

NORTH CAROLINA:

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY:

04 CVS 06966

PENDER COUNTY, et al.,
Plaintiffs,

v.

GARY O. BARTLETT, as
Executive Director of the
State Board of Elections, et al.,
Defendants.

BY

WAKE COUNTY C.S.C.

2006 JAN - 9 PM 12: 08

FILED

MEMORANDUM OF DECISION AND JUDGMENT

THIS MATTER is before the Court for entry of final judgment upon plaintiffs' claims for permanent injunctive relief to forbid the use of House Districts 16 and 18 as currently constituted under the North Carolina General Assembly's November 25, 2003, legislative redistricting plan.

Procedural Background

This case was instituted on May 14, 2004, by the filing of a complaint in the Superior Court of Wake County. The subject matter of the case involves a legal challenge by Pender County and the other named plaintiffs to portions of the N.C. House of Representatives' legislative redistricting plan adopted by the North Carolina General Assembly on November 25, 2003.

Pender County has been divided between two House Districts in the 2003 Redistricting Plan. Pender County contends that this division violates the Whole County Provision (WCP) of the North Carolina Constitution as defined in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) (*Stephenson I*) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003) (*Stephenson II*).

N.C.G.S. 1-267.1 requires that lawsuits seeking to challenge legislative redistricting plans be filed in the Superior Court of Wake County and that such challenges be

heard by a Three-Judge Panel appointed by the Chief Justice of the State of North Carolina.

Chief Justice I. Beverly Lake, Jr., signed an Order dated May 24, 2004, appointing the Three-Judge Panel for Redistricting Challenges as defined in G.S. 1-267.1 to hear and determine the action challenging that portion of the 2003 Legislative Redistricting Plan relating to House seats in North Carolina House Districts 16 and 18 (Pender and New Hanover Counties).

The BOE filed an Answer on June 4, 2004, asserting as one of many defenses, that the division of Pender County into two House districts was required by federal law, the supremacy of which under the federal and state constitutions was specifically acknowledged in **Stephenson I and II**.

The BOE contended that House District 18 was drawn for the purpose of providing black voters in Pender and New Hanover Counties an equal opportunity to elect a candidate of their choice in order to comply with Section 2 of the Voting Rights Act ("VRA").

On June 11, 2004, Pender County filed a motion for preliminary injunction and motion for summary judgment on permanent injunction seeking to enjoin the defendants from proceeding with primary and general elections for the 16th and 18th North Carolina House Districts as they now exist under the November 25, 2003, legislative redistricting plans adopted by the North Carolina General Assembly.

The Three-Judge Panel scheduled a hearing on the motion for preliminary injunction for Friday, June 25, 2004. The parties submitted affidavits, stipulations of fact, and memoranda of law several days prior to the hearing on the motion for preliminary injunction.

The hearing was held as scheduled on June 25, 2004. The Three-Judge Panel advised that it would only consider the issue of whether or not a preliminary injunction should issue to stop the election process. The parties made oral arguments and the Three-Judge Panel recessed for two hours to consider the matter. The Three-Judge Panel reconvened to announce its unanimous decision in open court and denied the motion for preliminary injunction. A written summary of the decision was provided to the parties, filed with the

Clerk of Superior Court of Wake County and provided that a written order would follow in due course.

There was no request from the parties for findings by the Three-Judge Panel pursuant to Rule 52, North Carolina Rules of Procedure and thus findings of fact and conclusions of law are not required when a motion for preliminary injunction is denied. The Three-Judge Panel entered its Order denying Pender County's motion for preliminary injunction in September, 2004.

On February 25, 2005, the parties filed cross motions for summary judgment. Thereafter, the parties filed Stipulations of Fact and Amended Stipulations of Fact (April 27, 2005) together with briefs and reply briefs in support of their respective positions.

On July 14, 2005, the Three-Judge Panel noticed the motions for summary judgment for hearing on Tuesday, August 30, 2005. On August 30, 2005, the parties presented their arguments before the Three-Judge Panel and the Panel took the motions under advisement.

