

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 04 CVS 06966

FILED
AM SEP 16 AM 10:23
WAKE COUNTY C.S.C.

PENDER COUNTY, et al.,
Plaintiffs,

v.

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

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER is before the Court upon plaintiffs' ("Pender County") motion for a preliminary injunction pursuant to Rule 65, North Carolina Rules of Civil Procedure forbidding 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 defendants filed an Answer on June 4, 2004, asserting as one of many defenses, that the division of Pender County between two House districts was required by federal law - i.e., Section 2 of the Voting Rights Act- the supremacy of which under the federal and state constitutions was specifically acknowledged in **Stephenson I and II**.

On June 11, 2004, the plaintiffs ("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.

Decision

The Three-Judge Panel has considered all of the evidence presented, the memoranda and the arguments of counsel and has carefully weighed the relative concerns and inconveniences that the parties would suffer by the granting or refusal of a preliminary injunction.

Based on the evidence presented and the law, the Three-Judge Panel unanimously finds and concludes that Pender County has not demonstrated that it is likely to have success on the merits; that Pender County has not demonstrated that it is likely to suffer irreparable, immediate and personal harm; nor has Pender County shown that any alleged harm to Pender County, or its citizens, outweighs the substantial harm to the defendants and the public interest likely to result from the Three-Judge Panel's intrusion into the legislative elections at issue in this case. Accordingly, the motion for preliminary injunction is denied.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Pender County's Motion for Preliminary Injunction is denied.

This the 14th day of September, 2004.


W. Erwin Spainhour


H. E. Manning, Jr.


Quentin T. Sumner

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