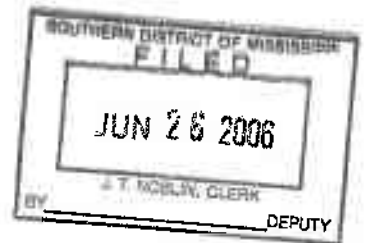


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION



REVEREND KENNETH E. FAIRLEY, SR.,
LAJUANA RICHARDSON, REVEREND KIMBLE
ALLEN, REVEREND CARLOS WILSON, FRED
BURNS, REVEREND RAY ALLEN BOLTON,
WILLIE FOSTER, REVEREND ROBERT TATE,
FRANKIE BENTON, JR. AND CLARENCE MAGEE

PLAINTIFFS

v.

CIVIL ACTION NO. 2'06CV 167 MS-Jue

HATTIESBURG, MISSISSIPPI; HATTIESBURG,
MISSISSIPPI DEMOCRATIC EXECUTIVE
COMMITTEE; HATTIESBURG, MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE; and
HATTIESBURG, MISSISSIPPI ELECTION
COMMISSION

DEFENDANTS

COMPLAINT

I. Introduction

1. This is a suit in equity under Section 2 of the Voting Rights Act of 1965, 42 U.S.C.A. Section 1973, 42 U.S.C. Section 1983, and the one person one vote principle of the equal protection clause of the Fourteenth and Fifteenth Amendments of the United States Constitution for declaratory and injunctive relief against Hattiesburg, Mississippi for constitutionally impermissible malapportionment and dilution of African American voting strength under the existing five(5) ward redistricting plan used to elect

city councilmen and executive committee members in Hattiesburg, Mississippi. Plaintiffs seek declaratory and injunctive relief of this court which: (1) declares that the existing councilmanic plan based on 2000 census data, but which includes non-resident college students temporarily residing in college dormitories at University of Southern Mississippi (USM) into the apportionment base, has a 46.68 % total deviation, is impermissibly malapportioned and violates the one person one vote principle; (2) enjoins further use of the existing councilmanic redistricting plan to conduct municipal elections in Hattiesburg, Mississippi; and (3) declares that the inclusion and use of the majority white non-resident student population in college dormitories at USM for councilmanic redistricting purposes impermissibly dilutes African American voting strength under Section 2 of the Voting Rights Act of 1965, as amended; and (4) enjoins defendants to adopt, to submit to the USAG and to preclear under Section 5 of the Voting Rights Act of 1965, as amended a councilmanic redistricting plan which excludes the majority white non-resident student population in college dormitories at USM from the apportionment base for use in 2009. The African American voting age population of Hattiesburg, Mississippi is sufficiently large and geographically compact to constitute a majority of the voting age population in three (3) of five (5) single member councilmanic districts; the African American voting age population of Hattiesburg, Mississippi is politically

cohesive; the white voting age population and registered voters in Hattiesburg, Mississippi vote sufficiently as a bloc to enable it to usually defeat the African American citizens' preferred city council candidates.

II. Jurisdiction

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. Section 1973 j(f) and 28 U.S.C. Sections 1331, 1343, 1344, 2201 and 2202.

III. Parties

3. Plaintiffs Reverend Kenneth E. Fairly, Sr. (ward 3), LaJuana Richardson (ward 1), Kimble Allen (ward 1), Carlos Wilson (ward 2), Fred Burns (ward 2), Ray Allen Bolton (ward 3), Willie Foster (ward 4), Reverend Robert Tate (ward 4), Frankie Benton, Jr., (ward 5), and Clarence Magee (ward 5) are African American registered voters and citizens of Hattiesburg, Mississippi.

4. Defendant Hattiesburg, Mississippi is a municipality existing under the laws of the State of Mississippi and is governed by a five (5) member city council and maybe served with process of this Court by its City Clerk, Eddie Myers, 200 Forrest Street, Hattiesburg, Mississippi. The defendants Hattiesburg, Mississippi Municipal Democratic and Republican Executive Committee, are charged with conducting primary elections to select party nominees for the municipal general election, and maybe served with process of this Court by and through their respective

chairpersons, Marva McLaughlin at 200 Forrest Street, Hattiesburg, Mississippi and Derrick Arrington at 200 Forrest Street, Hattiesburg, Mississippi. The defendant Hattiesburg, Mississippi Election Commission is composed of three (3) members. The Hattiesburg, Mississippi Election Commission is charged with conducting all general and special elections for municipal officers in Hattiesburg, Mississippi and may be served with process of this Court by and through Carolyn Courtney at 200 Forrest Street, Hattiesburg, Mississippi.

