

NORTH CAROLINA
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION
CIVIL ACTION No. 1 CV 02885

Ashley Stephenson, et al.;

Plaintiffs,

v.

Gary Bartlett, et al.;

Defendants.

**ORDER GRANTING DECLARATORY
AND INJUNCTIVE RELIEF AND STAY
OF ORDER PENDING APPEAL**

Pursuant to Rules 57 and 65, N.C. R. Civ. P., and having considered the materials and evidence filed with the Court and the briefs and arguments of counsel, the Court makes the following findings of fact and conclusions of law and enters the following order:

1. Article I, Section 3 of the North Carolina Constitution provides that every right under North Carolina law "should be exercised in pursuance of laws and consistently with the Constitution of the United States." Article I, Section 5 provides that "no law or ordinance of the State in contravention or subversion" of the United States Constitution "can have any lasting force and effect." Reconciliation of all sections of the North Carolina Constitution is a "postulate of constitutional... construction." *Sessions v. Columbus County*, 214 N.C. 634, 638 200 S.E.2d 418, 420 (1939). Therefore, pursuant to the postulate of the constitutional construction stated in *Sessions*, the Court concludes that Article I, Sections 2, 3, and 5, require that the North Carolina Constitution should be harmonized with any applicable provisions of federal law, so as to avoid any conflict between the North Carolina Constitution and federal law.

2. Under a harmonized interpretation of Article I, Sections 2, 3, and 5 and Article II, Sections 3(3) and 5(3), the North Carolina Constitution prohibits the General Assembly from

dividing counties into separate Senate and House districts, except to the extent that counties must be divided to comply with federal law. Thus, the General Assembly must preserve county lines to the maximum extent possible, except to the extent counties must be divided to comply with Section 5 of the Voting Rights Act, to comply with Section 2 of the Voting Rights Act, and to comply with the U.S. Constitution, including the federal one-person one-vote requirements as set forth in *Mahan v. Howell*, 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320 (1973).

3. The redistricting plans enacted by the General Assembly in November 2001, known as the Senate 1C Plan (Pl. Ex. 14A) and the Sutton 3 Plan (Pl. Ex. 15A) divide counties more than are necessary to comply with the Voting Rights Act or the federal one-person one-vote requirements, and therefore violate the North Carolina Constitution.

4. Neither the Voting Rights Act, nor the objection issued by the United States Department of Justice ("USDOJ") on November 30, 1981 (Pl. Ex. 8), precludes this Court from interpreting the North Carolina Constitution or giving the Constitution an interpretation that has never before been presented to USDOJ for review under Section 5 of the Voting Rights Act. In fact, as to the forty counties covered by Section 5, the North Carolina Constitution incorporates the requirements of the Voting Rights Act and the USDOJ's November 1981 objection and therefore eliminates any conflict between federal and state law.

5. Based on the foregoing, defendants are permanently enjoined from conducting any primary or general election under the 1992 Senate and House Plans, the 2001 Senate and House Plans (Senate 1C and Sutton 3), or any other plans that divide counties for any reason other than: (a) the creation of districts needed to obtain preclearance under Section 5 of the Voting Rights Act; (b) the creation of districts needed to avoid liability under Section 2 of the Voting Rights Act; (c) maintaining the population deviation range between districts within the

limits approved in *Mahan v. Howell*, *supra*, for jurisdictions that prohibit the division of counties into separate legislative districts; and (d) any other divisions that are necessary to comply with the United State Constitution and applicable federal law.

6. Defendants have five (5) days to file a written submission with the court addressing the following issues:

(a) An approximate time period within which the North Carolina General Assembly may be allowed the opportunity to correct the constitutional defects in the 2001 Senate and House Plans (Senate 1C and Sutton 3), in default of which the court will undertake the task.

(b) A proposed election schedule to follow redistricting which provide for a primary election process culminating in a general election for State Senate and State House on November 5, 2002.

7. As a matter of both state and federal law, this order is immediately enforceable in the 60 counties in North Carolina that are not covered by Section 5 of the Voting Rights Act. However, any plans that the General Assembly prepares pursuant to this order, or any plans adopted by the court to provide a remedy, may not be administered in any of the 40 counties subject to the preclearance requirements of Section 5, until such time as the plans are precleared. *See Lopez v. Monterey County*, 525 U.S. 265, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999); *Hathorn v. Lovorn*, 457 U.S. 255, 265 n.16, 102 S. Ct. 2421, 2428 n.16, 72 L.Ed.2d 824 (1982); *McDaniel v. Sanchez*, 452 U.S. 130, 153, 101 S. Ct. 2224, 2238, 68 L.Ed.2d 724 (1981).

8. The court concludes that this remedial order interpreting the North Carolina Constitution, issued by a Superior Court in a county that is not covered by Section 5 of the Voting Rights Act, enjoining State election officials in Wake County, another county that is not covered by Section 5 of the Voting Rights Act, is not subject to preclearance under Section 5.

See Lake v. State Board of Elections, 798 F. Supp. 1199 (M.D.N.C. 1992) (three judge court). However, in order to avoid any possible conflict with federal law, consistent with the court's underlying interpretation of the North Carolina Constitution, the court exercises its discretion and stays defendants' obligation to comply with this order until such time as it is precleared pursuant to Section 5. Plaintiffs' counsel are appointed preclearance agents for the court pursuant to 28 C.F.R. 51.23 (1999) and are directed to seek immediate preclearance of this order.

9. Plaintiffs have requested that this injunction be given immediate effect. The court believes that in fairness to all parties, the voters, and the taxpayers, the constitutional issues in this case and the decision of whether plaintiffs will be given injunctive relief for the 2002 general elections should be decided by the Supreme Court of North Carolina. Over plaintiffs' objection, the court therefore stays this Order unless and until the stay is removed by the North Carolina Court of Appeals, or the North Carolina Supreme Court. If the North Carolina Court of Appeals or the North Carolina Supreme Court so directs, this court will provide a temporary remedy for the 2002 election cycle in the form of a constitutional redistricting plan for the Senate and House and seek preclearance of such temporary, remedial plans for use in the 2002 elections.

SO ORDERED.

This the day of February, 2002.

Knox V. Jenkins, Jr.
Senior Resident Superior Court Judge