

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

VANDROTH BACKUS, WILLIE
HARRISON BROWN, CHARLESANN
BUTTONE, BOOKER MANIGAULT,
EDWARD MCKNIGHT, MOSES MIMS,
JR, ROOSEVELT WALLACE, and
WILLIAM G. WILDER, on behalf of
themselves and all other similarly situated
persons,

Plaintiffs,

and

DICK ELLIOTT, on behalf of himself
and the voters of Senate District 28,

Plaintiff-Intervenor,

v.

THE STATE OF SOUTH CAROLINA,
GLENN F. MCCONNELL, in his capacity
As President Pro Tempore of the Senate
And Chairman of the Senate Judiciary
Committee, ROBERT W. HARRELL, JR,
in his capacity as Speaker of the House of
Representatives, MARCI ANDINO, in her
capacity as Executive Director of the
Election Commission, JOHN H.
HUDGENS, III, Chairman, NICOLE S.
WHITE, MARILYN BOWERS, MARK
BENSON, and THOMAS WARING,
in their capacity as Commissioners of
the Elections Commission,

Defendants.

Case No.: 3:11-cv-03120-PMD-HFF-MBS

PLAINTIFF-INTERVENOR
DICK ELLIOTT'S COMPLAINT
FOR A DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF PURSUANT TO THE
FOURTEENTH AND FIFTEENTH
AMENDMENTS OF THE U.S.
CONSTITUTION AND THE
VOTING RIGHTS ACT OF 1965

Plaintiff-Intervenor Dick Elliott, as a resident, citizen, and voter of the State of South Carolina and as the elected Senator for Senate District 28, files this Complaint for declaratory and injunctive relief, pursuant to the Court's Order dated February 8, 2012 and Rule 24 of the Federal Rules of Civil Procedure; and respectfully would show unto the Court:

NATURE OF THE ACTION

1. Plaintiff-Intervenor is entitled to a declaratory judgment and injunctive relief to prevent the implementation and enforcement of the STATE OF SOUTH CAROLINA's redistricting law that illegally used race to draw election districts for the South Carolina Senate in violation of the Constitution and laws of the United States. The Defendants passed into law Act 71 of 2011 (Act 71 or Senate Redistricting Plan). The South Carolina General Assembly was required to pass this legislation drawing new legislative district lines pursuant to Article I of the United States Constitution and the mandate of one-person, one-vote which requires that election districts give equal representation. This redistricting plan became effective following federal administrative preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, as amended.

2. In debating, drafting, and passing the Senate Redistricting Plan, Defendants discriminated on the basis of race for the purpose of determining which voters were drawn into which districts. This law is a race-based redistricting scheme that used race as the predominant factor in drawing election district boundaries. This discriminatory redistricting scheme also resulted in a diminution in the political power of black voters whose influence is diluted by packing them into election districts in concentrations that exceed what is necessary and lawful to give them an equal opportunity to participate in the political process. Defendants have denied black voters, like those in Senate District 28, excluded from these packed majority black districts any opportunity to elect a candidate of their choosing.

3. This race-based redistricting scheme also abandoned traditional redistricting principles like drawing compact districts, keeping political subdivisions intact, and keeping communities of interest intact. These racially-neutral traditional redistricting principals, if followed, would have afforded black voters an equal opportunity to participate in the political process. Instead, Defendants have created a system in South Carolina that segregates white and black voters into election districts by using predetermined percentages of black and white voters for each district to assign voters based on race. This racial quota system has resulted in elections that are always or almost always decided by the district's majority race. As such, Defendants' senate redistricting scheme unlawfully discriminates against black voters and denies them an equal opportunity to participate in the political process in violation of the United States Constitution and federal law.

4. Plaintiff-Intervenor Dick Elliott is the incumbent Senator for Senate District 28 in Horry and Dillon Counties and seeks a Declaratory Judgment, on behalf of himself and the voters of Senate District 28, that Act 71 violates their civil rights protected by the Fourteenth Amendment, the Fifteenth Amendment, and the Voting Rights Act of 1965, 42 U.S.C. § 1973, et seq. Plaintiff-Intervenor Elliott seeks a temporary injunction preventing the irreparable harm that will result from the implementation of this law pending the outcome of this litigation. Plaintiff-Intervenor Elliott also seeks a permanent injunction enjoining Defendants from implementing and enforcing this law and directing Defendants to enact a new redistricting plan that adheres to traditional, racially neutral redistricting principles rather than illegal, predominantly race-based classifications.

