IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-489

UNITED STATES OF AMERICA,
Appellant,

v.

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

On Appeal from the United States District Court for the Southern District of Mississippi

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BRIEF FOR EDDIE THOMAS, ET AL., AS AMICI CURIAE, IN SUPPORT OF JURISDICTIONAL STATEMENT

FRANK R. PARKER

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
233 North Farish Street
Jackson, Mississippi 39201

JAMES WINFIELD

Post Office Box 1448
Vicksburg, Mississippi 39180

Attorneys for Amici Curiae

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INTEREST OF THE AMICI CURIAE

This brief is being filed with the consent of appellant and appellees, and copies of the letters of consent have been or soon will be filed with the Clerk.

This brief is filed on behalf of Eddie Thomas, Tommie Lee Williams, James H. Meeks, Charlie Steele, Mrs. Charlie Hunt, and St. Clair Mitchell, black citizens and

registered voters of Warren County, Mississippi. Amicus Eddie Thomas is president of the Concerned Citizens of Vicksburg, a black organization in Warren County, Mississippi, concerned with overcoming racial discrimination and achieving equal opportunities for black citizens. Amicus Charles Steele is president of the Vicksburg Branch of the National Association for the Advancement of Colored People, a predominantly black civil rights organization in Warren County. Under the county redistricting plan adopted by the District Court, four of the six amici have been removed from the majority black districts in which they resided prior to the first redistricting in 1970, and have been placed in white majority districts which deprive black voters of the opportunity to elect county officials of their choice.

Amici seek equitable county redistricting in Warren County which provides districts equal in population which do not fragment, dilute, and minimize black voting strength. Subsequent to the final injunction issued by the District Court in this case, amici filed an action in the United States District Court for the Southern District of Mississippi challenging the court-ordered county redistricting plan as beyond the jurisdiction of the three-judge District Court to adopt under Section 5 of the Voting Rights Act of 1965, as racially discriminatory, and as malapportioned. *Eddie Thomas, et al.* v. *Warren County Board of Supervisors, et al.*, Civil No. W76-45(N). On October 21, 1976, the District Court dismissed their action for lack of ripeness, because of the stay order issued by the District Court here, and under the comity doctrine as interference with this proceeding. This action currently is on appeal to the United States Court of Appeals for the Fifth Circuit on the ripeness and comity questions, and is not involved here.

Because the outcome in this action is likely to have a bearing on the action filed by amici (although as non-

parties the outcome would not constitute res judicata or collateral estoppel), amici file this brief to express their contentions that the three-judge District Court lacked jurisdiction to approve the Board's plan, that the plan is malapportioned under equitable standards, and that the plan fragments, dilutes, and minimizes black voting strength in Warren County.

STATEMENT OF THE CASE

Each Mississippi county is divided into five supervisors' districts (sometimes called "beats") for the election of members of the county board of supervisors (the county governing board), justice of the peace, constables, and members of the county board of education. The board of supervisors has the statutory responsibility for redistricting the five supervisors' districts.[1]

In 1970, according to the 1970 Census, three of the five supervisors' districts in Warren County (Districts 2, 3, and 4) were majority black in population.[2] See Table A. Further, all three of these districts were located entirely within the corporoate limits of the county seat of Vicksburg. This districting had been in effect in Warren County since 1929, and there is no evidence that the inclusion of three districts within the Vicksburg city limits caused any special administrative or financial difficulties in county administration.

On August 6, 1970, the Warren County Board of Supervisors adopted a county redistricting plan devised by Comprehensive Planners, Inc. (hereinafter "CPI"), of West Point, Mississippi, a planning firm, realigning the

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[1] Miss. Code Ann. § 19-3-1 (1972); Miss. Code Ann. § 2870 (1956 Recomp.).

[2] U. S. Bureau of Census, 1970 Census of Population, General Population Characteristics: Mississippi, PC(1)-B26, Table 33, p. 26-83 (1971).

