

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

FEB 21 2003

CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

JOAN HALL, RICHARD PRUITT,)
THOMASINA PRUITT, VIVIAN CURRY,)
ELIJAH SHARPE, EUNICE MCMILLAN,)
JAMES SPELLER, ROBBIE GARNES,)
and LESLIE SPEIGHT,)

Plaintiffs,)

COMPLAINT 2 03-CV-151

Civil Action No.:

COMMONWEALTH OF VIRGINIA, and)
JEAN JENSEN, SECRETARY,)
STATE BOARD OF ELECTIONS)
in her official capacity.)

Defendants.)

I. INTRODUCTION

1 On July 10, 2001, after reviewing several alternative redistricting plans, the Virginia General Assembly passed House Bill 18, the existing Congressional district plan (the "2001 Redistricting Plan"), for the Commonwealth of Virginia. Former Governor Jim Gilmore signed the 2001 Redistricting Plan into law on July 19, 2001, to be used for elections beginning in 2002.

Plaintiffs file this action seeking declaratory and injunctive relief to prevent the State from further using the enacted congressional plan. The plan significantly reduces the African-American population in what was Virginia Congressional District 4 ("Fourth Congressional District"). This reduction in the African-

American population's share of the Fourth Congressional District is neither necessary nor justified.

3. The new plan dilutes the voting strength of African-American voters in the Fourth Congressional District to such an extent that in the totality of the circumstances it leaves them with significantly less of an opportunity to elect a representative of their choice to the United States Congress than white voters, in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973.
4. In addition, when measured against the former district plan, the 2001 Redistricting Plan decreases the voting efficacy of African American voters and constitutes a retrogression in their ability to elect their preferred candidates, in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C § 1973.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343; and 42 U.S.C. § 1973j(f). Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.
6. Venue is proper pursuant to 28 U.S.C. §§ 1391(b)(2) because this is the district in which a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred.

III. PARTIES

7. Plaintiffs are citizens and registered voters residing in the former and present Fourth Congressional District. Plaintiffs have standing to bring this action under 42 U.S.C. § 1983 to redress injuries suffered through the deprivation, under color of state law, of rights secured by the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973.
8. Plaintiff Joan Hall is an African-American citizen above the age of eighteen who is registered to vote. She is a resident of the current Fourth Congressional District and was a registered voter in the former Fourth Congressional District prior to implementation of the 2001 redistricting plan.
9. Plaintiff Leslie Speight is an African-American citizen above the age of eighteen who is registered to vote. She is a resident of the current Fourth Congressional District and was a registered voter in the former Fourth Congressional District prior to implementation of the 2001 redistricting plan.
10. Plaintiff Vivian Curry is an African-American citizen above the age of eighteen who is registered to vote. She is a resident of the current Third Congressional District and was a registered voter in the former Fourth Congressional District prior to implementation of the 2001 redistricting plan.
11. Plaintiff Elijah Sharpe is an African-American citizen above the age of eighteen who is registered to vote. He is a resident of the current Third Congressional District and was a registered voter in the former Fourth Congressional District prior to implementation of the 2001 redistricting plan.
12. Plaintiff Eunice McMillan is an African-American citizen above the age of eighteen who is registered to vote. She is a resident of the current Third

- Congressional District and was a registered voter in the former Fourth Congressional District prior to implementation of the 2001 redistricting plan.
13. Plaintiff James Speller is an African-American citizen above the age of eighteen who is registered to vote. He is a resident of the current Third Congressional District and was a registered voter in the former Fourth Congressional District prior to implementation of the 2001 redistricting plan.
14. Plaintiff Robbie Gaines is an African-American citizen above the age of eighteen who is registered to vote. He is a resident of the current Fifth Congressional District and was a registered voter in the former Fourth Congressional District prior to implementation of the 2001 Redistricting plan.
15. Defendant Commonwealth of Virginia is the entity responsible for reapportioning electoral districts for the Members of the House of Representatives of the United States elected by Virginia citizens and residents.
16. Defendant Jean Jensen, Secretary of the State Board of Elections, is responsible for the administration and supervision of the election laws of the Commonwealth of Virginia and has the responsibility for the administration and supervision of the election of members to the United States House of Representatives from the Commonwealth of Virginia. She is sued solely in her official capacity.

