might be three candidates (Democrat, Republican, Independent), blacks would have a realistic opportunity of electing representatives from three districts with their plurality strength. The court determines this plan to be fair for both Fourteenth and Fifteenth Amendment purposes. It will not lessen the opportunity of black citizens of Warren County to participate in the political process and elect officials of their choice.

C. Equalization of Road Mileage

We reject the Government's argument that road mileage equalization should be a *de minimis* consideration in the drawing of this reapportionment plan. *Howard* v. *Adams County Board of Supervisors*, 453 F.2d 455 (5th Cir. 1972), recognized the equalization of road mileage as a legitimate consideration.

The Government argues, however, that since road mileage has not been equalized in Warren County for approximately the past 50 years, it should not now be a legitimate consideration. If this intends to urge that the errors of past officials in failing to seek equalization bind the present citizens by waiver or estoppel, it is not well taken. Any court apportionment plan should take into consideration every factor which will make county government in Warren County operate efficiently. The equalization of road mileage will substantially contribute to that efficiency since one of the major duties of the Board of Supervisors is to care for county roads.

Summary

It is the opinion of this court that the plan submitted by the Warren County Board of Supervisors neither dilutes black voting strength nor is deficient in one-man, one-vote considerations. The plan will provide the most efficient operation of the county government in Warren County. For these reasons, this court adopts the apportionment plan submitted by the Warren County Board of Supervisors.

II. Election

The existing members of the Board of Supervisors, justices of the peace, and constables of Warren County are holdovers. It is imperative that the right of the people of Warren County to elect officials of their choice not be further delayed. The time and

expense involved in conducting an election under the processes provided for by Mississippi law prohibit reliance on all of those procedures. To this end, we order that elections be held according to the following process and schedule:

Upon this order becoming final, the election commission shall direct the Circuit Clerk to conform the poll books to the new district lines within 3 weeks. *See* Miss. Code Ann. § 23-5-11 (1972). After the poll books have been corrected, the Election Commission shall publish in a newspaper of general circulation in Warren County, for 3 consecutive weeks, notice of the upcoming election and the newly drawn districts. *See id.* § 19-3-1. This same notice shall be posted for the same period of time on the public bulletin board maintained at the Warren County courthouse. Upon completion of the period of publication and posting, which shall occur 21 days from the date of first publication and posting, candidates shall have 30 days in which to file qualifying petitions and affidavits and pay appropriate assessments as hereinafter particularized. *Cf. id.* § 23-5-1. Petitions shall include 50 signatures of registered electors residing in the candidate's district and shall be filed with the Circuit Clerk. *Cf. id.* § 23-5-3. Although Mississippi law only applies the 50-signature petition requirement to Election Commission candidates the court considers that, absent a party primary, the requirement of these petitioning signatures is appropriate for all offices involved. The Corrupt Practices Act affidavit required by state law shall also be filed within this 30-day

period with the Circuit Clerk. *See id.* § 23-3-3 through -7. The assessments provided for in Miss Code Ann. § 23-1-33(d) and (e) shall be paid by each candidate for any office covered hereby to the County Election Commission within the same 30 days. *See id.* § 23-1-35. Upon the expiration of this 30-day period, the Circuit Clerk shall turn over the petitions and affidavits to the Election Commission. Within 10 days of the receipt of these items, the Election Commission shall verify each petition, affidavit, the filing of the required fee, and the statutory qualifications of each candidate for the office petitioned for, and certify the list of qualified candidates. *See id.* § 23-5-197.

The election shall be held as soon thereafter as procedures required will reasonably permit. Ballots will be printed and distributed and the election conducted in accordance with all provisions of Mississippi law not inconsistent with this order. *See id.* § 23-5-99 through -169. If no candidate receives a majority of votes in that election, the names of the two candidates having the highest number of votes shall be resubmitted to the voters in a run-off balloting 2 weeks after the first balloting. *Id.* § 23-5-303. All candidates receiving a majority of votes shall be declared elected.

The term of office covered by this procedure shall begin 30 days after the runoff election and shall extend until the next regularly elected officials take office. This is a one-time procedure only. Subsequent regular elections in these districts will be conducted in accordance with Mississippi law. Any of the time

periods discussed herein may be extended up to a maximum of 3 weeks to enable the special election or runoff to coincide with any regularly scheduled county-wide election.

This the 13 day of May 1976.

