



# Technical Brief

## Reapportionment & Redistricting 101

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### Introduction

Reapportionment and redistricting are, to most of us, vague concepts which bubble up to the surface of our collective conscientiousness every ten years after the decennial census. As we move into the latter half of 2008, the politicians among us begin to think ahead to reapportionment and redistricting. How has the nation's population migration of the last decade affected the shape and contour of the United States Congress? Will Mississippi lose another seat? And if so, why?

While congressional realignment – the apportioning of the 385 available U. S. Congressional seats among the 50 states— is the fodder of reapportionment, local variations in population contribute to a need for redistricting of state houses. In Mississippi, we need merely think back over the past decade to Katrina migrations, lost manufacturing jobs, new economic growth around Lee County and the Golden Triangle, and the extensive growth in DeSoto County and contiguous areas to recognize that the 2010 census results may cause significant realignment in Mississippi's Senate and House districts. Will coastal representation be diminished? How many seats will be added to Northwest Mississippi? Will Southwest Mississippi's districts be enlarged, shifted, and numerically reduced in order to account for other population growth and shifts? This is the time in the normal political cycle that these questions begin to be asked, and entities such as the Stennis Institute of Government begin trying to develop— not the answers— but the right questions.

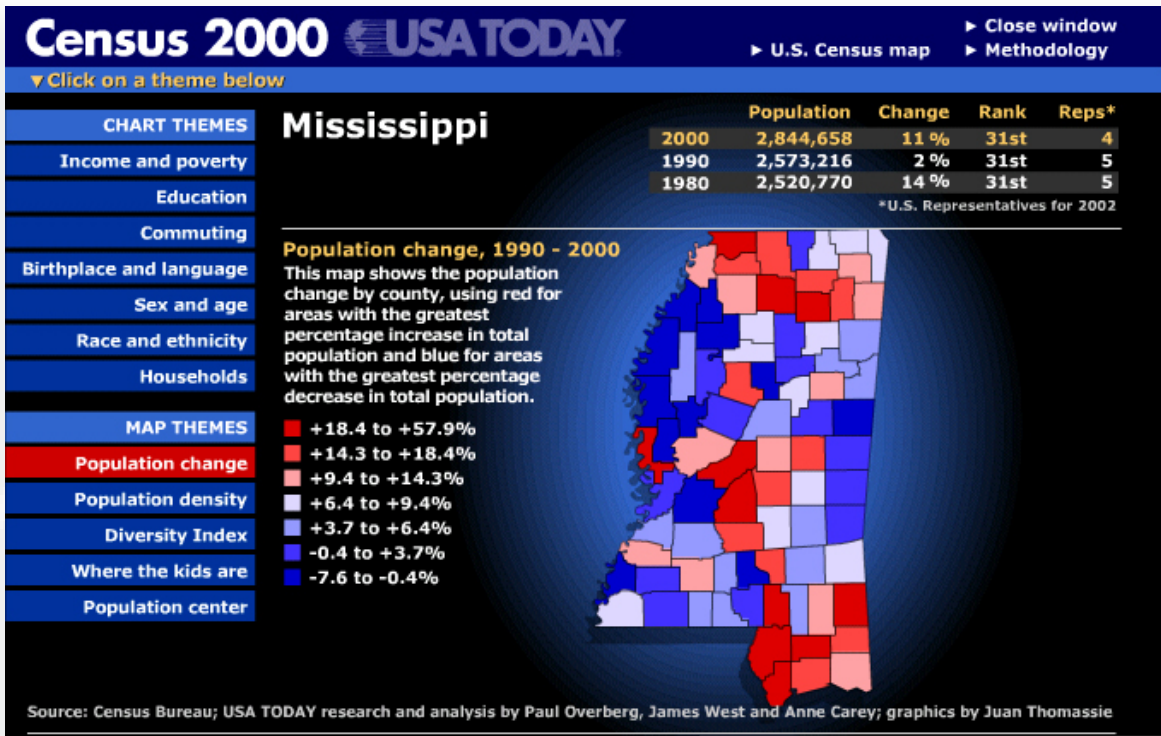
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- ★ **interest in the results of a census, congressional reapportionment**
- ★ **and legislative redistricting.**

### Historical Perspective

Prior to the last half of the 20th century, there was little common interest in the results of a census, congressional reapportionment and legislative redistricting. Common interest was raised as the census carried with it heightened newsworthiness. Much of this heightened newsworthiness was a result of judicial involvement in the process of reapportionment and redistricting which, prior to the 1960s, been the exclusive domain of the legislative branch.