5. All parties are sued in their official capacities for injunctive and declaratory relief.

6. At all relevant times set out herein, defendants were and have been acting under the color of the statutes, ordinances, regulations, customs, and usages of the State of Mississippi and Hattiesburg, Mississippi.

V. Facts

7. Hattiesburg, Mississippi is governed by a five (5) member city council which is elected from five single member councilmanic districts. The qualified electors of each councilmanic district elect one member to the city council at regular quadrennial elections (2001, 2005 and 2009). The elected members of the Hattiesburg, Mississippi city council are also responsible for the governance of the city. The city council is likewise responsible for the drawing of city councilmanic district boundaries in accord

with the one person vote principle of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

8. The five councilmanic districts in Hattiesburg, Mississippi are also used to elect municipal democratic and republican executive committee members.

9. According to the 2000 census, the total population of Hattiesburg, Mississippi is 44,729, of whom 21,200 (47.39%) are African American, and 23,529 (52.61%) are white and of other ethnic origins.

10. Under the existing councilmanic plan, according to the published 2000 census data, when the non-resident student population in dormitories at UMC is deleted in accordance with clearly established federal law, the total population, ideal district population, deviation and percentage of deviation of the existing five councilmanic districts in Hattiesburg, Mississippi are:

<u>Ward</u>	<u>Total Pop.</u>	<u>Ideal Dist.</u>	<u>Deviation</u>	<u>% Deviation</u>
1	5186	8946	-3759	-42.03%
2	8016	"	-268	-3.24%
3	7956	"	-328	+3.96%
4	8669	"	+385	+4.65%
5	8254	"	-30	-0.36%
	<u>41,371</u>			<u>46.68%</u>

The existing councilmanic redistricting plan in Hattiesburg, Mississippi is based on 2000 census data, has a 46.68 percent total

deviation due to the inclusion of the non-resident student population at USM into ward. The inclusion of the non-resident student population in college dormitories at USM dilutes African American voting strength and causes a violation of the one person one vote principle of the Fourteenth Amendment of the United States Constitution. The inclusion of non-resident student population in college dormitories at USM devalues resident voting strength.

11. Since 2000, the African American population in Hattiesburg, Mississippi has steadily increased due to white flight from the municipality to unincorporated areas and subdivisions in Forrest and Lamar Counties. The African American population in 2006 comprises at least 55% percent of the total voting age population when the majority white non-resident student population at USM is excluded for redistricting purposes. The existing councilmanicredistricting plan which includes non-resident student population in college dormitories at USM is seriously malapportioned, fractures geographically concentrated African American population and dilutes resident African American voting strength. USM is located within the municipal corporate boundaries of Hattiesburg. The 2000 census data includes the USM student population residing in the dormitories at USM on the date the Census Bureau compiled its count and the student enrollment at USM is as follows:

<u>Total</u>	<u>White and Other</u>	<u>African American</u>	<u>Percentage</u>
3358	2011	1347	40.10%

12. The inclusion and use of USM student population into the apportionment base for councilmanicredistricting purposes in Hattiesburg, Mississippi impermissibly dilutes African American voting strength under Section 2 of the Voting Rights Act of 1965 and impermissibly causes malapportionment because the non-resident USM student population is geographically concentrated in ward 1 of the present councilmanicredistricting plan.

13. If non-resident student population in college dormitories at USM is deleted from the 2000 Census data, the total population of Hattiesburg is, as follows:

<u>Total People</u>	<u>White and Other</u>	<u>African American</u>
44,729	23,529	21,200
3,358	-2,011	-1,347
<u>41,371</u>	<u>21,518</u>	<u>19,853</u>

The deletion of the majority white non-resident student population in college dormitories at USM for councilmanicredistricting purposes and white flight from Hattiesburg, Mississippi since 2000 result in a majority African American total voting age population in Hattiesburg, Mississippi.

14. The inclusion of the non-resident student population residing in dormitories at USM into the apportionment base is impermissible. States and other political subdivisions are not required to include transients, short-term residents or temporary residents in the apportionment base upon which their voting

districts or wards are based. Burns v. Richardson, 384 U.S. 73, 91-92 (1966). In Fairley v. Patterson, 493 F.2d 598, 602 (5th Cir.1974), the Fifth Circuit upheld a Forrest County, Mississippi supervisory redistricting plan which omitted from the reapportionment calculations all non-resident students at the county's two colleges who were unmarried and resided in dormitories or fraternity houses on campus; this totaled some 3,077 students. Non-resident students residing off campus were included in the Forrest County apportionment base; only those residing in dormitories were excluded. Fairley, 493 F.2d at 602-603.

15. Voting in Hattiesburg and Forrest Mississippi has been racially polarized in elections in which a African American candidate has run for office, with white voters generally voting for white candidates, and African American voters voting for African American candidates for elective office, including city council.