/s/ Charles Clark
United States Circuit Judge

/s/ Dan M. Russell, Jr.
United States District Judge

/s/ Walter L. Nixon, Jr.
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Civil Action No. 73W-48(N)

[Filed Jun. 2, 1976, Southern District of Mississippi, Harvey G. Henderson, Clerk]

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE BOARD OF SUPERVISORS OF WARREN COUNTY, MISSISSIPPI, ET AL., DEFENDANTS

SUPPLEMENTAL ORDER CLARIFYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND MANDATORY INJUNCTION DIRECTING ELECTION

In United States v. Warren County (May 13, 1976), this court ordered a compacted election schedule which should commence upon the opinion becoming final. The Warren County Election Commission has requested this court to clarify its intended commencement date. Our decision issued May 13, 1976, will not be final until the expiration of the 60-day period within which an appeal may be taken or an earlier waiver of that right. If an appeal is taken, our decision will not become final until that appeal has run its course before the Supreme Court of the United States. When that opinion has become final

as outlined next above, the time periods provided in our previous opinion for the election ordered in Warren County, Mississippi, shall begin to run.

The Warren County Election Commission also requested amplification of the court's opinion concerning the application of § 5 of the Voting Rights Act, payment of costs and attorneys' fees. "[C]ourt ordered plans resulting from equitable jurisdiction over adversary proceedings are not controlled by § 5." East Carroll Parish School Board v. Marshall, 44 U.S.L.W. 4320, 4321 n.6 (U.S., March 8, 1976). Therefore, changes in precincts and places for holding elections made necessary by the changes in district lines ordered by our May 13, 1976 opinion are not subject to the submission and United States Attorney General approval requirements of § 5.

The Board of Supervisors conceded in its response to the Election Commission's motion that it would pay all reasonable costs and expenses incurred by the Commission in complying with our May 13, 1976 order. Therefore, there is no costs controversy requiring any amplification of our original opinion. The Board of Supervisors in its answer to the Commission's motion points out that the attorneys for the Election Commission have not presented a specific request to the Board of Supervisors regarding attorneys' fees. Although we specifically pretermit whether the resolution of that conflict would ever be

jurisdictionally appropriate in this action, it is clear that the possible future attorneys' fees controversy is not yet ripe for judicial intervention.

/s/ Charles Clark
United States Circuit Judge

/s/ Dan M. Russell, Jr.
United States District Judge

/s/ Walter L. Nixon, Jr.
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Civil Action No. 73W-48(N)

[Filed Jul. 1, 1975, Southern District of Mississippi, Robert C. Thomas, Clerk]

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE BOARD OF SUPERVISORS OF WARREN COUNTY, MISSISSIPPI, ET AL, DEFENDANTS

INJUNCTION ORDER

Upon memoranda and oral argument of counsel the Motion for Summary Judgment served by the plaintiff on April 17, 1975 was granted on June 19, 1975. In view of the unique blend of Fourteenth Amendment (one-man-one-vote) and Fifteenth Amendment (dilution of racial voting strength) problems inherent in this cause, counsel for both plaintiffs and defendants were directed by the Court to confer concerning the appropriate remedy. A report of that conference is now on file. Based on the foregoing the Court finds that the primary election scheduled in Warren County, Mississippi, for August 5, 1975, the subsequent run-off election, if any, and the general election scheduled for November 4, 1975 with respect to the offices of

County Supervisor, Justice of the Peace, and Constable cannot be held as scheduled without abridging rights guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution of the United States and the court having considered the information generated by the parties as evidenced in the Report heretofore filed, it is hereby ORDERED, ADJUDGED, and DECREED that the holding of the 1975 primary and general elections for the positions of Supervisors of Warren County, Justices of the Peace of Warren County, and Constables for Warren County as provided by laws of the State of Mississippi are hereby stayed and postponed subject to the completion of the following requirements:

1. Defendants shall, no later than March 1, 1976, submit to the Attorney General for review under Section 5 of the Voting Rights Act of 1965, a plan for the redistricting of Warren County into five single member supervisor districts, which plan shall satisfy the requirements of the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

2. The United States shall have 60 days within which to review the plan in accordance with Section 5 of the Voting Rights Act of 1965 and the guidelines promulgated under Section 5 of the Voting Rights Act of 1965, 28 C.F.R. § 51 *et. seq.*, provided however such plan shall be given preferential and expedited review by the Attorney General.