Until 1962, the judicial branch of government had steadfastly removed itself from intervention in what it considered a "political question". But in the landmark case of *Baker v. Carr*, 369 U.S. 186 (1962), the United States Supreme Court abandoned its historic policy against intervening in congressional reapportionment and state legislative redistricting. The Court abandoned its deference to the legislative branch in the resolution of such questions by recognizing that "every voter has a right to have his vote counted equally with every other voter's" and determined that this right was a justiciable cause of action covered by the equal protection clause of the 14th Amendment to the U. S. Constitution.

Not surprisingly, this action was quickly followed by a 1963 holding that unit voting systems are unconscionable per se, a decision which required all states which aligned voting districts along geographic lines



Source: <http://www.usatoday.com/graphics/census2000/mississippi/state.htm>

(like counties) without regard to the population contained therein to reassess their methodology for developing voting districts. *Grey v. Sanders*, 372 U.S. 368 (1963).

### Purpose

The purpose of this technical brief is to provide a basic background for understanding the realignment of the U. S. Congress to be anticipated by the reapportionment of seats following the result of the 2010 census and Mississippi's legislative redistricting, which will follow. A series of briefs following this one will address other issues which are implicated in understanding the entire process, including the legal standards for both reapportionment and redistricting, an understanding of policies and standards which have been accepted by the federal courts to defend deviations which are larger than de minimis, an appreciation of Sections 2 and 5 of the Civil Rights Act, as amended, and pitfalls of political gerrymander.

- ★ **Redistricting refers to the redrawing of boundaries of election districts, required to be done by the state legislatures after every census, and required intermittently as a result of annexations of municipal boundaries, changes in forms of government which require a different number of selectmen, and the like.**

### Fundamentals

At the outset, it is important to distinguish between reapportionment and redistricting. Reapportionment refers to an allocation of seats among various units; Americans reapportion the available seats in the U. S. Congress after every decennial census. (13 U.S.C. § 141 (a).) Redistricting refers to the redrawing of boundaries of election districts, required to be done by the state legislatures after every census, and required intermittently as a result of annexations of municipal boundaries, changes in forms of government which require a different number of selectmen, and the like. (13 U.S.C. § 141 (b).)

### An Awesome Charge

The undertaking of political issues as a justiciable cause of action is an awesome charge for courts to assume. What is mandated is giving effect to the one man-one vote principle. The aim, while lofty, is illusory, in the sense that population flux is constant, while the census results that are utilized to conduct apportionment and redistricting tasks are frozen in time. Thus, there will never be a moment in which my vote may count precisely as much as yours, or that

ours may count precisely as much as our friend's vote in Alabama or New York. For example, as a result of the 2000 Census, seven states were authorized only one (1) seat in Congress. But the population of the most populous of these states, Montana, was 905,316 while the least populous of these states was Wyoming, with a population of 495,304. Nevertheless, the method that attempts to assure the concept of one man-one vote to the extent possible has been put in place over time by judicial decision.

### Methodology

The problem with apportionment and redistricting is reflected by the difficulty in measuring population in various districts. All federal congressional districts are single member; as are our state legislative districts in Mississippi. (Some states have multi-member state legislative districts, which further compound the population measurement techniques.)

In single-member districts, the first matter to be dealt with is the identification of the "ideal" single member district. This is defined as the total population divided by the total number of districts. In federal reapportionment, the questions would be posed this way:

- What is the total population?
- What is the total number of districts?
- After you divide the total population by the total number of districts, what is the ideal population?

While it sounds simple, it is actually a more confusing procedure. For example, in the reapportionment of the U. S. Congress, we know that of the 435 seats, each state is allowed one Congressman, just as each state is allowed two Senators.

Senate positions are created at large; thus, no reallocation of Senate seats based on population is necessary following the decennial census. The remaining 385 seats in the U. S. Congress are allocated among the 50 states based on population.

## ★|| The inclusion of illegal aliens in the definition of resident population ★|| is probably the most controversial aspect of apportionment.

The census purportedly counts total population; the census does not limit its count to the voting-age population, nor registered voters, nor eligible voters. A state's population, for apportionment purposes, includes a state's resident population plus all of the state's military and civilian personnel employed by the federal government and their dependents who are abroad on April 1 of the census year. The resident population is comprised of all persons counted in the census, including legal immigrants (citizens and non-citizens) and illegal aliens who either mail their census form back or whose presence in the United States was recorded by a Census Bureau employee in an interview.

