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United States District Court, N.D. Illinois, Western
Division.

PEOPLE WHO CARE, et al., Plaintiffs,
v.
ROCKFORD BOARD OF EDUCATION SCHOOL
DISTRICT # 205, Defendant.

Civ.A. No. 89 C 20168. | Sept. 12, 1991.

Opinion

PRELIMINARY ORDER COMPELLING PLAINTIFFS AND DEFENDANT TO ENGAGE IN JOINT EFFORT WITH REGARD TO ELECTION ISSUES AND ENJOINING SCHOOL BOARD ELECTION

ROSZKOWSKI, District Judge.

BACKGROUND

*1 On July 7, 1989, this Court entered a Preliminary Injunction Order (“1989 Order”) which established extensive duties on the part of Defendant School District with regard to the racial integration of District No. 205 schools and the equalization of educational opportunities among the students of District No. 205. (Mem. Opinion and Order, July 7, 1989). In October, 1990, the Plaintiffs filed with the Court a Default/Contempt Petition alleging that Defendant was failing in numerous respects to carry out its duties as established in the 1989 Order.

On April 26, 1991, the Court entered by agreement of the parties a Second Preliminary Injunction Order (“Second Interim Order”). With one exception, entry of the Second Interim Order mooted all requests for immediate corrective action (Second Interim Order, par. A.12) raised in Plaintiffs’ Default/Contempt Petition. The allegation in the Default/Contempt Petition which gives rise to the one request for immediate corrective action not mooted by entry of the Second Interim Order is as follows:

13.B. *Discrimination in Creation of New Electoral Districts.* By referendum approved in November 1989, the District is obligated to establish single-member subdistricts for new elections in November 1991 of the entire membership of the Board. Since the present Board

is all white, despite the student enrollment of the District being 30% minority, it is evident that the delineation of the subdistrict electoral boundaries will determine the extent of minority representation on the Board and that it has crucial importance for the protection of the constitutional rights of the plaintiff class. Upon information and belief, the District (and persons in policy and management positions in the District) intend to gerrymander the electoral boundaries to preserve the eligibility of all of the white incumbent members, or otherwise to draw boundaries in a manner that minimizes and defeats the representational rights and interests of the plaintiff class. Because the District’s conduct with respect to the July 1989 Order demonstrates that the District is not fulfilling its obligations concerning the civil rights of plaintiffs in either a responsible manner or a good faith manner, this electoral-district aspect of the District’s conduct should be scrutinized in the Contempt Hearing. As part of its Remedial Order the Court should require the District to submit to the Court for its prior approval the electoral boundaries which the District proposes to adopt. This subparagraph is founded upon the Voting Rights Act as well as the Fourteenth Amendment.

The referendum referred to in Paragraph 13.B of the Default/Contempt Petition obligates Defendant to establish single-member subdistricts for new elections in November 1991. (Ill.Rev.Stat., Ch. 122, Par. 9–22).

Subsequently, on May 21, 1991, Defendant adopted a set of subdistrict boundaries and a corresponding electoral map (“Adopted Map”). On May 31, 1991, Defendant filed a Petition for Instructions wherein it sought a judicial resolution of the alleged invalidity of Defendant’s adopted map. Defendant urged the Court to take up that matter and to make a determination also of an issue raised by Plaintiffs’ counsel regarding the residency of candidates for the November, 1991, school board elections. Plaintiffs’ counsel had indicated orally to Defendant’s counsel that Plaintiffs intended to supplement their Default/Contempt Petition to allege that the action of Defendant—in proceeding with the November election preparations without a requirement that school board candidates be residents of the subdistricts they seek to represent—threatens to minimize and defeat the representational rights of minorities.