3. Immediately upon making a determination that he will not interpose an objection to the plan submitted by the defendants, the Attorney General will

so notify the defendants and the Court. Candidate qualification periods and the elections for Warren County Supervisors, Justices of the Peace, and Constables which were postponed, shall be held under such plan in accordance with the following schedule:

A. Appropriate public notice that the qualifying period for candidates running in the party primary elections will be opened shall be given promptly. Such period shall commence no later than 10 days after defendants receive notice of the failure of the Attorney General to object, and shall remain open for 15 days.

B. Primary elections shall be held on the first Tuesday following a period of 60 days which shall be measured from the end of the qualifying period described in subparagraph A, above.

C. If no candidate in a party primary described above shall receive a majority of the votes cast for the office for which he is a candidate, a run-off primary for such office shall be held three weeks after the date of the primary, in the manner provided for in Title 23, Section 3-69 of the Code of the State of Mississippi.

D. The qualifying period for independent candidates for the general election shall begin on the day following the primary election, or if required, the run-off primary election, whichever is later, and shall end 15 days thereafter.

E. The general election for County Supervisors, Constables, and Justices of the Peace shall be held on the first Tuesday following a period of 60 days, which period shall be computed from the end of the qualifying period described in subparagraph D, above.

F. All other procedures necessary to conduct the elections provided for herein and not specified above shall be scheduled and performed as nearly as possible in conformity with election practices and procedures specified by Mississippi law but in such a manner so as to facilitate the holding of these postponed elections.

4. In the event that the defendants either fail to submit a plan for review under Section 5 of the Voting Right Act by March 1, 1976, or the Attorney General interposes an objection to the plan submitted by the defendants, plaintiff shall submit to this Court a plan, with appropriate supporting data, to redistrict Warren County into five single-member districts and the defendants shall have 10 days to show cause why the plan proposed by the plaintiff is deficient in any respect and should not be implemented, and if a plan submitted to the Attorney General by defendants has been objected to, that plan as submitted to the Attorney General or as further modified by the defendants shall be submitted to this Court. The Court, upon consideration of the plan submitted by plaintiff and defendants' response there-

to shall adopt a plan to be implemented by the defendants and the defendants shall hold elections for County Supervisors, Justices of the Peace, and Constables, according to the schedule described in paragraph 3, above, provided that the schedule of times shall commence with the date of the Order of the Court instead of the date of the Attorney General's failure to object described in paragraph 3.

5. If the Attorney General should be of the opinion that the plan submitted to him pursuant to Section 5 of the Voting Rights Act of 1965 should not be objected to thereunder, but contains infirmities with respect to the one-man, one-vote requirements of the Fourteenth Amendment, the plaintiff shall immediately report such infirmities to the Defendants and the parties shall attempt to resolve the problems involved. If no such resolution is possible, the impasse shall be reported to the Court and Plaintiff shall submit a plan, along with supporting data, which will reapportion the County within Fourteenth Amendment requirements. The defendants shall have 10 days to show cause why the plan proposed by the plaintiff is deficient with respect to the Fourteenth Amendment and should not be implemented. The Court, after considering plaintiff's plan and defendants' response, shall order a plan to be implemented for the holding of the election for County Supervisors, Justices of the Peace, and Constables according to the schedule described in paragraph 3, above, provided that the schedule of times shall commence with the date of the Order of the Court instead of the

date of the Attorney General's failure to object described in paragraph 3.

6. The terms of those persons presently holding office in Warren County as County Supervisor, Justices of the Peace, and Constable, shall be extended until their successors are elected under the provisions of the Order of the Court, in the manner provided for by Title 23, Section 5-93 of the Code of the State of Mississippi.

7. The defendants shall provide appropriate notice of the entry of this Order to the public, and shall make a copy thereof available for public inspection during usual office hours. The Court shall retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED:

This 1st day of July, 1975.

/s/ Charles Clark
Judge
United States Court of Appeals

/s/ Dan M. Russell, Jr.
Judge
United States District Court
Southern District of Mississippi

/s/ Walter L. Nixon, Jr.
Judge
United States District Court
Southern District of Mississippi

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Civil Action No. 73W-48(N)

[Filed Jul. 19, 1976, Southern District of Mississippi, Harvey G. Henderson, Clerk]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

WARREN COUNTY, MISSISSIPPI, ET AL., DEFENDANTS

ORDER

This cause is before the Court on the plaintiff's Motion to Amend Judgment, and the Court, being fully advised in the premises, finds that as a necessary adjunct to its decision of May 13, 1976, ordering the reapportionment of Warren County, Mississippi, and subsequent special elections, and in order to effectuate the prescribed expedited elections it is necessary that certain precinct lines and polling places be changed without the delays entailed by the submission and approval provisions of § 5 of the Voting Rights Act. However, the Court further finds that any future or subsequent precinct and polling place changes must be submitted to the United States Attorney General for approval under § 5.