On December 2, 2005, this Court entered a Memorandum of Decision and Order Re: Summary Judgment. The Court ruled in pertinent part as follows:

1. That Pender County lacks standing to bring this action against the State of North Carolina defendants and is hereby dismissed as a party to this action.
2. That Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland, and Eugene Williams, in their official capacities as County Commissioners of Pender County, lack standing to bring this action against the State of North Carolina defendants and they are hereby dismissed, in the official capacities, as parties to this action.
3. That Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Williams, as individual citizens and voters of Pender County, have standing to bring this action and they remain as plaintiff parties to this action.
4. That House District 18, as presently constituted, meets the first two (2) threshold tests set out in *Thornburg v. Gingles*, supra., in that based on the undisputed evidence of record and the law: (1) House District 18 has a black minority population that is

sufficiently large and geographically compact as to constitute a *de facto* majority in that single member district and (2) House District 18's black minority group is politically cohesive.

5. That the Court has determined that material issues of fact remain in dispute as relates to the third (3) *Gingles* threshold test relating to whether or not there is "racially polarized voting" and as relates to the "totality of circumstances" as to whether or not the members of the black minority have less opportunity than other members of the electorate to participate in the political process and elect representatives of their own choosing as required under 42 USC 1973(b) to establish a Section 2 VRA district. See *Shaw v. Hunt*, *supra* at 517 US 914.

Accordingly, Pender County's (Plaintiffs') Motion for Summary Judgment on the grounds that House District 18, as presently constituted, cannot comply with Section 2 of the Voting Rights Act, is denied and the BOE (State of North Carolina defendants) Motion for Summary Judgment on the grounds that House District 18, as presently constituted, complies with Section 2 of the Voting Rights Act is allowed in part and denied in part for the reasons set forth in this Memorandum of Decision and Order.

(Memorandum of Decision and Order Re: Summary Judgment, December 2, 2005, page 32)

Because the Memorandum of Decision and Order Re: Summary Judgment did not dispose of all claims and the Court determined that there were issues of fact to the third prong of *Gingles* and the "totality of circumstances" under 24 USC 1973(b), the MDO was interlocutory.

Following the MDO, a status conference was held to determine a hearing date for the Panel to hear evidence on the two (2) remaining issues relating to the Section 2 VRA status of House District 18. Counsel for the parties advised that they believed they could enter into a stipulation relating to the evidence in the record that would support the remaining issues to be decided before final judgment could be entered.

Thereafter, on January 5, 2006, counsel for both sides agreed on a **Joint Stipulation of the Parties** and furnished a copy to the Panel. The original was filed on January 9,

2006. As part of the Joint Stipulation, "Plaintiffs hereby advise the court that they do not wish to be heard further or to present evidence regarding the remaining issues, although plaintiffs intend to proceed with an appeal of the adverse holdings in the court's Memorandum and Order of 2 December 2005." (Joint Stipulation, page 2)

The Court, after examining the Joint Stipulation of the Parties as well as the undisputed facts of record and prior stipulations of the parties, is of the opinion that there are no issues of material fact to be decided by the Panel and that no further evidentiary hearings are requested or required and thus, this matter is ripe for entry of final judgment.

In addition to those findings and conclusions set forth in ***The Memorandum of Decision and Order Re: Summary Judgment*** entered in this case on December 2, 2005, the Court based on the undisputed facts of record and the stipulations of the parties, has considered the following additional relevant facts and circumstances:

(1) For many decades African-Americans in North Carolina, including the African-American minorities in Pender and New Hanover counties, were victims of racial discrimination. There is plenary evidence of racial discrimination in this record to support this finding.

(2) A substantial number of the African-American citizens in Pender and New Hanover Counties were still at a disadvantage in comparison to white citizens in Pender and New Hanover counties with regard to income, housing, education, and health which hindered their ability to participate effectively in the political process and elect representatives of their own choosing.

(3) Other than House District 18 and its predecessor districts, there was no house district in which African-Americans had an opportunity to elect a Representative of their own choosing to the House of Representatives from southeastern North Carolina.

(4) The African-American populations in Pender and New Hanover counties, which include those African-Americans within House District 18, are politically cohesive.