JURISDICTION AND VENUE

5. This action arises under Article I, sections 2 and 4 and the Fourteenth and Fifteenth Amendments of the United States Constitution and the Voting Rights Act of 1965, 42 U.S.C. § 1973, et seq.

6. This court has subject matter jurisdiction pursuant to 28 U.S.C. sections 1331, 1343(3) and (4), 2201, and 2284, as well as, 42 U.S.C. sections 1973, 1981, and 1983.

7. Venue is proper pursuant to 28 U.S.C. section 1391(b) and 28 U.S.C. section 2284.

PARTIES

8. Plaintiff-Intervenor Elliott is a registered voter and a resident of Horry County, South Carolina and the duly elected Senator for Senate District 28. Under the new Senate Redistricting Plan, Senate District 28 borders Senate District 30. This Redistricting Plan harms Senator Elliott and the black voters of these Senate Districts by discriminating against them on the basis of race.

9. Plaintiff-Intervenor Elliott and all other voters were assigned to their new Senate legislative districts as a result of being subjected to a racial classification. Plaintiff-Intervenor Elliott and all other voters are personally injured by being subjected to an illegal racial classification and by being placed into election districts in accordance with this race-based scheme rather than in accordance with traditional, race-neutral redistricting principles that require drawing geographically compact districts, keeping political subdivisions intact, and keeping communities of interest intact. These traditional, racially neutral redistricting principles, denied to Plaintiff-Intervenor Elliott and other voters in passing this redistricting law, would have facilitated equal participation in the political process.

10. Defendant the STATE OF SOUTH CAROLINA, is a proper defendant as a state subject to the limitations of the Fourteenth Amendment and Fifteenth Amendments of the United States Constitution and Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, et seq.

11. Defendant GLENN F. MCCONNELL, in his official capacity as President Pro Tempore of the South Carolina Senate, is a proper defendant as leader of the Senate responsible for drafting and passing reapportionment legislation for consideration by the full Senate.

12. Defendant ROBERT W. HARRELL, JR., in his official capacity as Speaker of the South Carolina House of Representatives, is a proper defendant as leader of the House charged with presiding over the House and ratifying bills upon passage by both houses of the General Assembly pursuant to Article III, Section 18 of the South Carolina Constitution.

13. Defendant MARCI ANDINO, in her official capacity as the Executive Director of the South Carolina Elections Commission, is a proper defendant as the head of the South Carolina agency responsible for implementing and conducting elections pursuant to S.C. Code Ann. §§ 7-3-10, et seq. and 7-13-10, et seq., as amended.

14. Defendants, JOHN H. HUDGENS, III, Chair, NICOLE S. WHITE, MARILYN BOWERS, MARK BENSON, and THOMAS WARING, in their official capacity, are members of the South Carolina Elections Commission Board. All Defendants are proper defendants as persons charged with the powers and duties of the South Carolina Elections Commission pursuant to S.C. Code Ann. §§ 7-3-10, et seq. and 7-13-10, et seq., as amended.

STATEMENT OF FACTS

15. The South Carolina General Assembly is comprised of two bodies: the Senate, which has forty-six (46) single-member districts, and the House of Representatives (House), which has one hundred and twenty-four (124) single-member districts. S.C. Const. art. III, §§ 1, 3, 6. Members of the Senate are elected to four-year terms every other even-numbered year during the general election. Id. § 6.

16. The STATE OF SOUTH CAROLINA must draw legislative election districts on an equi-populous basis in accordance with the Census.

17. South Carolina's previous redistricting plans, or "Benchmark Plans," were enacted pursuant to litigation resulting from impasse and malapportionment. In 2001, the South Carolina General Assembly passed redistricting plans for the Senate. Then-Governor James H. Hodges vetoed the bill and the General Assembly failed to override his veto. A malapportionment lawsuit was filed in the United States District Court for the District of South Carolina under the caption *Colleton County Council v. McConnell*. On March 20, 2002, the three-judge Court issued an order drawing districts for the Senate. *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618 (D.S.C. 2002).