The total population of the entire country, as determined by the census, is divided by 385 (the number of Congressional districts available to apportion among the population) and the result is the number of residents in the "ideal" district. The numerical population content of the "ideal" district allows the Secretary of Commerce to make recommendations to the President relative to the number of congressional seats to be aligned to each of the 50 states for the coming decade. As we remember all too well, Mississippi lost a seat as a result of the 2000 census. This has less to do with Mississippi's population than with the population migration of other states. While Mississippi's population growth was relatively stable during the 1990s, other areas of the country experienced significant population growth which impacted on Mississippi, making it a less populous area for purposes of apportioning a limited number of congressional districts. This is anticipated in the future as well, although in incremental margins. For example, as a result of the 2000 census, Mississippi ranked as the 31st most populous state with a population of 2,844,658. Census projections established as a result of interim census data and published by the Census Bureau in calendar 2008 suggests that by the 2030 census, Mississippi will rank as the 33rd most populous state with a projected population of 3,092,410. Incremental population growth while losing rank will ultimately result in Mississippi losing another Congressional seat at some point in time in the future.

As a result of the 2000 Census, the average size of a congressional district was 646,952; in 1990 the average district size was 572, 466. (A century ago, in 1900, the average district size was 193,167.) The result of the 2000

Census was that 12 seats were shifted among 18 states, with 8 states gaining one or more seats, while 10 states lost one or more seats.

#### Seats Gained as a Result of 2000 Census

Arizona (2)  
California (1)  
Colorado (1)  
Florida (2)  
Georgia (2)  
Nevada (1)  
North Carolina (1)  
Texas (2)

#### Seats Lost as a Result of 2000 Census

Connecticut (1)      Pennsylvania (2)  
Illinois (1)          Wisconsin (1)  
Indiana (1)  
Michigan (1)  
Mississippi (1)  
New York (2)  
Ohio (1)  
Oklahoma (1)

As a result of the 2000 census, over 150 lawsuits were filed. Mississippi had its share. Ted Booth, General Counsel at PEER provided a list of Mississippi litigation which was made available to the National Conference of State Legislatures.<sup>1</sup>

### Redistricting Methodology

Local redistricting in our state house works from a similar concept. Once again, the requirement is to measure the “ideal” district by dividing population by number of districts in order to assess the “ideal” district – a district containing a particular number of residents. Extant districts are then redrawn in order to create legislative districts that are as close to the “ideal” as possible, thus creating the illusion that each of us has a vote which carries as much weight as our neighbor’s.

After identifying the “ideal” population, the process turns to measuring deviation from the ideal. Those involved in the process first attempt to secure the absolute deviation. Absolute deviation is the expression to describe the difference between the district’s actual population and the “ideal” expressed by a plus (+) or a minus (-). For example, if Mississippi’s determined “ideal” district had a population of 5,000 and House District 43 had a population of 5,050, the absolute deviation of House District 43 would be +50. Relative deviation is expressed in percentages.

In order to determine how a state legislature’s many districts would be realigned, it is necessary to consider these computations on a statewide basis – identifying the absolute mean deviation and the relative mean deviation. The absolute mean deviation is the sum of absolute deviations of all districts divided by the number of districts, while the relative mean deviation is the sum of individual districts’ relative deviation divided by the number of districts. The range of deviations is the difference in population between the largest and the smallest district (by population) expressed in percentage points or number of people.

This process seems complicated enough, for the deviation between districts (congressional or legislative) must be minimized as much as possible in order to attempt to create that illusory sense that my vote is equal to your vote. If the legislative branch still maintained exclusive control of the redistricting process, as it did prior to Baker v. Carr, supra, the process would end with the effort at voter weight equalization. However, as a result of the U. S. Supreme Court’s recognition of a justiciable issue, the evaluation of the process has become more complicated and additional confusion abounds. For example, there is a different standard for deviations between Congressional districts and legislative districts, as elaborated in case law. Moreover, deviations can be defended by established (and accepted) state policies. Further confusion results in the expressions of racial and ethnic discrimination, significantly outlawed by the Civil Rights Act of 1965, and implications of political gerrymander. These topics will be addressed in forthcoming technical briefs on the topic of Reapportionment & Redistricting.