16. State election laws and local statutes, ordinances, and regulations applicable to elections for city council and municipal executive committee members in Hattiesburg, Mississippi provide that a majority vote is required to win party nomination or special elections.

17. African American citizens in Hattiesburg, Mississippi have long suffered from the results and effects of invidious discrimination and treatment in education, employment, income,

health, living conditions, and other related areas.

18. The governing board of Hattiesburg, Mississippi has been and is unresponsive to the particular needs, interests and concerns of the African American community.

19. Presently, two African American citizens serve on the Hattiesburg, Mississippi city council and African American citizens have been denied the opportunity to elect candidates of their choice for city council.

20. By virtue of the foregoing, Hattiesburg, Mississippi's inclusion of the majority white non-resident student population in college dormitories at USM into the apportionment base and the use of the resultant malapportioned councilmanic redistricting plan based upon 2000 census data has caused and is causing immediate and irreparable harm and injury to plaintiffs and members of the African American race by denying them an equal opportunity to participate in the political process and to elect municipal candidates of their choice for city council. Plaintiffs have no plain or adequate remedy at law. Unless restrained and enjoined by this Court, defendants will continue to deny plaintiffs and those similarly situated their rights.

A. First Cause of Action: Section 2 of the Voting Rights Act of 1965

21. The inclusion of the majority white non-resident student population in college dormitories at USM into the apportionment

base for councilmanic redistricting plan in Hattiesburg, Mississippi to elect council members and municipal executive committee members and the use of the resultant malapportioned councilmanic plan result in a denial or abridgment of the rights of plaintiffs and those similarly situated to vote on account of race or color, and as a result, African American citizens have less opportunity than whites to participate in the political process and to elect municipal candidates for city council, all in violation of the rights of plaintiffs and those similarly situated secured by Section 2 of the Voting Rights Act of 1965, 42 U.S.C.A. Section 1973 (West. Supp. 1993).

B. Second Cause of Action: Official Racial Purposeful
Discrimination Under The
Fourteenth and Fifteenth
Amendments

22. The inclusion of the majority white non-resident student population in college dormitories at USM into the apportionment base for councilmanic redistricting plan in Hattiesburg, Mississippi and the use of the resultant malapportioned councilmanic plan to elect city council and municipal executive committee members in Hattiesburg, Mississippi is based on a discriminatory purpose of diluting, minimizing, and canceling out African American voting strength in violation of the rights of plaintiffs and those similarly situated secured by the Fourteenth and Fifteenth Amendments to the United States Constitution and 42 U.S.C. Section 1983.

C. Third Cause of Action: One Person One Vote
Violation of the Equal
Protection Clause

23. The existing Hattiesburg, Mississippi councilmanic redistricting plan based on 2000 census data which includes non-resident student population in college dormitories at USM is malapportioned, has a 46.68 percent total deviation among the five (5) councilmanic districts and violates the one person one vote principle of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

VI. Relief

WHEREFORE, plaintiffs pray that this Court set this matter down for an expedited and speedy hearing, and upon which hearing:

(a) Declare the existing Hattiesburg, Mississippi councilmanic redistricting plan based on 2000 census data which includes non-resident student population in the college dormitories at USM has a 46.68 percent total deviation and violates the one person one vote principle of the Fourteenth Amendment of the United States Constitution;

(b) Declare the inclusion of the non-resident student population in college dormitories at USM into the apportionment base for municipal redistricting purposes in the Hattiesburg, Mississippi violates Section 2 of the Voting Rights Act and the one person one vote principle of the equal protection of the Fourteenth Ammendment United States Constitution;

(c) Enjoin any further use of the malapportioned existing councilmanic redistricting plan;

(d) Enjoin defendants to adopt, to submit to the USAG and to preclear under Section 5 of the Voting Rights Act of 1965, as amended a new councilmanic redistricting plan which excludes the non-resident student population in college dormitories at USM for redistricting purposes;

(e) Grant plaintiffs their costs of Court necessary to this litigation and reasonable attorney's fees as provided by 42 U.S.C. Sections 1973 1(e) and 1988; and

(f) Grant plaintiffs such other relief as may be just and equitable.

SO COMPLAINED, this the 23rd June, 2006.

Respectfully submitted,

Reverend Kenneth E. Fairley, Sr.
et. al., Plaintiffs



By: s/Ellis Turnage
ELLIS TURNAGE, Attorney for
Plaintiffs

OF COUNSEL:

ELLIS TURNAGE, MSB #8131
TURNAGE LAW OFFICE
108 North Pearman Avenue
Post Office Box 216
Cleveland, Mississippi 38732-0216
Tel: (662) 843-2811
Fax: (662) 843-6133