18. The General Assembly subsequently modified the Court's plan for the Senate. Act No. 55, 2003 S.C. Laws 255. Act 55 of 2003 (Benchmark Senate Plan) was subsequently precleared by the Department of Justice pursuant to administrative preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

19. The Benchmark Plans were in effect until 2011 when modified by the General Assembly pursuant to the results of the 2010 Census.

A. CHANGES IN DEMOGRAPHICS AS REPORTED BY THE 2010 CENSUS

20. According to the 2010 Census, South Carolina's population has grown from 4,012,012 persons to 4,625,364 persons over the last ten years. This constitutes an increase of more than fifteen (15%) percent.

21. South Carolina has a large black minority population that has grown proportionally to the State's overall growth. The non-Hispanic black population (hereinafter simply "black population") is relatively equal as a percentage of the overall population compared to ten years ago. Presently South Carolina's black population is 1,290,684, or almost twenty-eight (27.9%) percent of the overall population. In 2000, the black population was 1,186,071, or twenty-nine (29.6%) percent of the overall population.

22. Despite overall population growth in South Carolina, this growth was not uniform across the State's forty-six (46) counties. Thirty-four (34) counties increased population while twelve (12) counties lost population. Of the twelve (12) counties that lost population, six (6) of those counties are small rural counties with a majority black population.¹ The other six (6) counties that lost population have a significant black population.² Districts representing urban and suburban areas saw the greatest growth during this period.³

23. As a result of these population shifts over the last ten years, the black population in South Carolina has naturally shifted from rural and urban areas to become increasingly integrated with the white population in suburban areas. The white population has also shifted back to the cities resulting in increasingly integrated urban areas.

¹ Allendale (73.6% black population), Bamberg (61.5%), Hampton (53.9%), Lee (64.3%), Marion (55.9%), and Williamsburg (65.8%)

² Abbeville (28.3% black population), Barnwell (44.3%), Calhoun (42.6%), Chester (37.4%), Laurens (25.4%), and Union (31.3%)

³ E.g., Beaufort, Berkeley, Dorchester, Greenville, Horry, Lancaster, Lexington, Richland, York.

24. While communities in South Carolina are increasingly integrated—with white and black citizens living in the same neighborhoods, working at the same businesses, and attending the same schools—our election districts have become increasingly segregated. Defendants' Senate Redistricting Plan further segregates voters into a system of electoral segregation.

25. Pursuant to the results of the 2010 Census, all of the Benchmark Plans were malapportioned and needed to be redrawn.

B. PASSAGE OF THE SENATE REDISTRICTING PLAN BY THE GENERAL ASSEMBLY

26. In April 2011, the General Assembly began drafting legislation to redraw South Carolina's legislative districts. The General Assembly used Senate Bill 815 (S. 815) as the legislative vehicle for Senate redistricting legislation. This bill became Act 71 upon passage into law.

27. During the debate and passage of this plan, members of the General Assembly claimed they were drawing a redistricting plan motivated by traditional redistricting principles and mandates imposed by federal law. Traditional redistricting principles in South Carolina include drawing geographically compact districts, keeping county and municipality boundaries intact, and keeping communities of interest intact. See *Colleton Co., supra*.

28. In actuality, the General Assembly drew maps that artificially manipulated percentage of black voting age population (VAP) for each Senate District as previously decided by leaders in the General Assembly.

29. The goal of the General Assembly's leadership in adopting a race-based redistricting scheme was to diminish the political power of black voters by making political party synonymous with race. Since black voters continue to overwhelmingly prefer Democratic

candidates in South Carolina, Republican leaders in the General Assembly sought to make the Democratic Party the “black party” by packing as many black voters as possible into a few election districts.