Table A. Warren County Redistricting, 1970 and 1976

1. POPULATION OF PRE-1970 DISTRICTS BY RACE
(1970 Census)

District	Total	White	% White	Black	% Black
1	9,827	5,934	60.38%	3,871	39.39%
2	7,566	2,717	35.91%	4,807	63.53%
3	6,217	3,066	49.32%	3,124	50.25%
4	7,539	3,321	44.05%	4,206	55.79%
5	13,832	13,832	82.68%	2,347	16.97%
Totals	44,981	26,474	58.86%	18,355	40.81%

2. POPULATION OF 1976 COURT-ORDERED PLAN DISTRICTS BY RACE

District	Total	White	% White	Nonwhite	% Nonwhite
1	8,843	5,072	57.4%	3,771	42.6%
2	8,749	3,466	39.6%	5,283	60.4%
3	8,946	5,187	58.0%	3,759	42.0%
4	9,002	6,503	72.2%	2,499	27.8%
5	9,441	6,246	66.2%	3,195	33.8%
Totals	44,981	26,474	58.86%	18,507	41.14%

boundaries of all five supervisors' districts. The new plan was an "apple pie" plan. Each of the five districts took in large areas of the county outside Vicksburg and convereged in spoke-like fashion into the City of Vicksburg, slicing up the Vicksburg population and fragmenting it among all five districts.

Subsequently, the Board submitted the new plan to the United States Attorney General for clearance pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. After requests for additional information which extended the time for objection, the Attorney General on April 4, 1971, objected to the Board's 1970 plan for the reason that the Board had failed to demonstrate that its plan did not have a prohibited racially discriminatory purpose or effect. The objection letter

stated that because of "substantial and apparently irreconcilable discrepancies" between the submitted CPI racial statistics and 1970 Census data, "there is no way to determine . . . whether there is a proscribed discriminatory effect on the basis of race."

On August 23, 1971, and February 13, 1973, after the Board had submitted additional data and suggested changes, the Attorney General refused to withdraw his April 4, 1971 objection, stating in his February 13, 1973 letter that "the effect of the proposed district boundary lines is to fragment areas of black population concentrations, thereby minimizing the total number of black persons residing in each of the districts and diluting black voting strength" without "any compelling governmental need" and without reflecting "population concentrations" or "considerations of district compactness or regularity of shape."

Regardless of the Attorney General's April 4, 1971, Section 5 objection to the 1970 redistricting plan, the Board took the position that the plan remained in effect, and county officials conducted the 1970 county primary and general elections on the basis of the objected-to districts. No blacks were elected to any county office. No action was instituted by the Board in the United States District Court for the District of Columbia to contest the Attorney General's Section 5 objection.

On October 31, 1973, the United States filed its complaint in the United States District Court for the Southern District of Mississippi pursuant to Sections 5 and 12(d) of the Voting Rights Act, 42 U.S.C. §§ 1973c and 1973j(d), and the Declaratory Judgment Act, 28 U.S.C. § 2201, alleging that the 1970 redistricting plan was unenforceable and that the primary and general elections held pursuant to that plan were held in violation of Section 5. The defendants were the Warren County Board of Supervisors and its members, the County Elec-

tion Commission and its chairman, and the County Democratic Executive Committee and its chairmen. The plaintiff sought relief (1) declaring that implementation of the 1970 plan violates Section 5, (2) enjoining the defendants from implementing any election districts different from those in effect on November 1, 1964, without the required Section 5 clearance, and (3) ordering the defendants to develop a new county redistricting plan to be implemented "after the plan is found to be acceptable under the provisions of Section 5 of the Voting Rights Act of 1965" on a schedule set by the District Court.

On January 7, 1974, a three-judge District Court was designated pursuant to the requirements of Section 5 of the Voting Rights Act.

The docket entries indicate that no answer was ever filed by any of the defendants.

On June 19, 1975, the District Court granted summary judgment for the plaintiff and directed the parties to confer concerning the appropriate remedy. On July 1, 1975, the District Court entered an order proposed by the Department of Justice (J.S. App., pp. 13a-18a) which (a) stayed the August primary and November general elections for county officials elected by supervisors' districts and extended the terms of office of the incumbents, and (b) provided for the development of a new plan. The July 1, 1975, order required the defendants "no later than March 1, 1976" to submit to the Attorney General for Section 5 review a county redistricting plan which satisfies Fourteenth and Fifteenth Amendment requirements. The order provided that if the defendants failed to submit such a plan by the required deadline, or if the Attorney General interposed an objection to a submitted plan, then the United States was required to submit to the court a county redistricting plan with "appropriate supporting data" and the defendants were

given 10 days within which to show cause why the Justice Department's plan should not be implemented.

