

STATE OF RHODE ISLAND

SUPERIOR COURT

PROVIDENCE/BRISTOL, S.C.

MICHAEL PUYANA)
)
 Plaintiff,)
)
 v.)
)
 STATE OF RHODE ISLAND;)
 GORDON FOX, in his official)
 capacity as Speaker of the Rhode)
 Island House of Representatives;)
 RALPH MOLLIS, in his official)
 capacity as Secretary of State of)
 Rhode Island. and, RHODE)
 ISLAND BOARD OF ELECTIONS)
)
 Defendant)

CIVIL ACTION NO. PC-2012-

COMPLAINT

Introduction

1. This is an action under Article VII, § 1 of the Constitution of the State of Rhode Island, and R.I. Pub. Laws. 2012, ch. 7, § 2,
2. The plaintiffs seek, inter alia, the following relief: (i) a declaratory judgment holding R.I. Gen. Laws §§ 22-2-2, as enacted by R.I. Pub. Laws. 2012, ch. 7, § 2, which reapportioned and redistricted the Rhode Island State House of Representatives (hereinafter, the "House Redistricting Statute"), unconstitutional under the Rhode Island constitution as it relates to House District 47 and House District 48 within the House Redistricting Statute; and (ii) injunctive relief to prevent the holding of House elections in said House Districts, under the House Redistricting Statute, until a constitutional redistricting statute is enacted.

Parties

3. The individual plaintiffs are citizens and residents of the State of Rhode Island and bring this action individually and in their capacity of registered voters of the State of Rhode Island on behalf of themselves and all other persons registered to vote in the State of Rhode Island.
4. Plaintiff Michael Puyana resides in the Town of Burrillville, Rhode Island and is a registered voter in the Town of Burrillville, Rhode Island. His residence was previously located in the House District 47 and is located in the New House District 48 created by the House Redistricting Statute.
5. Defendant State of Rhode Island is a Sovereign State of the United States of America.
6. Defendant Gordon Fox sued in his official capacity as Speaker of the Rhode Island House of Representatives
7. Defendant Ralph Mollis is sued in his official capacity as Secretary of State of Rhode Island. He is charged by law with various functions relating to the conduct of elections, including but not limited to the preparation and printing of ballots and voting machine labels for both primary and general elections pursuant to R.I. Gen. Laws § 17-6-1, *et seq.*
8. Defendant Rhode Island Board of Elections is an independent governmental body created by Rhode Island law and charged by law with various functions relating to the conduct of elections, including but not limited to the preparation of voting machines and the supervision of local board of canvassers for both primary and general elections pursuant to R.I. Gen. Laws § 17-7-1, *et seq.*

Factual Allegations

9. The Special Commission of Reapportionment (hereinafter, the "Reapportionment Commission") was created by 2011 R.I. Laws ch. 106, § 1; and 2011 R.I. Laws ch. 100, § 1 and charged with the task of reapportioning and redistricting the Rhode Island State House of Representatives as required by law.
10. By the terms of § 1(b) of Chapter 106 of the 2011 Rhode Island Public Laws, the Reapportionment Commission was required to draft and report an act to reapportion the

General Assembly into new districts as required by law and to perform all the necessary functions incident to drafting such an act, including, but not limited to, dividing the state into seventy-five (75) House of Representative districts, thirty-eight (38) Senate districts, and two (2) United States congressional districts "as near equal as possible."