(5) Racially polarized voting existed in Pender and New Hanover Counties so that African-American candidates usually were overwhelmingly the choice of African-American voters, but were not the choice of non-African American voters.

(6) The racial difference in the preference of voters in Pender and New Hanover counties resulted in the white majority voting sufficiently as a block to usually enable the white majority to defeat the African-American minority's preferred candidate.

(7) At the time of the enactment of the 2003 House Redistricting Plan, there was a strong basis in fact for the General Assembly to have reasonably believed that House District 18 should be drawn in order to comply with Section 2 of the VRA.

(8) That House District 18, as presently constituted, satisfies the three-prong factual threshold inquiry required by *Gingles*, in that (1) House District 18 has a black minority population that is sufficiently large and geographically compact as to constitute a de facto majority in that single member district; (2) House District 18's black minority group is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable itusually to defeat the black minority's preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30, 50-52 (1986); *Grove v. Emison*, 507 U.S. 25 (1986).

In conclusion, this Court has considered all of the foregoing and all other relevant circumstances as they existed at the time of the enactment of the 2003 House Redistricting Plan as related to House District 18 and finds, based on the totality of those circumstances, that the African-American minority in Pender and New Hanover counties living in House District 18 had less opportunity than other members of the electorate to participate in the political process and to elect a representative to the North Carolina House of Representatives of their choice.

Accordingly, this Court concludes as a matter of law:

(A) That House District 18 was required to be drawn as it was under the 2003 House Redistricting Plan in order to provide the African-American minority in Pender and New Hanover counties living in House District 18 with an equal

opportunity to participate in the political process as other members of the electorate and thus, an equal opportunity to elect a representative to the North Carolina House of Representatives of their choice as required by Section 2 of the VRA. 42 U.S.C. 1973(b)

(B) That the failure of the General Assembly to draw House District 18 as a **de facto** majority district in the 2003 House Redistricting Plan would have resulted in violation of Section 2 of the VRA and thus House District 18 was necessary in order to comply with Federal Law.

(C) That House District 18 is a valid Section 2 VRA district, drawn in accordance with the authority of the General Assembly of North Carolina to enact redistricting legislation and in compliance with the requirements of Section 2 of the VRA.

(D) That because House District 18 is a valid Section 2 VRA district, Pender and New Hanover counties could be split in accordance with the Supreme Court's interpretation of the Whole County Provision ("WCP") of the North Carolina Constitution. **Stephenson I, 355 N.C. 354, 383.**

(E) That House District 18 complies, to the maximum extent practicable, with the legal requirements of the WCP as established in **Stephenson I.**

(F) That House District 18 is in conformity with the North Carolina Constitution and its creation was a valid exercise of the redistricting authority of the North Carolina General Assembly.

Based upon the foregoing, the entry of a final judgment is appropriate at this time.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Memorandum of Decision and Order Re: Summary Judgment entered December 2, 2005, is incorporated as part and parcel of this Memorandum of Decision and Judgment to the extent it is not inconsistent with this Memorandum of Decision and Judgment. Any part of said Memorandum of Decision and Order Re: Summary Judgment entered December 2, 2005 inconsistent with this Judgment is surplus and has no further force or effect.

2. That House District 18 is a valid Section 2 VRA district, drawn in accordance with the authority of the General Assembly of North Carolina to enact redistricting legislation and in compliance with the requirements of Section 2 of the VRA.
3. That because House District 18 is a valid Section 2 VRA district, Pender and New Hanover counties could be split in accordance with the Supreme Court's interpretation of the Whole County Provision ("WCP") of the North Carolina Constitution. *Stephenson I*, 355 N.C. 354, 383.
4. That House District 18 complies, to the maximum extent practicable, with the legal requirements of the WCP as established in *Stephenson I*.
5. That House District 18 is in conformity with the North Carolina Constitution and its creation was a valid exercise of the redistricting authority of the North Carolina General Assembly.
6. That this action is dismissed.
7. That in the discretion of the Court, the parties shall bear their own costs.

This the 9th day of January, 2006.


W. Erwin Spainhour


H. E. Manning, Jr.


Quentin T. Sumner

Three-Judge Panel for Redistricting Challenges G.S.1-267.1