IV. FACTUAL ALLEGATIONS

17. According to 2000 census data, the total population of the former Fourth Congressional District was 645,733, of whom 254,167 (39.4%) were African-American. The population of the Fourth Congressional District after the

implementation of the 2001 Redistricting Plan is 643,447 of whom 215,935 (33.6%) is African-American.

18. In comparison with the prior Fourth Congressional District, the 2001 Redistricting Plan reduces the percentage of Fourth Congressional District residents who are African-American by nearly 6% of the total population and decreases the size of the African-American community within that district by 15%.
19. In comparison with the Maxwell-Crittenden plan, the Deeds plan and Congressional Plan 188, the 2001 Redistricting Plan reduces the percentage of Fourth Congressional District residents who are African-American by 19.2%, 6.7% and 6.8% respectively.
20. The African-American voters displaced by the 2001 Redistricting Plan from the Fourth Congressional District were reassigned to either the Fifth Congressional District or the Third Congressional District. Reassignment of black voters from the "old" Fourth Congressional District to the Third Congressional District dilutes African-American voting strength not only by reducing black voting strength in the Fourth Congressional District, but also by wasting the votes of African-Americans through packing into the Third Congressional District.
21. On June 19, 2001, prior to approval of the 2001 Redistricting Plan, the Commonwealth held a special election for the U.S. House of Representatives seat in the Fourth Congressional District ("Forbes/Lucas Race"). The candidates for the seat were Republican Randy Forbes ("Forbes") and Democrat Louise Lucas ("Lucas").

22. Lucas was the candidate favored by African-American voters. She won the majority vote in all but one of the majority African-American cities and counties in the Fourth Congressional District.
23. The June 19, 2001 special election took place one week after the gubernatorial election. Because of its proximity to the larger election, the special election garnered less attention than usual. This led to an overall low voter turn-out of 38% among all voters in the district.
24. Even under the challenging conditions of running in a special election held one week after a gubernatorial vote and in a non-majority African-American district, Lucas gained 48% of the district-wide vote, only slightly less than the 52% majority vote for Forbes.
25. The Forbes/Lucas Race, along with other past election results, indicate that in the former Fourth Congressional District, African-American voters would have the opportunity to elect a candidate of their choice with some white cross-over votes in a district that is approximately 40% or greater African-American in population.
26. African-American voters in the former Third Congressional District are numerous enough and politically cohesive such that they would have an opportunity to elect a candidate of their choice in a district that is less than approximately 54% black in total population such that compliance with Section 5 of the Voting Rights Act did not require maintaining precisely the same percentage of black voters in that district as existed in the former Third Congressional District.

27. As evidenced by the Forbes/Lucas Race and other elections, African-Americans in the former Fourth Congressional District are politically cohesive in that they tend to vote as a bloc.
28. Lucas did not receive the majority vote in the majority-white areas in the district except Suffolk City. In Suffolk City, she won by only a 1.5% margin in the 53.8% majority-white city. African-Americans make up 43.5% of the population in Suffolk City.
29. Anecdotal evidence and the election results of the Forbes/Lucas race, and other elections, indicate that the white voters in the Fourth Congressional District are politically cohesive and tend to vote as a bloc in numbers sufficient usually to defeat the candidate of choice of black voters.
30. Elections in the Commonwealth of Virginia are still characterized by a racially divided electoral environment. Lucas received less support, including financial support, from members of her own party than she would have received if she had been a White Democratic candidate.
31. The voting strength of African Americans within the Fourth Congressional District has diminished since the enactment of the current plan. Under the 2001 Redistricting Plan, a critical number of Lucas's African-American voters were removed from the Fourth Congressional District. Facing this lack of a sufficient voting base, Lucas withdrew her bid for the U.S. House of Representatives in August, 2002. Consequently, the remaining African-American voters of the Fourth Congressional District were left without a candidate of their choice and in

a worse circumstance than before the 2001 Congressional District Plan was enacted.