11. To enable the Reapportionment Commission to perform its duties as aforesaid, the enabling legislation empowered it to engage clerical, technical, and other assistance; to spend such other funds as it deemed necessary; to make contracts with private agencies and with local, state and federal government agencies; and to accept grants for local, state and federal government agencies.
12. By the terms of § 2(d) of Chapter 106 of the 2011 Rhode Island Public Laws, the Reapportionment Commission was required to reapportion congressional and state legislative districts into districts which "shall be as compact in territory as possible and, to the extent practicable, shall reflect natural, historical, geographical and municipal and other political lines, as well as the right of all Rhode Islanders to fair representation and equal access to the political process."
13. By the terms of § 2(d) of Chapter 106 of the 2011 Rhode Island Public Laws, the Reapportionment Commission was required to reapportion congressional and state legislative districts into districts which "[t]o the extent practicable, . . . shall be composed of contiguous territory."
14. Article VII, § 1 of the Constitution of the State of Rhode Island requires House districts to be "as compact in territory as possible."
15. The constitutional requirement of compactness has been defined as referring to a geographic area whose boundaries are as nearly equidistant from its center as possible. A compact district is one that is made up of closely united, contiguous territory.
16. One of the primary purposes of the constitutional requirement of compactness is to provide the electorate with effective representation by eradicating the evil of political gerrymandering. By virtue of its prohibition of gerrymandering, the constitutional requirement of compactness is essential to the preservation of representative government.

Any deviation from contiguity and from natural, historical, geographical, municipal and political lines for the purpose of achieving political gerrymander is prohibited by the constitutional mandate of compactness.

17. Following its initial organizational meeting on October 4, 2011 the Reapportionment Commission conducted twenty-two public meetings to address, inter alia, community interests and comments on plan alternatives.
18. In or about November, 21, 2011, the Reapportionment Commission presented, inter alia, House Plan Alternative A, and public comment was held thereon. A true copy of House Plan Alternative A is affixed hereto and incorporated herein as Exhibit A.
19. Upon information and belief, after conducting a meeting in closed session to discuss House Plan Alternative A, the Reapportionment Commission abandoned House Plan Alternative A, and emerged from said session with, inter alia, House Plan Alternatives B, C, and D. True Copies of House Plan Alternatives B, C, and D are affixed hereto and incorporated herein as Exhibits B, C, and D.
20. Not one person testified in favor of House Plan B, House Plan C or House Plan D with respect to the changes to the boundary line between House District 47 and House District 48. This includes not only public testimony taken at the more than twenty hearings, but, upon information and belief, any other venue.
21. Several members of the public, including a former state representative from Burrillville and a member of the Burrillville town council, testified against the changes to the boundary line between House District 47 and House District 48 as delineated on House Plan C, House Plan D or House Plan E. They testified, in general, that the changes were not in the best interests of the town of Burrillville, that the changes were not required or necessary as a result of shifts in population or other census data, and that the changes would result in voter confusion. They also testified that the changes violated historic political and geographic boundaries of the town of Burrillville.
22. According to press accounts as reported in the Providence Journal on Sunday February 12, 2012, Larry Berman, the spokesman for House Speaker Gordon D. Fox, stated that

the changes to the boundary line between House District 47 and House District 48 as adopted by the Rhode Island General Assembly and signed into law by Governor Chafee were made by \$700,000 taxpayer funded consultant Kimball Brace.

23. Mr. Brace has, to date, offered two and only two, explanations for the changes he allegedly made to the boundary line between House District 47 and House District 48.
24. First, at a House Judiciary Committee hearing on January 26, 2012, Mr. Brace claimed the changes to the boundary line between House District 47 and House District 48 were made because he was trying to make the new districts align with the existing private fire districts of the town of Burrillville. Specifically he said "quote him from the you tube video here)".
25. A comparison of the existing fire district maps of the town of Burrillville and the maps allegedly drawn by Mr. Brace and adopted by the Rhode Island General Assembly and signed into law by Governor Chafee demonstrates that his explanation is false.
26. Second, Mr, Brace, according to press accounts as reported in the Providence Journal on Sunday February 12, 2012, has stated that the changes to the boundary line between House District 47 and House District 48 were made in order to make the two House districts conform with the law with respect to population.
27. More specifically, Mr. Brace claimed, according to press accounts as reported in the Providence Journal on Sunday February 12, 2012 as well as on Thursday February 9, 2012, that the reason he rejected an alternative proposal put forth by House Minority Leader Brian C. Newberry, was that Leader Newberry's proposal "would have left districts 47 and 48 too far away from the ideal House district population of 14,034, based on 2010 census figures. Correcting that, he said, would lead to changes in neighboring districts."
28. This claim is demonstratively false and was concocted as a post-hoc explanation to try to provide a temporarily satisfactory answer to a reporter.
29. In fact, Leader Newberry's proposal would not have made any changes to the other 73 districts as adopted by the Rhode Island General Assembly and signed into law by

