UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

KATE CALVIN, JOHN NELSON, CHARLES J. PARRISH, LONNIE GRIFFIN, AND CONCERNED UNITED PEOPLE,

***Plaintiffs*,**

v. **CASE NO. 4:15CV131-MW/CAS**

JEFFERSON COUNTY BOARD OF COMMISSIONERS, JEFFERSON COUNTY SCHOOL BOARD, AND MARTY BISHOP, SUPERVISOR OF ELECTIONS OF JEFFERSON COUNTY, IN HIS OFFICIAL CAPACITY,

***Defendants*.**
_____/

ORDER APPROVING DEFENDANTS' PLAN

Defendants have submitted a proposed districting plan. ECF No. 52. Plaintiffs claim that this plan violates a 1985 consent decree that served as the basis for a stipulated judgment in this Court. ECF Nos. 55 & 57. For the reasons set forth below, this Court disagrees. The plan may not be perfect, but Plaintiffs have not shown that it violates any federal or state law or that it violates the 1985 consent decree.

As an initial matter, it's necessary to clarify what the "consent decree" requires. In late 1985, Judge Maurice M. Paul of this Court entered a judgment that had been agreed to by the parties, which certainly sounds like a consent decree. "A consent decree no doubt embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 378 (1992). There was some suggestion at the telephonic hearing held on April 15, 2016 that there's more to the consent decree—that there's some other agreement which includes terms not spelled out in the final judgment. If there is some additional agreement, the parties have not pointed this Court to it. At any rate, it is the judgment and attachments thereto that must be considered first. *See, e.g.*, *Ahern v. Bd. of Educ. of City of Chicago*, 133 F.3d 975, 981 (7th Cir. 1998) ("Although consent decrees have the force of a court order, they are also a form of contract to be construed according to basic principles of contract interpretation.").

The judgment entered by Judge Paul does a few things:

(1) it enjoins Jefferson County from using county-wide at-large elections in a manner that violates the Voting Rights Act, ECF No. 52-1, at 7;

(2) it adopts an election plan for "future elections," *id.*; and

(3) it provides that "all elections henceforth will proceed on a single district basis; that is all candidates in future elections must reside in the residence area for which they seek election and only voters in that particular residence area shall cast ballots for the particular candidate running in that area," *id.* at 8.

Defendants' plan clearly doesn't violate items (1) or (3). Plaintiffs' contention is apparently that Defendants' plan violates the decree by using an election plan that is in some sense inconsistent with the plan adopted in 1985, and therefore violates item (2). Obviously the new plan is not the same as the old one—Jefferson County has redistricted many times since 1985 in light of population and demographic changes—but Plaintiffs' claim is that the new plan violates the "spirit" of the old one. ECF No. 55-1, at 2. In particular, Plaintiffs claim that the new plan violates the requirement that District 3 be a "balance" district. ECF No. 57, at 2–3. This argument fails for two reasons.

First, Plaintiffs have failed to show that the "spirit"—as opposed to the terms—of the consent decree is sufficiently ascertainable and articulable that it should be enforced as they request. No doubt the 1985 judgment was intended to address a history of racial discrimination in Jefferson County, and to that end the practice of at-large elections was ended and single-member districts were drawn in a way to allow African-Americans to elect their candidates of choice. *See* ECF No. 52-1, at 7–8. These provisions are clearly enforceable. Certainly the consent decree as a whole was intended to increase African-American political power in Jefferson County. But that doesn't mean that the consent decree requires (or perhaps even allows) this Court to *maximize* such political power upon redistricting. *Cf. Lelsz v. Kavanagh*, 807 F.2d 1243, 1253 (5th Cir. 1987) ("If . . . a federal court may take almost any action against a state to enforce a consent decree so long as it is 'consistent with' the 'spirit' of the applicable constitutional law and the decree itself, there is no limitation on the scope of the court's power."); *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 574 (1984) ("It is to be recalled that the 'scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it' or by

what 'might have been written had the plaintiff established his factual claims and legal theories in litigation.'") (quoting *United States v. Armour & Co.*, 402 U.S. 673, 681–82 (1971)).

Second, to the extent the consent decree contains an enforceable provision in its spirit requiring that there be a "balance" district, Plaintiffs haven't shown that the new plan violates that provision. Plaintiffs have not shown that 40.8%—the percentage of the voting age population that was African-American in the "balanced" district under the 1985 plan—is a magic number that must be satisfied under the markedly different demographic facts present today. Of course 40.8% is better than 38.24% (the number under Defendants' plan) for purposes of maximizing African-American political strength, but Plaintiffs haven't shown that the difference would actually lead to loss of political opportunity. True, Plaintiffs' expert opines that Plaintiffs' plan[1] "will afford African Americans the best opportunity to elect their candidate of choice in a second district," ECF No. 55-1, at 9, but by that reasoning it's hard to see why one should stop at 40.8%, or even 41.65%.

[1] Under Plaintiffs' proposed plan, the voting age population of District 3 would be 41.65% African-American. ECF No. 55-1, at 5.

In the absence of a consent decree, there is no doubt that Defendants' plan would have to be accepted. "Where . . . [a] legislative body . . . respond[s] [to an invalidated districting scheme] with a proposed remedy, a court may not thereupon simply substitute its judgment of a more equitable remedy for that of the legislative body; it may only consider whether the proffered remedial plan is legally unacceptable because it violates anew constitutional or statutory voting rights—that is, whether it fails to meet the same standards applicable to an original challenge of a legislative plan in place." *McGhee v. Granville Cty.*, 860 F.2d 110, 115 (4th Cir. 1988) (citing *Upham v. Seamon*, 456 U.S. 37, 42 (1982)). The consent decree doesn't change anything, because (1) it doesn't appear to require that there be a second "balanced" district and (2) even if it does, Plaintiffs have not shown that District 3 in Defendants' plan isn't such a district. Plaintiffs' version of District 3 is certainly better for purposes of maximizing African-American political power, but Plaintiffs haven't shown that the difference is one that violates the terms or spirit of the consent decree. Accordingly,

IT IS ORDERED:

1. Defendants' proposed districting plan as described in ECF No. 52 is accepted.

2. The Clerk shall enter judgment stating "IT IS ORDERED AND ADJUDGED that judgment be entered in favor of Plaintiffs and against Defendants. The districting plans or schemes used by the Jefferson County Board of County Commissioners and the Jefferson County School Board are hereby declared to be in violation of the Equal Protection Clause of the Fourteenth Amendment. Defendants and their officers, agents, servants, employees, and attorneys, and those other persons who are in active concert or participation with them, shall not use these districting schemes or allow them to be used in future elections. Defendants shall take the necessary steps to ensure that the Court-approved districting plan, ECF No. 52, is officially adopted."
3. This Court retains jurisdiction to settle issues relating to attorney's fees and other ancillary matters.
4. The Clerk shall close the file.

SO ORDERED on April 18, 2016.

s/Mark E. Walker
United States District Judge