### Conclusion

For now we leave the issues of reapportionment and redistricting with a basic understanding of “ideal” districts and deviations therefrom. In technical briefs which follow on the topic of Reapportionment & Redistricting, we will examine the impact of Sections 2 and 5 on “ideal” districts, the legal differences that are encompassed in a determination of a congressional reapportionment and a legislative redistricting, case law application to the same distinctions, and an understanding of racial and ethnic discrimination and political gerrymander as aspects of reapportionment and/or redistricting.

## Typical lawsuits filed in Mississippi following the 2000 Census

— courtesy of Ted Booth, General Counsel at PEER

<sup>1</sup> Branch v. Clark, No. G-2001-1777 (Chancery Court of Hinds Co., complaint filed Oct. 5, 2001), appeal filed sub nom. Mauldin v. Branch, No. 2002-TS-00146 (Miss. Jan. 25, 2002), rev'd sub nom. Mauldin v. Branch, No. 2002-CA-00146, 866 So.2d 429 (Miss. Dec. 18, 2003)

The complaint alleged deadlock in the Legislature and asked the state court to draw a congressional plan. On December 21, 2001, the court adopted a plan (color version) as submitted by the plaintiffs. On December 26, 2001, the State's attorney general submitted the plan to the Department of Justice for preclearance, requesting expedited consideration and preclearance by January 31, 2002. On February 14, 2002, the Department of Justice, by a letter to the State's attorney general, requested more information from the State about the operation of the chancery courts and the jurisdiction of a single judge to create and implement a statewide redistricting plan. On the same date, the Department of Justice also requested the Mississippi Supreme Court to expedite its review of the plan adopted by the chancery court, so that "issues inherent to state-level governance [could] first be resolved by state authorities."

In re Mauldin, No. 2001-M-01891 (Dec. 13, 2001), rev'd sub nom. Mauldin v. Branch, No. 2002-CA-00146, 866 So.2d 429 (Miss. Dec. 18, 2003)

The Mississippi Supreme Court held that the Chancery Court had jurisdiction to issue a congressional redistricting plan.

Smith v. Clark, No. 3:01-CV-855WS, 189 F. Supp.2d 503 (S.D. Miss. Jan. 15, 2002)

The three-judge federal court concluded that, because of the need to have the plan drawn by the state court precleared by the Justice Department before it could become effective, it "appears to be uncertain that the State authorities will have a redistricting plan in place by March 1," and therefore decided to begin drawing their own congressional redistricting plan.

Smith v. Clark, No. 3:01-CV-855WS, 189 F. Supp. 2d 512 (S.D. Miss. Feb. 4, 2002)

On February 4, 2002, the federal court adopted a plan, which it proposed to implement "absent the timely preclearance of the redistricting plan adopted by the State Chancery Court, which is now pending for preclearance before the United States Attorney General."

Smith v. Clark, No. 3:01-CV-855WS, 189 F. Supp. 2d 548 (S.D. Miss. Feb. 26, 2002), aff'd sub nom. Branch v. Smith, No. 01-1437, 538 U.S. 254 (U.S. Mar. 31, 2003)

On February 26, 2002, the federal court enjoined the State from implementing the congressional plan adopted in Branch v. Clark on December 21, 2001, even if the plan were precleared, because the state court's assertion of jurisdiction to adopt the plan violated Article I, Section 4, of the U.S. Constitution, which says that "The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof." The Court distinguished *Grove v. Emison* and cases from California, New York, Texas, and New Jersey, where state courts had drawn or modified congressional plans, on the ground that in none of those cases had the state court's jurisdiction been challenged on the basis of Article I, Section 4. The federal district court conceded that the Mississippi Supreme Court had found that the state chancery court did have jurisdiction in this case, but reached its own conclusion that the Mississippi Supreme Court's decision was not supported by Mississippi law. The Court ordered the State to conduct elections based on the plan adopted by the federal court February 4, 2002. The order left open the possibility that the Legislature might enact a congressional plan at some future date.

Branch v. Smith, No. 01-1437, 538 U.S. 254 (Mar. 31, 2003)

Justice Scalia, writing for a unanimous Supreme Court, affirmed the judgment of the federal district court enjoining implementation of the plan drawn by the state court because it had not been precleared under § 5 of the Voting Rights Act. The Court vacated the district court's alternative holding that the state court had no constitutional authority to adopt a congressional plan.