Governor Chafee, and would have left the two districts at issue in this matter (House District 47 and House District 48) with populations of +329 and +348 over the ideal House district population of 14,034 respectively while the plan allegedly drawn by Mr. Brace and adopted by the Rhode Island General Assembly and signed into law by Governor Chafee left the districts with populations of +333 and +344 respectively - a difference of four people per district and all within the legal requirement, as stated by Mr. Brace, of being within 2.5% of the ideal population.

30. Leader Newberry's proposal would also have had no impact on the Senate overlay map nor would it have caused any hardship for the town of Burrillville. In fact, Leader Newberry's proposal would have resulted in fewer disruptions for voters and been easy for the town of Burrillville to implement.
31. Under the plan adopted by the Rhode Island General Assembly and signed into law by Governor Chafee, 909 people previously located in House District 48 according to census figures are being moved in to House District 47 while 562 people from House District 47 according to census figures are being moved into House District 48.
32. Under Leader Newberry's proposal, only 332 people from House District 48 would be moved into House District 47 while not one single voter from House District 47 would be moved into House District 48.
33. Leader Newberry's proposal results in less voter movement and disruption than the plan adopted by the Rhode Island General Assembly and signed into law by Governor Chafee.
34. Leader Newberry's proposal is in accordance with Article VII, § 1 of the Constitution of the State of Rhode Island in that the lines delineating the resulting districts would have adhered to natural, historic, geographic, or political lines.
35. The plan adopted by the Rhode Island General Assembly and signed into law by Governor Chafee, with respect to House Districts 47 and 48, violates Article VII, § 1 of

the Constitution of the State of Rhode Island in that the lines delineating the resulting districts fail to adhere to natural, historic, geographic, or political lines.

36. The only reason that the plan adopted by the Rhode Island General Assembly and signed into law by Governor Chafee was selected was because it accomplished the arbitrary and improper purpose of removing one man, Donald A. Fox, from District 47 to District 48.
37. Donald A. Fox had run for the District 47 seat in 2010 and lost to the incumbent Representative Cale P. Keable, by less than 200 votes.
38. Donald A. Fox had made clear his intention to run again for the District 47 seat in 2012.
39. During his one year in the General Assembly, Representative Keable has been a loyal 'foot soldier' in the General Assembly, voting routinely and without comment, for legislative initiatives pushed by Speaker Gordon D. Fox and the House Democratic Leadership.
40. Representative Keable harbors a personal animus for Donald A. Fox.
41. Representative Keable fears that in a rematch with Donald A. Fox in the 2012 election, he would be defeated in his re-election bid.
42. Because of this animus and this fear, Representative Keable requested that a new reapportionment plan be drawn and adopted by the General Assembly that would remove Donald A. Fox from House District 47.
43. This information was communicated to members of the Democratic Leadership of the House of Representatives and/or their staff members. These members in turn, including upon information and belief, Frank Anzeveno, Chief of Staff to House Speaker Gordon D. Fox, communicated these orders to Kimball Brace. Mr. Brace then adjusted the new House reapportionment plan to accommodate these desires.
44. The changes made by Mr. Brace at the request of Representative Keable and the House Democratic Leadership which were adopted without discussion or debate by the Reapportionment Commission violate Article VII, § 1 of the Constitution of the State of Rhode Island.