The July 1, 1975 order also provided for review by the Mississippi District Court of any Section 5 objections entered by the Attorney General to the defendants' proposed plan by stating:

> "[A]nd 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 thereto shall adopt a plan to be implemented by the defendants * * *" (J.S. App., pp. 16a-17a).

A schedule was also provided for holding county primary and general elections (1) if no objection was interposed by the Attorney General to the defendants' submitted plan, or (2) under a county redistricting plan adopted by the District Court.

No proposed county redistricting plan was submitted formally by defendants for Section 5 review by the Attorney General by the March 1, 1976 deadline established in the District Court's July 1, 1975 order. However, two draft plans were submitted by the Board to the Attorney General for "informal consideration" by letter of December 24, 1975. Both drafts were simply revisions of the objected-to 1970 plan. The district boundaries outside Vicksburg were left unchanged; only the district boundaries within Vicksburg were somewhat altered. On February 9, 1976, the Attorney General objected to both drafts for dilution of black voting strength:

> "[O]n the basis of our analysis we are unable to conclude that either Draft A or Draft B will not have a prohibited racially discriminatory effect in Warren County similar to that perceived in the plan to which the Attorney General previously objected.

> Our evaluation of these redistricting plans indicates that the effect of either plan is 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 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."

Defendants having failed to comply with the District Court's order, the Department of Justice on March 30, 1976 filed two alternative county redistricting plans with the District Court. On March 26, 1976, CPI submitted a county redistricting plan to the Board of Supervisors which was identical to Draft A objected to by the Attorney General. Apparently, the Board of Supervisors subsequently sent copies of this new CPI plan to the District Judges and to the Justice Department attorneys, but according to the docket entries the 1976 Board plan (Draft A) was never filed with the Clerk of the District Court nor admitted in evidence in the case. On April 6, 1976, the Department of Justice filed with the District Court objections to the defendants' proposed plan contending that the plan fragmented areas of black population, minimized the number of blacks in each district, and unnecessarily diluted black voting strength in Warren County.

Plan 1 submitted by the Department of Justice provided two black majority districts which were 64.3 and 55.8 percent black, and substantially equalized population among the districts by a total deviation of 5.5 percent (maximum variances of +2.5 percent and -3.0 percent). Two districts (District 3 and 4) were entirely within Vicksburg. Plan 2 also provided two black ma-

jority districts which were 70.1 and 60.2 percent black with a total deviation from population equality of only 3.95 percent (maximum variance of +2.12 percent and -1.83 percent). Each district of Plan 2 included both rural and urban areas of Warren County. Both Justice Department plans were based exclusively on Census enumeration districts.

The plan submitted by the Board of Supervisors provided only one black majority district which was 60.4 percent black; the remaining districts were all majority white. Further, the Board plan provided a greater total deviation and less equality of population among the districts than either Justice Department plan, with a total deviation of 7.69 percent (maximum variances of +4.95 percent and -2.74 percent).[3]

After a hearing on April 29, 1976, the three-judge District Court on May 13, 1976, issued its findings of fact, conclusions of law, and mandatory injunction (J.S. App., pp. 1a-9a) adopting the Board's plan as a court-ordered county redistricting plan for Warren County.

However, insofar as the docket entries and record reveal, no judgment "set forth on a separate document" as required by Rule 58, F.R.Civ.P., was ever entered. On June 2, 1976, the District Court entered an order automatically staying implementation of the court-ordered plan pending appeal (J.S. App., pp. 10a-12a).

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[3] The District Court opinion erroneously states: "The overall variation in predicted voting age population in the Board of Supervisors' plan is ±7.3%" (J.S. App., p. 3a). This statement is erroneous on two counts. First, the figure given according to the defendants' plan is for total population, not voting age population (Defendants' Plan, p. 3). Second, the 7.3 percent figure is wrong. The defendants' plan states a maximum plus variance of 4.9 percent and a maximum minus variance of 2.7 percent (*id.*), and then concludes that the "overall spread" is 7.3 percent (*id.*), which is either poor addition or a typographical error.