*2 In its Petition for Instructions the Defendant sought an expedited resolution of these issues because non-resolution would cast doubt on the Board’s status as a legally constituted governmental body (after the election), and would, therefore, leave in doubt (1) Defendant’s ability to comply with the Second Interim Order and other orders of this Court, and (2) Defendant’s ability to issue debt securities for compliance with the Court’s orders. In support of its Petition for Instructions, Defendant filed a

memorandum and Plaintiffs filed a responsive brief. Plaintiffs contended that Defendant's adopted map was inadequate under the Voting Rights Act because it did not provide for any subdistrict with a strong African American majority of total population and with at least a 50% African American voting age population. Plaintiffs presented with their response the first draft of an alternative map, and on July 15, 1991, submitted the final draft. Plaintiffs' alternative map succeeded in creating a subdistrict with a strong African American majority of total population and a 50% African American voting age population.

On August 2, 1991, Plaintiffs filed and the Court granted a motion to amend the Default/Contempt Petition for the purpose of joining as necessary parties-respondents to the Petition certain public officials responsible for the conduct of the November school board election. On July 18, 1991, the Court scheduled for August 14, 1991, an evidentiary hearing to resolve the issues raised by Paragraph 13.B of Plaintiffs' Default/Contempt Petition and by Defendant's Petition for Instructions. By newspaper publication on August 7, 1991, and August 13, 1991, notice of the August 14, 1991, hearing was given. The notice included publication of the parties' respective electoral maps to be introduced into evidence at the hearing, the street descriptions of the boundaries of these maps, notice of the issues to be addressed and notice to affected third-parties of their right to intervene in the August 14 proceeding. By Order of the Court, the parties on August 7, 1991, lodged with the Clerk of the Court for public inspection the parties' respective electoral maps to be introduced at the hearing. Neither on August 14, 1991, nor at any other time since the publication of the notices referred to in paragraph 11 above, has any person appeared for the purpose of intervening in the proceedings regarding the allegations raised in Paragraph 13B of Plaintiffs' Default/Contempt Petition.

On August 14, 1991, Plaintiffs sought, and the Court allowed, the filing of a supplement to Plaintiffs' Amended Default/Contempt Petition for the purpose of adding the allegation that Defendant's action in proceeding with the November election preparations without a subdistrict residency requirement for candidates threatens to minimize and defeat the representational rights of African Americans. Also on August 14, 1991, upon notice to the parties-respondents and in lieu of an evidentiary hearing, Plaintiffs and Defendant submitted to the Court certain stipulations and affidavits relating to the allegations raised in Paragraphs 13B and 13C of Plaintiffs' Amended Default/Contempt Petition.

*3 The Board of Election Commissioners of the City of Rockford, the County Clerk of Winnebago County, and the County Clerk of Boone County (hereinafter collectively referred to as the "Election Authorities") were represented before the Court on August 14, 1991.

FINDINGS AND CONCLUSIONS

Based upon the evidence submitted by the Plaintiffs (all of which is uncontroverted and appears to be substantial and credible) and upon the parties' stipulations, the Court concludes that there appears to be a strong likelihood that the implementation of Defendant's adopted map would violate Section 2 of the Voting Rights Act. More specifically, it appears from the evidence that the electoral subdistrict boundaries of Defendant's adopted map would fracture the African American community and, thereby, operate to minimize or cancel out the ability of African American voters to elect their preferred candidates. *See, Thornburg v. Gingles*, 478 U.S. 30, 348 (1986); *Ketchum v. Byrne*, 740 F.2d 1398 (7th Cir.1984). To succeed in establishing a Section 2 violation, Plaintiffs do not need to prove intentional discrimination. The evidence before the Court appears to be sufficient to meet the three-pronged test for Section 2 violations set forth in the Supreme Court's decision in *Gingles*. *Gingles*, 478 U.S. at 50-51.