30. Defendants’ Senate Redistricting Plan packs black voters into a few districts making them “blacker” while also “bleaching out” all of the surrounding election districts. This concentration and disbursement scheme ensures that black voters in majority black districts will overwhelmingly decide the outcome in a few election districts but that black voters in majority white districts, the vast majority of election districts, have no opportunity to participate in the political process. These redistricting laws create a system of electoral segregation by segregating voters into election districts contrary to natural population shifts that demonstrate that white and black voters in South Carolina are increasingly integrated—choosing to live side by side one another.

31. In passing the Senate Redistricting Plan, Act 71, the General Assembly adopted a redistricting plan that:

- (a) Ignores racially-neutral, traditional redistricting principles in order to maintain artificially high black VAP percentages;
- (b) Reduces the black VAP percentage in several Senate Districts where black voters were able to elect a candidate of choice with the support of part of the white community, making cooperation between blacks and whites less likely or impossible in these districts; and
- (c) Disproportionately diminishes the political power of black voters in poor, rural counties which were carved up among several different Senate Districts ensuring that no single Senator will have the primary interest of these poor, rural communities in mind.

32. The General Assembly passed and enrolled the Senate Redistricting Plan, Act 71, and Governor Haley signed the bill into law on June 28, 2011.

33. It was not necessary to pack black voters into election districts to reach arbitrary black VAP percentages decided on by Defendants in order to give minority voters in these districts an opportunity to elect a candidate of their choosing. Consequently, Defendants' Senate Redistricting Plan dilutes black voting power by packing black voters into a few districts and dispersing those excluded from the packed districts among the remaining districts in a low enough concentration to be irrelevant to the political process.

34. In order to draw districts that met the arbitrary racial quota adopted by Defendants, it was required to abandon traditional redistricting principals like drawing geographically compact districts, keeping political subdivisions like counties and municipalities intact, and keeping communities of interest intact.

C. SUIT IS TIMELY TO CHALLENGE DISCRIMINATORY STATE ACTION UNDER THE CONSTITUTION AND THE VOTING RIGHTS ACT OF 1965

35. The STATE OF SOUTH CAROLINA is a "covered jurisdiction" under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, as amended. As such, the State is required to obtain either judicial or administrative preclearance prior to enacting any change in voting law. *Id.*

36. On July 27, 2011, Senator GLENN F. MCCONNELL submitted Act 71, the Senate Redistricting Plan, to the United States Attorney General for administrative preclearance. On September 26, 2011, the Attorney General, through his agent, wrote to Senator MCCONNELL requesting additional information about the Senate Redistricting Plan. Senator MCCONNELL replied to the Attorney General and also filed suit in the United States District

Court for the District of Columbia seeking judicial preclearance. See *McConnell v. United States of America*, 1:11-cv-01794-HHK (D.D.C. 2011).

37. On November 14, 2011, the Attorney General, through his agent, notified Senator MCCONNELL that he would not object to the Senate Redistricting Plan, Act 71, mootng the pending lawsuit seeking preclearance.

38. Pursuant to 42 U.S.C. § 1973c(a), Plaintiff-Intervenor Elliott's action against Defendants for declaratory and injunctive relief is now timely to enforce rights under the United States Constitution and the Voting Rights Act of 1965.

39. At all times relevant herein, Defendants acted under color of state law.

40. Defendants' race-based scheme denies Plaintiff-Intervenor Elliott and other voters the equal protection of law, abridges their right to vote, and violates the protection afforded them by the Voting Rights Act of 1965, 42 U.S.C. § 1973, et seq.

FIRST CAUSE FOR DECLARATORY AND INJUNCTIVE RELIEF:
SENATE REDISTRICTING PLAN
DENIES VOTERS EQUAL PROTECTION UNDER THE LAW

41. Plaintiff-Intervenor Elliott incorporates Paragraphs 1-40 as if set forth verbatim herein.

42. Plaintiff-Intervenor Elliott and all other voters are entitled to the equal protection of law under the Fourteenth Amendment of the United States Constitution.