According to the 1970 Census, Warren County, Mississippi, has 44,981 persons, of whom 26,474 are white (58.85 percent), 18,355 are black (40.81 percent), and 152 are of other races (0.34 percent).[4] Blacks are most heavily concentrated in the City of Vicksburg, which contains 12,568 black persons, or 68.47 percent of the total black population of Warren County.[5]

The Board plan adopted by the three-judge District Court is an "apple pie" plan in which each of the five districts converge in long, narrow corridors on the heavy black population concentration in Vicksburg, fragment it, and slice it up among all five districts, thus minimizing the number of blacks in each district and diluting black voting strength. Under the 1976 court-ordered plan, the number of black majority districts is reduced from three (1970) to one in a county which is over 40 percent black.

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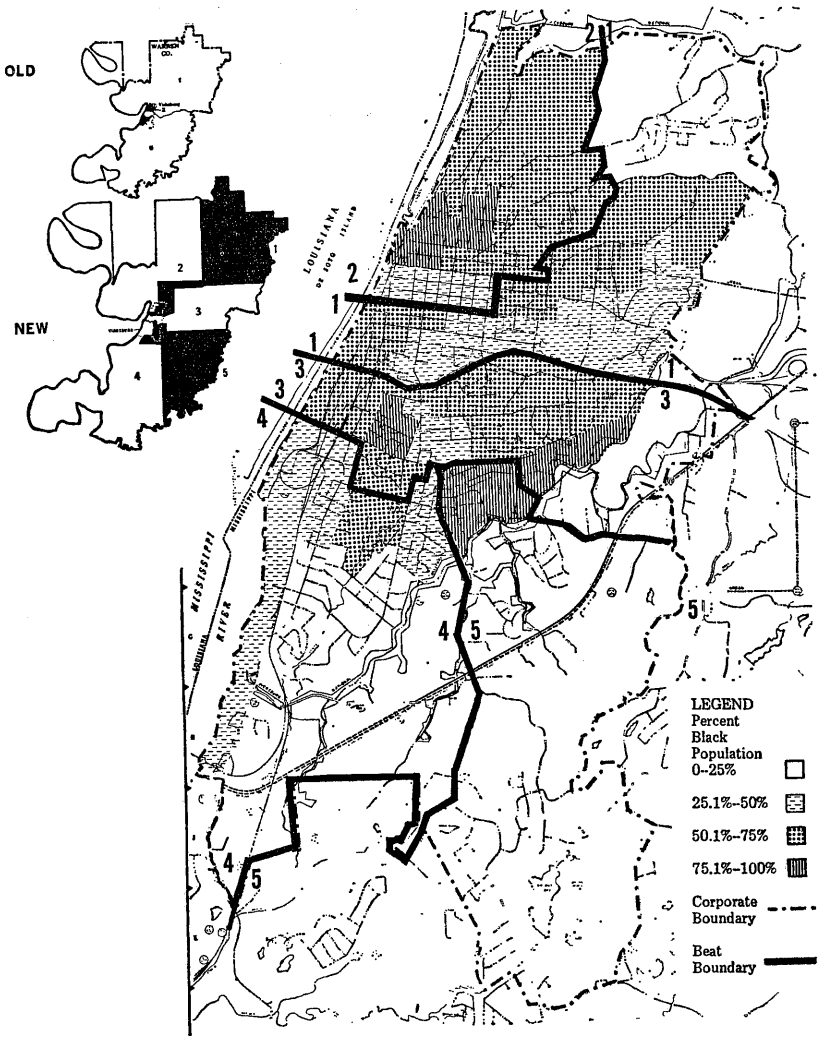
[4] U.S. Bureau of Census, 1970 Census of Population, General Population Characteristics: Mississippi, PC(1)-26B, Table 34, p. 26-86 (1971).

[5] *Id.*, Table 27, p. 26-62.



Maps showing the boundaries of the pre-1970 districts (old) and 1976 court-ordered districts in Warren County (new) and Vicksburg (detail map) with Census enumeration districts shaded for racial percentage.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

In the view of amicus, this case presents the substantial questions of (1) whether a three-judge District Court convened pursuant to 42 U.S.C. § 1973c to enforce an Attorney General's Section 5 objection has jurisdiction as a Section 5 three-judge District Court to adopt and order into effect a county redistricting plan to which the Attorney General informally has objected, and (2) whether the three-judge District Court erred in adopting the Board plan which provides less equality of population among the districts, fragments and minimizes black voting strength, and allows only one black majority district, over two Justice Department plans which provide greater equality of population among the districts, do not fragment and minimize black voting strength, and result in two black majority districts in a county which is more than 40 percent black.