Defendant and Plaintiffs have stipulated to certain predicate facts (*e.g.*, census figures on total and voting age population and residence) which support a finding that the African American community in School District 205 is sufficiently large and geographically compact to constitute a majority in a single subdistrict. As the census figures demonstrate, almost 70% of Rockford's African American population reside in a geographically contiguous and cohesive area in the southwest quadrant of Rockford. Within the southwest quadrant live approximately 25,671 persons, of whom approximately 15,489 (60.37%) are African Americans. Using the average subdistrict size of 25,884, there is ample population within the African American communities to form a subdistrict with a total population over 60% African American and a voting age population over 50% African American.

Moreover, under Defendant's adopted map, a single subdistrict with a voting age population over 50% African American has not been created. In fact, no subdistricts under the adopted map contain even an African American majority of *total* population. Instead, the African American population is "fractured" and significant groups of African American voters are separated from contiguous African American communities and assigned to white majority subdistricts. *See, Ketchum*, 740 F.2d at 1408 n. 8, 1409. Under Defendant's adopted map, the African American community in the southwest quadrant is divided among three subdistricts that contain a large white majority of both total and voting age population and one subdistrict that is comprised of 47% white voting age and 39% African American voting age population.

*4 Furthermore, uncontroverted evidence from Plaintiffs indicates that the African American community is politically cohesive. The African Americans in the School District have tended to vote as a group and to vote for African American candidates. Plaintiffs have also submitted uncontroverted evidence that the African American community is subject to majority bloc voting against its candidates.

Finally, the stipulations reveal significant additional social and historical factors which interact with the adopted map's fracturing of the African American community to cause minority vote dilution. These additional factors are supportive of Plaintiff's claim of minority vote dilution (*see, Gingles*, 478 U.S. at 47–48 & n. 15; *Ketchum*, 740 F.2d at 1405), and include lower income levels, depressed housing conditions, and racial isolation in schools for African Americans in Rockford.

In addition to a violation of Section 2 of the Voting Rights Act, Plaintiffs have also alleged in their Default/Contempt Petition a violation of the Fourteenth Amendment of the United States Constitution. (*See*, par. 13c, Pl.'s supplement to Amended Default/Contempt Petition). In order to establish such a violation, Plaintiffs would be required to demonstrate that the Defendant had *intentionally* discriminated against minorities in its adoption of electoral boundaries. *City of Mobile v. Bolden*, 446 U.S. 55, 66 (1980). If Plaintiffs could make out such a violation, there would, however, "be no difference in the practical result or in the available remedy" in this redistricting case as compared to the result and remedy available under Section 2, of the Voting Rights Act. *Ketchum*, 740 F.2d at 1409–10. Accordingly, should there be found to be a violation of Section 2, it will not be necessary at this time to reach the Plaintiffs' Fourteenth Amendment claim. *See, Id.*

Though there appears to be a strong likelihood that Defendant's adopted map violates Section 2 of the Voting Rights Act, Plaintiffs' alternative electoral map appears to conflict with the Illinois statutory requirement that the territories circumscribed by school district boundaries be "compact and contiguous." Ill.Rev.Stat., Ch. 122, Par. 9–22. Upon a finding of a Section 2 violation this Court would have authority under the Supremacy Clause of the United States Constitution to impose, if necessary, a remedy that contravenes State statutory law. *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985). Nevertheless, under principles of Federal–State comity, where possible this Court should avoid or minimize federal preemption of state laws. *Id.* In addition, under Federal law, though "[t]he virtues of compactness and contiguity cannot override the court's statutory ... obligation to provide a complete remedy" for a Section 2 violation, as a general rule, Federal courts faced with the task of fashioning new boundaries "should attempt to draw district lines 'with an eye to compactness,

contiguity, and the preservation of natural, political and traditional boundaries.'" *Dillard v. Town of Louisville*, 730 F.Supp. 1546, 1549 (M.D.Ala.1990), quoting, *Marshall v. Edwards*, 582 F.2d 927, 937 (5th Cir.1978), *cert. denied* 442 U.S. 909 (1979).