43. The Senate Redistricting Plan, Act 71, discriminates against Plaintiff-Intervenor Elliott and all other voters on the basis of race in one of more of the ways set forth below, each sufficient to demonstrate race-based discrimination used to include or exclude voters from Senate election districts:

- (a) Act 71 has a discriminatory purpose evidenced by the demographics of the plan as a whole;

(b) Act 71 has a discriminatory purpose evidenced by the demographics of specific districts. Defendants discriminated on the basis of race for the purpose of maintaining artificially high black VAP percentages in districts like Senate District 30, contrary to population shift and traditional redistricting principles;

(c) Act 71 has a discriminatory purpose evidenced by the irregular shape of its districts that ignore traditional redistricting principles and natural population shifts in favor of a racial classification used to artificially manipulate the black VAP of each district;

(d) Defendants' purpose in passing Act 71, either in whole or in part, was motivated by race and/or the goal of drawing districts with specific racial composition in each district;

(e) Defendants' purpose in passing Act 71, either in whole or in part, was to reduce the number of election districts where black voters could determine or could help determine the winner;

(f) The shape of the districts drawn by Act 71 are so irrational that they can only be explained as a race-based gerrymander; and

(g) In other ways as proven during the trial of this matter.

44. Defendants' use of race in drawing legislative and congressional election district lines is not strictly necessary to serve a compelling governmental purpose.

45. Defendants have offered no adequate justification for discriminating on the basis of race for the purpose of drawing legislative and congressional election districts.

46. Defendants' use of race is not the least restrictive means available to give black voters an opportunity to participate equally in the political process.

47. Plaintiff-Intervenor Elliott and all other voters are denied equal protection under the law and injured by the STATE OF SOUTH CAROLINA, and her agents, the other above-named defendants, when the State uses race-based discrimination without a compelling governmental purpose or where less restrictive means are available.

48. Plaintiff-Intervenor Elliott has no adequate remedy at law other than the judicial relief sought here. The failure to temporarily and permanently enjoin enforcement of the Senate Redistricting Plan will irreparably harm Plaintiff-Intervenor Elliott and other voters by violating their constitutional and statutory rights.

SECOND CAUSE FOR DECLARATORY AND INJUNCTIVE RELIEF:
THE SENATE REDISTRICTING PLAN
VIOLATES SECTION TWO OF THE VOTING RIGHTS ACT OF 1965

49. Plaintiff-Intervenor Elliott incorporates Paragraphs 1-48 as if set forth verbatim herein.

50. Section 2 of the Voting Rights Act of 1965, prohibits the abridgement of the right to vote on account of race, color, or language minority. 42 U.S.C. § 1972(a).

51. Diluting minority-voting power constitutes an abridgement of the right to vote for the purpose of Section 2. *Voinovich v. Quilter*, 507 U.S. 146, 154, 113 S. Ct. 1149, 1155 (1993). “Dilution of racial minority group voting strength may be caused” either “by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.” *Id.*

52. The Senate Redistricting Plan, Act 71, dilutes minority voting strength by maintaining artificially high black VAP percentages in districts like Senate District 30, contrary to population shift and traditional redistricting principles.

53. Black voters in the above-named district already demonstrated an overwhelming ability to elect candidates of choice so that additional packing or artificial manipulation of the

district lines contrary to traditional redistricting principles was unnecessary to continue to allow black voters in these districts to elect candidates of choice.

54. The Senate Redistricting Plan dilutes the voting power of black voters outside of packed districts. Defendants' packing schemes deliberately reduce the number of "crossover" districts or prevent them from emerging over time through natural population shifts.

55. Crossover districts are districts where white voters join together with black voters to help them elect a candidate of choice.

56. Defendants' Redistricting Plan uses unusual and irrational shapes to draw election districts that violate traditional redistricting principles. Had Defendants followed traditional redistricting principles—which require drawing geographically compact districts, keeping political subdivisions like counties and municipalities intact, and keeping communities of interest intact—they would have drawn racially integrated election districts that reflect the communities they represent.

57. Under the Senate Redistricting Plan, black voters excluded from majority-minority districts are disbursed in small enough numbers to deny them any opportunity to elect a candidate of choice through crossover voting.

58. Defendants' packing scheme also prevents new crossover districts from naturally emerging through population shift. If Defendants had instead drawn legislative districts using traditional redistricting principles, then additional crossover districts would continue to emerge naturally over time through population shift.

59. By destroying existing crossover districts and blocking the emergence of new crossover districts, Defendants have denied black voters an equal opportunity to participate in the political process and relegated them to only participating in electing a candidate of choice in the handful of districts Defendants have packed with black voters.