Mississippi's attorney general had responded to the Justice Department's last request for information about the state court plan on February 20, 2002. The plan would have gone into effect 60 days later, absent objec-

tion from the Justice Department. But the Mississippi attorney general had not appealed the federal district court order of February 26 enjoining implementation of the state court plan. The Supreme Court concluded that, because the State had not appealed the injunction, “the State was no longer ‘seek[ing] to administer’ the state court plan, and thus the 60-day time period for DOJ review was no longer running.” Slip op. at 8. The passage of time had not caused the plan to be precleared. Since the plan had not been precleared, it could not be implemented, and the federal district court had properly adopted a plan of its own.

Seven members of the Court agreed that the federal district court had properly adopted a plan using single-member districts, as mandated by 2 U.S.C. § 2c. Justices O’Connor and Thomas dissented, saying that the district court should have ordered at-large elections, as mandated by 2 U.S.C. § 2a (c)(5), since they were of the opinion that the mandate to draw single-member districts only applied after the State had redistricted and did not give a federal court authority to draw the districts first. Justices Stevens, Souter, and Breyer concurred that § 2c mandated the federal court to draw single-member districts, but expressed their opinion that the enactment of § 2c had impliedly repealed § 2a (c)(5), so that at-large elections were never an option. Justices Scalia, Rehnquist, Kennedy, and Ginsburg expressed their opinion that the role of § 2a (c)(5) was to permit the use of at-large elections when “the election is so imminent that no entity competent to complete redistricting pursuant to state law (including the mandate of §2c) is able to do so without disrupting the election process.” Scalia, J., slip op. at 19.

Mauldin v. Branch, No. 2002-CA-00146, 866 So.2d 429 (Miss. Dec. 18, 2003)

The Mississippi Supreme Court held that Miss. Code Ann. § 5-3-123 (Rev. 2002) assigned responsibility for drawing congressional district boundaries to the Legislature, thus depriving the state courts of jurisdiction to draw a congressional plan. Rather, the state courts could only assist the Legislature to draw a plan. See Miss. Code Ann. § 5-3-127 (Rev. 2002). The Court reversed its own order of December 13, 2001, In re Mauldin, No. 2001-M-01891, where it had found the Chancery Court did have jurisdiction to draw a congressional plan. It noted that Miss. Code Ann. § 23-15-1039 (Rev. 2001) provided that, if the state lost a congressional seat and the Legislature failed to draw new districts, all seats would be filled by an at-large election, but that the three-judge federal court’s injunction prevented the use of an at-large election until the injunction was vacated.

Barbour v. Gunn, No. 2003-EC-02169-SCT, 890 So.2d. 843 (Miss. Apr. 8, 2004)

The Mississippi Supreme Court was faced with a problem of resolving an ambiguity in the redistricting resolution that created the House Districts, Joint Resolution No. 1 of the 2002 Regular Session. The issue was whether all of precinct 4 in Clinton, Mississippi was to be included in House District 72, as set forth in the resolution, or whether part of precinct 4 should have been included in House District 56, as shown by the Census 2000 maps that were incorporated by reference into the resolution. The Court concluded that the redistricting resolution provided for resolving these issues by making the boundaries used in the Census 2000 maps controlling. It affirmed the decision of the trial court that found part of precinct 4 to be included in House District 56 and ordered a revote in that part of District 56. With the additional voters, the result of the election was reversed.

Woullard v. Mississippi, No. 3:05-CV-97 (S.D. Miss. June 29, 2006)

Plaintiffs challenged Senate District 45 as drawn by the Mississippi Legislature in 2002 as a racial gerrymander. As African American resident citizens of former District 45, they alleged that the district’s boundaries had been redrawn with the race-based goal of minimizing the number of minority voters in the district by moving them out of it. A three-judge court found that the district was redrawn with the goals of meeting equal population requirements, complying with the Voting Rights Act, and satisfying the requests of incumbent senators, and that race was not “a predominant factor in the drafting of District 45, or any other district.” The court dismissed the complaint.

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  - Where the kids are
  - Population center

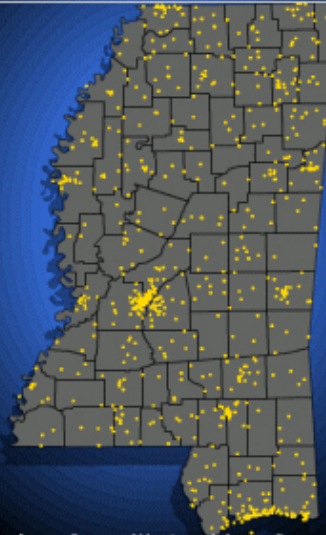
## Mississippi

	Population	Change	Rank	Reps*
2000	2,844,658	11 %	31st	4
1990	2,573,216	2 %	31st	5
1980	2,520,770	14 %	31st	5

\*U.S. Representatives for 2002

**Population density**  
 This map depicts population density. Each dot represents a number of people, which varies by state. It was calculated by averaging the locations and population totals of hundreds or thousands of small areas called Census tracts.