*5 This Court's review of Defendant's adopted map, Plaintiffs' alternative map, and the evidence submitted suggests a reasonable possibility that electoral subdistrict boundaries can be drawn that comport with the dictates of the Voting Rights Act, with State law requirements and with Federal legal norms of compactness and contiguity. Accordingly, a structured effort, with the participation of the parties, to expeditiously develop a new electoral map would be advantageous under the special circumstances of this case. These circumstances include the following:

(1) The Court's Second Interim Order compels substantial actions on the part of Defendant in all significant aspects of administering the School District for the purpose of effecting racial integration and equalization of educational opportunities. Defendant's duties under the Second Interim Order call for substantial financial commitments by Defendant. Expedited resolution of the electoral boundaries issue is necessary to remove doubt, created by Plaintiffs' allegations, as to the post-election status of the Board as a legally constituted governmental body. (Affidavit of Daniel L. Johnson.) The possibility of post-election judicial invalidation of Defendant's adopted map, and, therefore, of the newly elected Board, is critical to Defendant's ability to obtain credit *at the present time*. (*Id.*) An inability on the part of Defendant to obtain credit would substantially impair Defendant's efforts to comply with the Second Interim Order for the upcoming school year, which starts August 26, 1991.

(2) An effort at resolution, allowing for participation of the parties and their experts, within guidelines set by the Court, is more expeditious than a two-tiered liability and remedy proceeding before this Court.

(3) The need for expeditious resolution of the electoral boundaries issue is not due to any delay on the part of any party to these proceedings. Although the electoral boundaries issue was first raised by Plaintiffs in October of 1990 in Paragraph 13B of Plaintiffs' Default/Contempt Petition, the allegation was made upon information and belief as to what Defendant intended to do but had not yet done with regard to adoption of an electoral map. Immediately upon Defendant's adoption, on May 21, 1991, of its adopted map, Defendant filed its Petition seeking instruction from the Court as to both the validity of its map and the requirement of board member subdistrict residency. Plaintiffs' response to Defendant's Petition for Instructions was filed soon thereafter, and, with the permission of the Court, Plaintiffs joined as necessary parties-respondents the election commissioners and county clerks. On August 14, 1991, pursuant to order

of Court, the parties submitted evidence, which included stipulations, in an effort to avoid unnecessary litigation over undisputed facts.

(4) At all times since the filing of its Petition for Instructions, Defendant has expressed to the Court its good faith willingness to alter its adopted map to conform to the dictates of Section 2 of the Voting Rights Act.

*6 (5) At all times since the filing of their response to Defendant's Petition for Instructions, Plaintiffs have also expressed to the Court their good faith willingness to alter their alternative map to conform to the dictates of Section 9–22 of the Illinois School Code.

A decision to delay a scheduled election is within the sound discretion of the court, and such a decision must be based upon a thoughtful consideration of the equities involved. *Neal v. Harris*, 837 F.2d 632, 634 (4th Cir.1987); *Banks v. Board of Educ., City of Peoria School District*, 659 F.Supp. 394, 402–03 (C.D.Ill.1987). Upon careful consideration of all the circumstances in this case, the Court finds that it is in the best interests of the public, including the voters, taxpayers, students and parents of students of Rockford School District No. 205, to delay the school board election scheduled for November 5, 1991, until March 17, 1992, to be held simultaneously with the General Primary scheduled for that date. The circumstances warranting this delay include the following:

(1) Due to the late date and the burdens that would be placed upon the Election Authorities, proceeding with the November 5th election as scheduled, based upon an election map that the parties will have developed within the guidelines set by this court, would be physically impossible.

(2) Even if a November 5th election with a new map were physically possible, the radically shortened time lines for pre-election filings and proceedings would be unfair to all candidates, potential candidates, objectors to candidates and voters.