I. The Three-Judge District Court Lacked Jurisdiction to Adopt and Order Into Effect a County Redistricting Plan.

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, requires any covered jurisdiction to submit any election law change enacted after November 1, 1964, for approval either by the United States District Court for the District of Columbia or the United States Attorney General. If the change is submitted to the Attorney General, and an objection is lodged, then the covered jurisdiction may seek review of the Attorney General's objection only in the United States District Court for the District of Columbia. *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 549 (1969); *South Carolina* v. *Katzenbach*, 383 U.S. 301, 331-32, 335 (1966); see also, 42 U.S.C. § 1973*l*(b). In any Section 5 submission either to the D. C. District Court or to the Attorney General, the covered jurisdiction has the burden of proof of showing

that the change does not have a racially discriminatory purpose or effect. *Georgia* v. *United States*, 411 U.S. 526, 536-39 (1973); 28 C.F.R. § 51.19.

In a local District Court action challenging the implementation of an election law change for lack of Section 5 preclearance, the jurisdiction of the local three-judge District Court is "limited" to the determination of (1) "whether 'a state requirement is covered by § 5,'" and (2) if covered, whether the required approval of the District of Columbia District Court or the United States Attorney General has been obtained. *Perkins* v. *Matthews*, 400 U.S. 379, 383-85 (1971); *Allen* v. *State Board of Elections*, *supra*, 393 U.S. at 558-59, 561. As this Court held in *Perkins*, *supra*:

> "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.'" 400 U.S. at 385.

On several occasions the District Court for the Southern District of Mississippi has ignored the submission and review requirements of Section 5, *Connor* v. *Waller*, 421 U.S. 656 (1975); *Perkins* v. *Matthews*, *supra*, and the District Court has done so again here.

As a local three-judge District Court convened exclusively to enforce a Section 5 objection and with limited jurisdiction conferred by Section 5, the three-judge District Court was without jurisdiction: (1) to order the defendants or the Department of Justice to devise a new county redistricting plan (Order of July 1, 1975, J.S. App., pp. 14a, 16a), (2) to review the merits of any Section 5 objection by requiring submission to the District Court of any plan submitted for clearance under Section 5 and objected to by the Attorney General (*id.*,

p. 16a), or (3) to itself adopt and order into effect a county redistricting plan for Warren County (Findings of Fact, Conclusions of Law, and Injunction of May 13, 1976, J.S. App., pp. 1a-9a).

This is not a case, like *East Carroll Parish School Board* v. *Marshall*, —— U.S. ——, 47 L.Ed.2d 296 (No. 73-861, decided March 8, 1976), in which Section 5 preclearance is not required when "the reapportionment scheme was submitted and adopted pursuant to court order." 47 L.Ed.2d at 299, n. 6. Here, the three-judge District Court was convened exclusively to enforce the Attorney General's Section 5 objection to the 1970 Board plan, and its jurisdiction was limited to that enforcement role. Thus, it was without jurisdiction to order the defendants to devise a new plan. Further, the District Court itself ordered the defendants to submit their new plan to the Attorney General "for review under Section 5 of the Voting Rights Act of 1965" (J.S. App., p. 14a). Under its own order, once that submission had been made pursuant to Section 5, the District Court lacked jurisdiction, as a Section 5 local three-judge District Court, to review the Attorney General's substantive determination.

This case also is distinguishable from *East Carroll Parish* in that there the police jury "did not purport to reapportion itself in accordance with the 1968 enabling legislation" and in fact "did not have the authority to reapportion itself" because of the Attorney General's Section 5 objection to the Louisiana state law authorizing at-large elections. 47 L.Ed.2d at 299, n. 6. Thus, the power of the police jury to devise a plan providing for at-large elections derived exclusively from the authority of the District Court. Here the Board of Supervisors retained the authority, under Mississippi law, to redistrict "itself on its own authority," see Miss. Code Ann. §19-3-1 (1972), Miss. Code Ann. § 2870 (1956

Recomp.), and therefore Section 5 preclearance of the Board plan under Section 5 procedures was required.