60. Consequently, the Senate Redistricting Plan abridges Plaintiff-Intervenor Elliott's and all voters' right to vote by resegregating electoral politics in South Carolina. Black voters in black districts are guaranteed to elect a candidate of choice, while black voters in white districts are virtually irrelevant.

61. Plaintiff-Intervenor Elliott has no adequate remedy at law other than the judicial relief sought here. The failure to temporarily and permanently enjoin enforcement of the Senate Redistricting Plan, Act 71, will irreparably harm Plaintiff-Intervenor Elliott and other voters by violating their constitutional and statutory rights.

THIRD CAUSE FOR DECLARATORY AND INJUNCTIVE RELIEF:
THE REDISTRICTING PLAN VIOLATES THE FIFTEENTH AMENDMENT

62. Plaintiff-Intervenor Elliott incorporates Paragraphs 1-61 as if set forth verbatim herein.

63. The Fifteenth Amendment of the United States Constitution prohibits the denial or abridgement of the right to vote on account of race, color, or previous condition of servitude. U.S. Const. amend XV.

64. The Fifteenth Amendment protects minority voters from being disenfranchised by race-based gerrymanders. *Gomillion v. Lightfoot*, 364 U.S. 339, 341, 81 S. Ct. 125, 127 (1960).

65. The Senate Redistricting Plan, Act 71 uses race to dilute black voting power in one or more of the manners stated above, incorporated here as if set forth verbatim.

66. Consequently, the Senate Redistricting Plan denies black voters an equal opportunity to participate in the political process that could have been achieved by adopting racially neutral redistricting principles that would give Plaintiff-Intervenor Elliott and all black voters in Senate Districts 28 and 30 an equal opportunity to elect candidates of choice.

67. Plaintiff-Intervenor Elliott has no adequate remedy at law other than the judicial relief sought here. The failure to temporarily and permanently enjoin enforcement of Act 71 will irreparably harm Plaintiff-Intervenor Elliott's and other voters' constitutional and statutory rights.

REQUEST FOR A THREE-JUDGE COURT

68. Plaintiff-Intervenor Elliott requests trial of this case by a three-judge court pursuant to 42 U.S.C. § 1973c(a) and 28 U.S.C. § 2284.

SENATE DISTRICT 28 PROPOSED REMEDIAL PLAN

69. Plaintiff-Intervenor Elliott proposes these minimum changes as a remedial plan:
- (a) Redraw Senate District 28 by adding Pleasant Hill, Carolina, Manning, East Dillon, Hamer, and Oakland precincts from Senate District 30; and
 - (b) Redraw Senate District 30 with Dog Bluff, Jordanville, Cedar Grove, Taylorsville, and Juniper Bay precincts from Senate District 28. See Exhibit A.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth the allegations against Defendants, Plaintiff-Intervenor Elliott respectfully requests that this Court:

- (i) Assume jurisdiction of this case and try it before a three-judge court;
- (ii) Temporarily enjoin Defendants from calling, holding, supervising, or certifying any elections under Act 71 pending the outcome of this litigation;
- (iii) Issue a declaratory judgment that Act 71 is illegal for one or more of the reasons set forth above;
- (iv) Permanently enjoin Defendants from calling, holding, supervising, or certifying any elections under Act 71;

- (v) Set a reasonable deadline for Defendants to enact and adopt a redistricting plan for Senate Districts that does not violate Plaintiff-Intervenor Elliott's and other voters' constitutional or statutory rights;
- (vi) Retain jurisdiction while Defendants enact this plan by this Court's deadline;
- (vii) Order a new redistricting plan in the event that Defendants fail to adopt a new plan or fail to adopt a plan that conform with this Court's judgment;
- (viii) Adjudge all reasonable attorneys' fees, costs, and expenses against Defendants in favor of Plaintiff-Intervenor Elliott pursuant to 42 U.S.C. §§ 1973l(e) and 1988(b), as amended; and
- (ix) Grant other such relief as this Court deems just and proper.

Respectfully submitted,

s/ Matthew T. Richardson
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DICK ELLIOTT

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