(3) Proceeding with the November 5th election based upon the adopted map followed by a special election based upon the newly developed map would do nothing to alleviate the problems recited above and would add the further factor of a governing board, the constitution of which has already been declared suspect by this Court. Unlike cases involving legislative bodies that were previously elected by the same election practice or procedure the legality of which was at issue, there have been no allegations that the present Board of Education, elected at-large, is illegally constituted. Only a November 5th election based upon the adopted map would create a Board of Education tainted by the probable Voting Rights Act violation found herein.

(4) Proceeding with the November 5th election, based upon the adopted map followed by a special election based upon the newly developed map, would result in a Board of Education with an extremely truncated tenure. The School District will likely have difficulty attracting qualified new candidates to run for such a short-term school board. Further, the holding of two elections within 4 ½ months would disrupt the continuity of leadership essential for both the implementation of this Court's orders and the governance of the School District generally.

(5) Proceeding with the November 5th election, based upon the adopted map followed by a special election based upon the newly developed map, would create unnecessary confusion to the voters and cost to the taxpayers.

*7 (6) Delaying the school board election until an election map is adopted that meets the requirements set forth in this order and until the next regularly scheduled election date under State law, avoids the problems recited in subparagraphs (1) through (5) above in that it accomplishes the following: it gives the Election Authorities enough time to prepare for the election; it permits voters and candidates adequate time to prepare for the election; it avoids the creation of a school board for any length of time the constitution of which is tainted by allegations or findings regarding Voting Rights Act violations; it avoids the discontinuity of leadership inherent in a school board with an extremely short tenure of office; and it limits, albeit without eliminating, the voter confusion and the extra taxpayer cost that would result under the alternative schemes.

The Court does not, however, reach at this time the issue of whether Illinois law presently requires that school board members elected by subdistricts pursuant to Section 9–22 of the Illinois School Code (Ill.Rev. Stat., ch. 122, par. 9–22) must reside within the subdistricts by which they are each elected. Both parties have submitted legal memoranda on the issue and Plaintiffs have submitted arguments that subdistrict residency is required. Defendant does not argue in favor of or against a subdistrict residency requirement, but seeks this Court's instructions on the issue in order that it may avoid liability under the Voting Rights Act and the United States Constitution while attempting to comply with this Court's orders. In light of the fact that legislation is currently pending before the Illinois General Assembly on this issue, and the fact that the school board election is being delayed by order of this Court, the Court need not decide this issue at this time.

CONCLUSION

The Court hereby orders the following:

1. Plaintiffs shall submit by September 23, 1991, a proposed set of subdistrict boundaries that conform to the requirements of Section 2 of the Voting Rights Act and Section 9–22 of the Illinois School Code. Specifically, the proposed electoral map should contain:

(a) a subdistrict with a total voting age population over 50% African American;

(b) no subdistrict that has an “excessive majority” of African Americans (*Gingles*, 478 U.S. at 46 n. 11); and,

(c) subdistrict boundaries that circumscribe only territories that are “compact and contiguous” as that phrase is defined under Illinois law.

2. Not later than October 10, 1991, the School District shall complete its consideration of the map proposed by Plaintiffs. Such consideration shall include at least one public hearing convened with at least seven days notice.

3. The parties are to appear before this Court on October 11, 1991, at 10:00 a.m. to report to the Court on the

results of the foregoing effort.

4. The November 5, 1991, school board election for Rockford School District No. 205 is delayed until March 17, 1992. The School District and the Election Authorities are enjoined from conducting said election on the time schedule set by Illinois law for the November 5, 1991, nonpartisan election, but are ordered to take all actions otherwise required by Illinois election law. The parties and the election authorities shall submit, by October 11, 1991, a revised calendar incorporating such a schedule. For any actions required by Illinois election law, but not provided for by the revised schedule, the School District and Election Authorities shall act according to the time schedule for the March 17, 1992, general primary election to the extent said schedule is applicable.

*8 4. This Court will rule no later than December 15, 1991, on the issue of whether school board members elected by subdistricts must reside within such subdistricts, taking into consideration any action or inaction before such date by the Illinois General Assembly relating to this issue.