It is therefore ordered that the parties shall immediately confer for the purpose of reaching an agreement on the necessary changes in precincts and polling places for the expedited special election only.

In the event that the parties are unable to reach such an agreement, each shall within 20 days of the date of this Order submit to this Court their respective written proposals, with all necessary documentation, including maps.

SO ORDERED, this the 10th day of July, 1976.

/s/ Charles Clark
United States Circuit Judge

/s/ Dan M. Russell, Jr.
United States District Judge

/s/ Walter L. Nixon, Jr.
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Civil Action No. 73W-48(N)

[Filed Jul. 9, 1976, Southern District of Mississippi, Harvey G. Henderson, Clerk]

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE BOARD OF SUPERVISORS OF WARREN COUNTY, MISSISSIPPI, ET AL., DEFENDANTS

NOTICE OF APPEAL

Please take notice that the United States of America, plaintiff in this action, hereby appeals to the United States Supreme Court the Findings of Fact, Conclusions of Law and Mandatory Injunction Directing Election, of the three-judge District Court entered on May 13, 1976. The appeal is taken pursuant to 28 U.S.C. Section 1253.

/s/ Robert E. Hauberg
ROBERT E. HAUBERG
United States Attorney

CERTIFICATE

I, the undersigned, Robert E. Hauberg, United States Attorney, hereby certify that I have this day mailed, postage prepaid, a true copy of the foregoing Notice of Appeal to the following:

John W. Prewitt
Prewitt, Braddock & Varner
P.O. Box 750
Vicksburg, Mississippi 39180

Landman Teller
George W. Rogers, Jr.
P.O. Box 22
Vicksburg, Mississippi 39180

This 9th day of July, 1976.

/s/ Robert E. Hauberg
ROBERT E. HAUBERG
United States Attorney

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Civil Action No. 73W-48(N)

[Filed Aug. 13, 1976, Southern District of Mississippi, Harvey G. Henderson, Clerk]

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE BOARD OF SUPERVISORS OF WARREN COUNTY, MISSISSIPPI, ET AL., DEFENDANTS

AMENDED NOTICE OF APPEAL

Please take notice that the United States of America, plaintiff in this action, hereby appeals to the United States Supreme Court the Findings of Fact, Conclusions of Law and Mandatory Injunction Directing Election, of the three-judge District Court entered on May 13, 1976, as clarified by the supplemental order of June 2, 1976, and amended by the order signed by the District Court on July 10, 1976 (filed by the Clerk on July 19, 1976). The appeal is taken pursuant to 28 U.S.C. Section 1253.

/s/ Robert E. Hauberg
ROBERT E. HAUBERG
United States Attorney

CERTIFICATE

I, the undersigned, Robert E. Hauberg, United States Attorney, hereby certify that I have this day mailed, postage prepaid, a true copy of the foregoing Amended Notice of Appeal to the following:

John W. Prewitt
Prewitt, Braddock & Varner
P.O. Box 750
Vicksburg, Mississippi 39180

Landman Teller
George W. Rogers, Jr.
P.O. Box 22
Vicksburg, Mississippi 39180

This 13th day of August, 1976.

/s/ Robert E. Hauberg
ROBERT E. HAUBERG
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Civil Action No. 73W-48(N)

[Filed Sep. 9, 1976, Southern District of Mississippi, Harvey G. Henderson, Clerk]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

WARREN COUNTY, MISSISSIPPI, ET AL., DEFENDANTS

ORDER

This cause is before the Court on the Plaintiff's Motion to Clarify the Court's Order of July 10, 1976. The Court, being fully advised in the premises, finds that the ultimate disposition of this cause will be materially advanced by submission and approval pursuant to Section 5 of the Voting Rights Act of 1965 of the changes in polling places and precinct lines necessitated by the reapportionment plan ordered by this Court on May 13, 1976, that such submission will not unduly delay the special elections ordered by this Court, and that for these reasons Plaintiff's Motion is well taken.

IT IS THEREFORE ORDERED that the above-described changes in polling places and precinct lines be submitted by the Defendants for approval pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c.

SO ORDERED, this the 4th day of September, 1976.

/s/ Charles Clark
United States Circuit Judge

/s/ Dan M. Russell, Jr.
United States District Judge

/s/ Walter L. Nixon, Jr.
United States District Judge

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