

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RENE ROMO, et al,

CASE NO: 2012-CA-412

Plaintiffs,

vs.

KEN DETZNER and PAM BONDI,

Defendants.

THE LEAGUE OF WOMEN VOTERS
OF FLORIDA, et al,

CASE NO: 2012-CA-490

Plaintiffs,

vs.

KEN DETZNER, et al,

Defendants.

2014 AUG - 1 A 11: 23
C-04
GOB HYZER
CLERK OF CIRCUIT COURT
LEON COUNTY FLORIDA

FILED

ORDER ON DEFENDANTS' MOTION TO AMEND THE JUDGMENT

In the Final Judgment entered in this case on July 10, 2014, I found the congressional map drawn by the Legislature to be unconstitutional, specifically finding that certain districts would have to be redrawn. I reserved jurisdiction to enter such additional orders as may be necessary to effectuate an equitable remedy. To date, I have not been presented with a proposed remedial map by the Legislative Defendants and the parties differ wildly as to what should be done at this point.

The Legislative Defendants argue that the only proper remedy is to have them draw a remedial map to conform with the judgment. They further argue that I should amend or clarify the judgment to specify that the 2014 congressional elections will go forward under the present map, and that the remedial map will not be applicable until the

2016 election cycle.

The Plaintiffs urge me to adopt one of their proposed remedial maps, draw one myself, have an independent expert draw one, or if the Legislature is to redraw the map, that I give them specific, detailed instructions on how to do so. Whichever method I choose, however, the Plaintiffs say I must act quickly to modify the election schedule and take any other actions necessary to insure that representatives will be elected in 2014 under the revised map.

For the reasons set forth below, I find the Defendants' positions more sensible and legally sound on almost all points. However, I cannot at this time rule out the possibility of holding 2014 elections for certain districts under a revised map, and thus deny the motion to amend the judgment. Because of time constraints, I will not discuss each argument of the parties in detail, but will attempt to address the key issues.

I agree that the Legislature should redraw the map. Unless and until it becomes obvious that it cannot or will not do so, I will not consider other options. I also agree that it is not necessary or appropriate for me to give specific directions on how to do so, nor to dictate what process they follow. The Legislature's only obligation is to produce a constitutionally compliant map. The case law seems clear to me on this point. It also seems clear that until we have a map in place, and we know what districts are affected, it is difficult, if not impossible to evaluate whether an election with altered district lines in those affected districts is feasible prior to the new Congress taking office in January 2015.

Even if a revised map was in place today, the legal and logistical machinations it would take to have the election take place on November 4th under that revised map is not

something justified by law or common sense. There is just no way, legally or logistically, to put in place a new map, amend the various deadlines and have elections on November 4th, as prescribed by Federal law. It is also not an option to have a special election after the general election is held, as I would no longer have jurisdiction over the matter. However, it might be possible to push the general election date back to allow for a special election in 2014 for any affected districts. This is one of the options advanced by Plaintiffs.

The Defendants argue that there is no legal authority for such a remedy, and that even if there was such authority, it would still be too late to have a proper election. It's a fairly compelling argument. Despite the legal maxim that for every wrong there is a remedy, our laws do not always allow the most efficient, the most satisfying remedy for those who have been wronged. From the perspective of equity, the cure should not be worse for the patient than the illness. To develop a new map and hold a special election for some congressional representatives would cost more money, would place additional burdens on our election officials and might confuse some voters. On the other hand, to do nothing, when you could, means that you lessen the ability of many citizens to fairly elect a representative of their choice -- which is the effect of political gerrymandered districts. You must tell them that even though they have been deprived of the equal right of having a say in who represents their interests in congress for two years, they must wait another two.

It may be that I ultimately agree after further proceedings, research, or evidence that elections for affected districts under a new map in 2014 is not legally authorized or logistically practicable. But I am not there yet, on the record before me and the case law

provided. There is authority that both justifies pushing back the November 4th election date and suggests that logistically, it can be done. Under the circumstances before me, I believe the law requires that I at least consider the possibility.

I found no case right on point to guide me but the case of *Busbee v. Smith*, 549 F. Supp. 494 (D. D.C. 1982) seems factually and legally analogous. In *Busbee*, the State of Georgia failed to legally draw two congressional districts. The State had violated the Voting Rights Act, and was denied Department of Justice pre-clearance. The court found that the Federal election date could be moved because 2 U.S.C. § 8 allowed for flexibility under exigent circumstances

We do not deal here with the VRA but the *Busbee* court's analysis and its interpretation of 2 U.S.C § 7, which sets the date for elections to congress, and 2 U.S.C. § 8, which provides for exceptions, is nonetheless instructive.

“We construe this section to mean that where exigent circumstances arising prior to or on the date established by section 7 preclude holding an election on that date, a state may postpone the election until the earliest practicable date. In this case, for example, Georgia will "fail [] to elect at the time prescribed by law" because its purposefully discriminatory conduct prevented it from securing section 5 approval for constitutionally required changes in its voting procedures.” *Busbee v. Smith*, 549 F. Supp. 494 at 525.

In this case, as in *Busbee*, the State finds itself facing elections under an unlawful redistricting plan. It's not the result of a conflicting federal law, which the Defendants consider crucial to the *Busbee* holding. But a natural disaster is not the result of conflicting federal laws either, but it was given by the *Busbee* court as an example of the type of exigent circumstances that would justify a state in conducting special elections

after the date specified in section 7. It would seem that a finding of exigent circumstances in this case is consistent with the *Busbee* court's interpretation of sec 7 and 8, justifying a later election date for selected districts.

It is necessary to get a revised map in place and for me to consider additional evidence as to the legal and logistical obstacles to holding delayed elections for affected districts in 2014. Time is of the essence. The Legislature has shown following the Supreme Court's order in *Apportionment I* that it is capable of adopting and submitting a remedial map very quickly when time is of the essence. Indeed, I would be surprised if its staff has not already prepared alternatives for consideration by the members.

The Plaintiffs and the NAACP as Intervener Defendant should have an opportunity to object to any revised map. The Secretary of State and the Supervisor of Elections are in the best position to propose a special election date and concomitant schedule for consideration under a revised map, and to articulate any obstacles to an orderly election under such a schedule.


Accordingly, it is Ordered as follows:

1. The Legislature shall submit a remedial or revised map no later than noon on August 15, 2014;
2. The Secretary of State and Supervisors of Elections shall collaborate to present by noon, August 15th, 2014, a proposed special election schedule and comments or suggestions regarding the conduct of such an election, assuming a revised map will be in place no later than Aug 21;
3. By noon, August 18th, 2014, the parties shall submit objections, if any, to the

revised map and or election schedule;

4. Oral Argument, if appropriate will be heard on objections to the map and/or proposed election schedule on August 20th at 9:00 a.m. in a Courtroom to be announced at the Leon County Courthouse, Tallahassee, Florida.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida, this
1st day of August, 2014.


TERRY P. LEWIS, Circuit Judge

Copies to:

All parties of record