45. The RI Reapportionment Commission was a charade with no real power and only nominal authority. It rubber-stamped all changes made by Mr. Brace without any independent analysis or debate.
46. In or about December 2011, the Reapportionment Commission presented House Plan Alternative D Amended to the Rhode Island General Assembly, as its recommendation for redistricting the Rhode Island House of Representatives into new districts.
47. On February 2, 2012, the Rhode Island General Assembly enacted R.I. Gen. Laws §§ 22-2-2, as enacted by R.I. Pub. Laws. 2012, ch. 7, § 2 as amended, which incorporated therein the House Alternative Plan D, as amended as the new Rhode Island House Districts.

Count I

(Declaratory Judgment - Violation of Constitutional Requirement of Compactness)

48. Plaintiffs incorporate the allegations contained in paragraphs 1 through 25 hereof as though set forth fully herein.
49. Notwithstanding the fact that the Newberry Plan A presented compact and contiguous House districts within the area of House Districts 40, 47 and 48 within the Town of Burrillville which substantially adhered to natural, historical, geographical, municipal and political lines, House Alternative Plan D, as amended, which deviates from contiguity and which deviates from natural, historical, geographical, municipal and political lines was presented by the Reapportionment Committee and was enacted and passed as the House Redistricting Statute.
50. House Districts 47 and 48 were gerrymandered to ensure and or unfairly enhance Representative Cale Keable's reelection prospects and/or to unfairly hinder and/or prevent the election prospects of Donald Fox who lost to Keable by 196 votes in 2010 and had already publicly declared his intent to seek election to the seat in 2012.
51. None of the aforesaid violations of the constitutional requirement of compactness in the above-numerated House Districts is justified by an rational or legitimate basis or upon grounds that are free from any taint of arbitrariness and/or discrimination.

52. As a result of the aforesaid conduct, plaintiffs' constitutional and legal rights have been and will continue to be violated and plaintiff, who have no adequate remedy at law, have been and will continue to be irreparably damaged and injured thereby.

Count II

(Injunctive Relief)

53. Plaintiffs incorporate the allegations contained in paragraphs 1 through 31 hereof as though set forth fully herein.

54. The Reapportioned House Districts created by the House Redistricting Statute will be the basis for a primary election for the Rhode Island House of Representatives to be held on September 11, 2012 and a general election to be held on November 6, 2012.

55. Unless defendants are preliminarily and permanently enjoined and restrained from taking any action to prepare for or to conduct primary or general elections of members of the Rhode Island House of Representatives within House Districts 40, 47, and 48, pursuant to the invalid House Redistricting plan, plaintiff will sustain irreparable harm and injury and their fundamental right to vote and to effective representation will be violated for the next two years while Representatives from malapportioned districts hold office.

56. There is no adequate remedy at law to redress such a continuous and lengthy violation of constitutional rights.

WHEREFORE, plaintiffs respectfully request that this Court order injunctive relief as follows:

a. Preliminarily and permanently enjoining defendants from preparing ballots, ballot labels, and voting machines, or otherwise taking any action to prepare for the primary or general election of members of the Rhode Island House of Representatives within House Districts 40, 47, and 48, until such time as the Rhode Island General Assembly enacts a redistricting statute consistent with House Alternative Plan A, or the Court develops and/or implements by Court order a House redistricting plan which meets constitutional requirements;

- b. Ordering the adoption of Newberry Plan as it relates to the areas currently encompassed by House Districts 40, 47, and 48, or in the alternative, ordering the development and adoption of a redistricting plan which is constitutional;
- c. A declaration that House Alternative Plan D, as amended, is unconstitutional as enacted;
- d. Entering such other and further orders as this Court deems necessary and proper to insure the creation and implementation of a constitutional House redistricting plan;
- e. Awarding to plaintiffs their attorney's fees, costs, and such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,
THIS 6th DAY OF MARCH, 2012
PLAINTIFFS,
BY THEIR AND THROUGH COUNSEL,

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