After the Attorney General's objection to the 1970 plan was enforced by the District Court, the Board of Supervisors failed to adopt a new county redistricting plan or formally submit any new plan to the Attorney General for Section 5 review. The December, 1975, submission was considered by all the parties to constitute only an informal conference among the parties, and not a Section 5 submission. Accordingly, without Section 5 preclearance of any new plan, the three-judge District Court was without jurisdiction to order any new plan devised by the Board of Supervisors into effect.

To hold otherwise would be to allow Section 5 covered jurisdictions to avoid Section 5 submission requirements, in which the covered jurisdiction has the burden of proof, simply by implementing an uncleared and objected-to plan in violation of Section 5. This unlawful action would then invite suit by the Department of Justice, and the covered jurisdiction could then submit the uncleared plan to the local District Court for approval in an action in which the Justice Department has the burden of proof. This was the course of conduct pursued by the Board of Supervisors here. It rewards noncompliance with Section 5 (1) by allowing a county redistricting plan to be reviewed by a Mississippi District Court, rather than the Attorney General or the District of Columbia District Court as Section 5 requires, (2) in an action in which the Justice Department, rather than the covered jurisdiction, has the burden of proof.

Because no new plan has been approved under Section 5 requirements, and because the Section 5 three-judge District Court lacked jurisdiction to adopt and order into effect any new plan, Warren County must revert to its prior election law. Thus, the only redistricting

which currently can be enforced in Warren County is the districting which was in effect prior to the 1970 plan.

II. The District Court Erred in Adopting the 1976 Board Plan.

Assuming the Court concludes that the District Court did have jurisdiction to adopt the Board's 1976 plan, then the Court should examine whether the adoption of the Board's plan over the two Justice Department plans constituted an abuse of equitable discretion, or alternatively, whether the Board's plan is unconstitutional.

In *Chapman* v. *Meier*, 420 U.S. 1, 26 (1975), this Court held in a legislative redistricting case that a "court-ordered plan . . . must be held to higher standards than a [jurisdiction's] own plan." The context of this holding relates specifically to population apportionment, the Court declaring that a court-ordered plan must "achieve the goal of population equality with little more than *de minimis* variation," 420 U.S. at 27, but has implications beyond that specific context. The Court also held, noting the "practical weaknesses" (id. at 15) of multi-member districts, that absent "persuasive justifications, a court-ordered reapportionment plan of a state legislature must avoid use of multi-member districts . . ." *Id.* at 26-27.

Here the District Court adopted, over the objections of the Department of Justice, a plan submitted by the Board which provided greater population deviations and less equality of population and which fragmented black voting strength, in preference to two Justice Department plans which provided lesser population deviations and greater equality of population and which did not fragment and dilute black voting strength. Although in terms of population apportionment alone all the plans presented probably met constitutional standards, under the *de minimis* requirement of *Chapman* the District

Court in its equitable discretion should have preferred the plans providing greater equality of population among the districts.

The plan adopted by the District Court also possesses all the characteristics of a racial gerrymander of black voting strength. Black voting strength is effectively minimized and cancelled out when a heavy black population concentration, as exists in Vicksburg here, is fragmented by the new district lines, divided, and dispersed throughout all five districts. *Taylor* v. *McKeithen*, 407 U.S. 191 (1972); *Robinson* v. *Commissioners County, Anderson County, Texas*, 505 F.2d 674 (5th Cir. 1974); *Moore* v. *Leflore County Bd. of Election Comm'rs*, 502 F.2d 621, 622-24 (5th Cir. 1974). The gerrymandering here is achieved by districts which are not compact, which employ long, narrow corridors to reach into the black concentration in Vicksburg, and which follow, not historical boundaries or physical and geographical ground features such as rivers, highways, roads, railroads and other landmarks, but section lines which are invisible to the voter.

By reducing the number of black majority districts from three to one, the court-ordered plan although providing single-member districts operates unconstitutionally "to cancel out or minimize the voting strength of racial groups," *White* v. *Regester*, 412 U.S. 755, 765 (1973), and also meets the test for an objection under Section 5 of the Voting Rights Act by effecting "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States*, —— U.S. ——, 47 L.Ed.2d 629, 639 (No. 73-1869, decided March 30, 1976).