● = 4,000 population



Source: Census Bureau; USA TODAY research and analysis by Paul Overberg, James West and Anne Carey; graphics by Juan Thomassie

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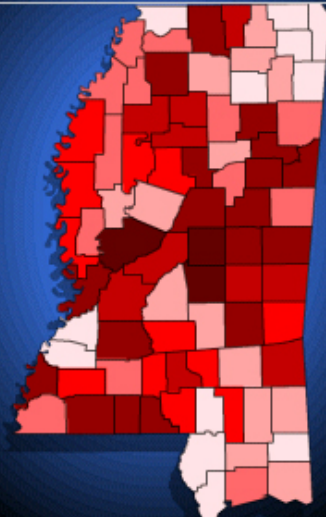
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**USA TODAY Diversity Index**  
 The index measures, on a scale of 0 to 100, the probability that two people chosen at random from an area are of different racial and ethnic backgrounds. Red areas with a high index have more racial and ethnic diversity than white areas with a low index.

- 52 - 55
- 50 - 52
- 48 - 50
- 45 - 48
- 43 - 45
- 28 - 43
- 11 - 28



Source: Census Bureau; USA TODAY research and analysis by Paul Overberg, James West and Anne Carey; graphics by Juan Thomassie

Source: <http://www.usatoday.com/graphics/census2000/mississippi/state.htm>



## About the Author

### LYDIA QUARLES, J.D., SENIOR POLICY ANALYST, Editor

Lydia Quarles is a Senior Policy Analyst at the John C. Stennis Institute of Government, Mississippi State University. She received her Juris Doctorate in 1975 from Cumberland School of Law, Samford University, and her MA and BA from Mississippi University for Women, in 1972 and 1971 respectively, in political science and communication. After over a dozen years in the private practice of law in Alabama and Mississippi, she joined the Mississippi Workers' Compensation Commission as an Administrative Judge in 1993. Eight years later, in 2001, she was appointed Commissioner of the agency. In 2006, she resigned to join the Stennis Institute.

Quarles remains active in bar work, and currently chairs the Women in the Profession Committee, a standing committee of the Mississippi Bar. She also serves as co-chair of the Mississippi Supreme Court's "Gender Fairness Implementation Study Committee" and acts as the Chief Operating Officer of the Workers' Compensation Section of the Mississippi Bar. She is a fellow of the Mississippi Bar Foundation, a recipient of the Mississippi Bar's Distinguished Service Award, a member of the Mississippi School for Math and Science Foundation Board and a member of the MUW Alumni Board. Quarles was recently honored by the American Bar Association's Administrative Law and Regulatory Practice Section, receiving the Mary C. Lawton Award for lasting contributions to the Mississippi Workers' Compensation Commission in the areas of alternative dispute resolution and access for Hispanic workers. In 2004, Quarles was named one of Mississippi's 50 Leading Business Women by the Mississippi Business Journal; the Journal recognized her service to the State as a Commissioner as well as entrepreneurial skills developed in her property management business in Starkville, Spruill Property Management, LLC.

### CLAUDETTE JONES, RESEARCH ASSOCIATE II, Editor & Graphic Designer

Claudette Jones' career spans more than 25 years in media, public relations, and marketing, with a concentration in the built industry, marketing professional services to municipalities, and state and federal agencies. She holds a BFA from Middle Tennessee State University, a MFA from the University of Cincinnati, a MPPA from Mississippi State University, and is pursuing a PhD in Urban and Regional Planning from Jackson State University.

Jones has marketing management and consulting experience in several business sectors including: *Engineering* environmental, civil (site, transportation and aviation), structural, and mechanical, electrical and plumbing (MEP); *Architecture* commercial and residential development, interior design, healthcare, education, corrections, and landscape architecture; *Construction* commercial and residential development; *Military* marketing support for U.S. Air Force aeropropulsion, aerodynamic ground testing, and environmental projects; and *Real Estate* property listing, client relations, and advertising. Her interests include urban and regional planning, affordable housing, green space design and historical preservation, economic and workforce development, and small business initiatives.

## About the Institute



Elected to the United States Senate in 1947 with the promise to "plow a straight furrow to the end of the row," John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

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