32. The 2001 Redistricting Plan decreases the number of African-Americans in the Fourth Congressional District to the point at which African-American voters no longer have any effective opportunity to elect a candidate of their choice in Congressional elections.
33. Other Congressional redistricting plans proposed to the Virginia legislature would not have diluted the voting strength of African-American voters in the Fourth Congressional District. One such plan was Congressional Plan 188. If passed, Congressional Plan 188 would have increased the African-American voting population in the Fourth Congressional District to 40.4%. This plan allowed African-American voters in the district to keep their ability to elect a candidate of choice and/or influence Congressional elections while still maintaining a majority-white Fourth Congressional District. The Deeds Plan, House bill 19, would have increased the population of African-Americans in the Fourth Congressional to 40.3% and provided African-American voters an opportunity to elect a candidate of choice to Congress. A third alternative plan, the Maxwell-Crittenden plan, would have increased the population of African-Americans to 52.8% to create an African-American majority district and provided African-American voters an opportunity to elect a candidate of choice to Congress.
34. The 2001 Redistricting Plan enacted by the Commonwealth of Virginia reduced the percentage of African-Americans in the Fourth Congressional District more than any other plan proposed during the redistricting process.

35. African-Americans in Virginia, particularly those in the Fourth Congressional District, suffer the present effects of past official discrimination.
- African-Americans in the Fourth Congressional District have fewer opportunities for housing, education, health care and employment than non-African Americans.
- African-Americans continue to fall behind the white population on common measures of socio-economic status, educational attainment, and access to the resources necessary to participate effectively in the political process.
36. As a result of past racially discriminatory election procedures, the Commonwealth of Virginia is one of sixteen states that are required to gain pre-clearance from the Department of Justice or the United States District Court for the District of Columbia prior to the enactment of new redistricting plans.
37. The Department of Justice pre-cleared the 2001 Redistricting Plan on October 16, 2001, despite a community outcry opposing the plan.
38. Under the totality of the circumstances, the 2001 Redistricting Plan denies black voters in the Fourth Congressional District an equal opportunity to elect candidates of their choice to the U.S. House of Representatives by significantly reducing the percentage of African-American voters in the Fourth Congressional District.
39. The allegations of the preceding paragraphs show that the 2001 Redistricting Plan, as passed by the Virginia General Assembly, signed into law by former Governor Jim Gilmore, used in the 2002 elections and which will be used in every Congressional election thereafter until 2012, has the effect of diluting the voting strength of African-American voters in the Commonwealth of Virginia and

particularly in the Fourth Congressional District. This plan thereby denies African-American voters in the Fourth Congressional District an equal opportunity to that of whites to elect candidates of their choice to the U.S. House of Representatives, in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973. The plan also fragments African-American population concentrations among different districts, ignores compactness and contiguity, and unnecessarily packs African-American voters into the Third Congressional District without justification.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

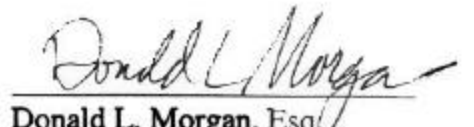
1. Assume jurisdiction of this action.
2. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57, declaring that the 2001 Redistricting Plan for the Virginia Fourth Congressional District dilutes the voting strength of black voters in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973.
3. Issue preliminary and permanent injunctions enjoining the defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the current district boundaries for the Fourth Congressional District of Virginia, including enjoining the Defendants from conducting any elections for the U.S. House of Representatives, Virginia Fourth District, based on the 2001 Redistricting Plan.

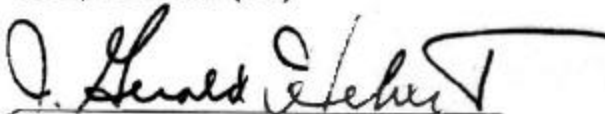
4. Retain jurisdiction over this action until districting plans are in place that comply with the requirements of the Voting Rights Act of 1965 and give African-American voters an equal opportunity to elect candidates of choice to the U.S. House of Representatives from the Fourth Congressional District.
5. Make all further orders as are just, necessary, and proper to ensure complete fulfillment of this Court's declaratory and injunctive orders in this case.
6. Issue an order requiring the defendants to pay plaintiffs' costs, expenses and reasonable attorneys' fees incurred in the prosecution of this action, as authorized by the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. § 1988.
8. Grant such other and further relief as it deems is proper and just.

This 20th day of February, 2003.



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