Whether or not the plan submitted by the Board is unconstitutional as a racial gerrymander, the principles announced by this Court in *Chapman* should operate to restrict the equitable discretion of the District Court

from preferring a plan which minimizes black voting strength over plans which do not, absent some overriding justification or unless the former plan is required to satisfy a "compelling state interest." *Dunn* v. *Blumstein*, 405 U.S. 330, 336-37 (1972); *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663, 667 (1966).

No such overriding justification was presented here. The District Court preferred the Board's plan because it attempted to equalize the responsibilities of the five county supervisors among the districts by approximately equalizing county-maintained road mileage and land area (J.S. App., pp. 2a, 5a-6a). However, there is no evidence or finding by the District Court that equalization of these factors is necessary to efficient county government in Warren County; indeed county operations had been maintained successfully from 1929 to 1970 with three of the five districts entirely within the City of Vicksburg and with no county-maintained road mileage.[6] Employment of these criteria in county redistricting becomes suspect when conceived only after the Voting Rights Act of 1965 is enacted, when Mississippi blacks are enfranchised and the state's poll tax struck down, and when advanced to justify distorted districts which frag-

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[6] Under Mississippi law, counties have the option of adopting the "beat system," in which each supervisor is responsible for construction and maintenance of the county roads and bridges in his district, or some form of the "county unit system" in which responsibility for the county roads and bridges is shared among all five supervisors. See Miss. Code Ann. §§ 65-7-95, 65-17-3 through 65-17-7, 65-17-201 through 65-17-205, 65-19-1 through 65-19-5 (1972). Further, apart from road and bridge maintenance, county supervisors have numerous countywide responsibilities regarding county personnel, property taxation, the county budget and budget of the county school district, libraries and recreation, public health and welfare, industrial development, county planning, and other functions. See generally, D. Brammer, A Manual for Mississippi County Supervisors (2d ed., University of Mississippi Bureau of Governmental Research, 1973).

ment black voting strength. See *Robinson* v. *Commissioners Court, supra,* 505 F.2d at 680.

The District Court considered that the Board's plan did not minimize black voting strength by hypothesizing a three-way election in which blacks could elect county officials of their choice with a plurality of the vote in black minority districts (J.S. App., p. 5a). However, there is no evidence that this ever has occurred in Warren County,[7] and no evidence that white Republican voting strength for county office candidates is sufficiently great to allow for an equal division of the white vote.

The District Court rejected Plan 2 of the Justice Department on the strength of the testimony of defendants' planning agent that it "appeared to have been constructed so as to maximize black voting strength in at least one of the five districts" (J.S. App., p. 2a). However, there was no direct evidence of racial motivation in the Justice Department's proposal (*id.*, pp. 2a-3a), and there is no attempt to maximize black voting strength by providing two black majority districts in a 40 percent black county which previously had three.

CONCLUSION

For the foregoing reasons, the Court should note probable jurisdiction and reverse and remand the injunction issued by the District Court for entry of an order limited to enjoining the 1970 Board plan and any new county redistricting plan not approved in accordance with the

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[7] Mississippi law requires a majority vote for party nomination in primary elections, Miss. Code Ann. § 23-3-69 (1972), and victory in the Democratic primary generally is tantamount to election. Mississippi law also requires a majority vote to win special elections to fill vacancies in county office, Miss. Code Ann. § 23-5-203 (1972). The order of the District Court requiring a special election and a majority vote to win office under the new plan (J.S. App., p. 8a) thus precludes the election of any candidates supported by the black community in any white majority district.

procedures of Section 5 of the Voting Rights Act of 1965. Alternatively, the Court should reverse the injunction of the District Court adopting and ordering into effect the 1976 Board plan and remand for adoption of one of the Justice Department plans or another plan which provides equality of population among the districts with little more than *de minimis* variation and which does not fragment, dilute or minimize black voting strength.

Respectfully submitted,

FRANK R. PARKER

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
233 North Farish Street
Jackson, Mississippi 39201

JAMES WINFIELD

Post Office Box 1448
Vicksburg, Mississippi 39180

Attorneys for Amici Curiae


CONNECTICUT STATE