

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 19-CVS-12667

REBECCA HARPER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
REPRESENTATIVE DAVID R. LEWIS,)
et al.,)
)
 Defendants.)

DECISION ON NEW CONGRESSIONAL DISTRICTS

HONORABLE JUDGES PAUL C. RIDGEWAY, JR.,
ALMA L. HINTON AND JOSEPH N. CROSSWHITE

MONDAY, DECEMBER 2, 2019

By: Denise Myers Byrd, CSR 8340, RPR

1 JUDGE RIDGEWAY: All right. Ladies and
2 gentlemen, we've had an opportunity to review these
3 matters and confer among ourselves, and I will read to
4 you the unanimous decision of this Court, which is
5 comprised of Judge Joseph Crosswhite and
6 Judge Alma Hinton and myself, and my colleagues have
7 asked that I read this into the record.

8 Three months ago on September 3rd, 2019, this
9 court announced its judgment in Common Cause versus
10 Lewis, and declared that extreme partisan gerrymandering
11 was unconstitutional under the North Carolina
12 constitution. In the 90 days following that ruling, the
13 voters of North Carolina now have new General Assembly,
14 House, and Senate maps drafted by the General Assembly
15 and approved by the courts that remedy the extreme
16 partisan gerrymandering of past maps. And as a result
17 of this litigation that brings us here today, this
18 Court -- after this Court preliminarily enjoined the
19 further use of the 2016 congressional maps, the voters
20 of North Carolina now have a new congressional map,
21 namely the one enacted by the General Assembly on
22 November 15, 2019.

23 Moreover, in this same 90-day period, the
24 citizens of North Carolina, for the first time, were
25 witnesses to the drafting of their voting districts.

1 The new General Assembly districts and the congressional
2 districts were not drawn in the basement of a political
3 operative's home, as was the case with prior maps, but
4 were drawn in open by the General Assembly in public
5 hearings with live-stream audio and video, in a process
6 that began with non-partisan base maps, which were then
7 amended without reference to past election data.

8 Much has changed with respect to North Carolina
9 redistricting in the past three months. Three months
10 from today, voters in North Carolina are scheduled to
11 vote in the March 2nd, 2020, primary election. Among
12 the many important constitutional and legal issues
13 argued today, the most critical one for the Court is a
14 practical question: Whether the Court should exercise
15 its broad equitable authority to delay the primary
16 election for congressional elections.

17 The Court has considered the nature of the
18 claims likely to be asserted should further review of
19 the newly enacted congressional maps be undertaken. In
20 sum, Plaintiffs contend the 2019 congressional districts
21 bear many of the same constitutional infirmities as its
22 predecessor, the 2016 constitutional map --
23 congressional map, and that these infirmities compel
24 further remedy.

25 In the short time that the parties have had

1 since the enactment of the new congressional districts
2 to frame the issues surrounding the challenge to the
3 newly enacted congressional districts, it is evident
4 that many of these challenges raise significant factual
5 issues that must be resolved prior to the Court reaching
6 the legal conclusion of the constitutionality of these
7 maps.

8 For example, just one of the significant
9 factual disputes that must be resolved by the Court is
10 as follows: Legislative Defendants, while denying any
11 partisan intent in drawing the new congressional
12 districts, argue that the ultimate result of the
13 map-drawing process is a map that shows no extreme
14 partisan gerrymandering because it yields eight
15 Republican-leaning districts and five Democratic-leaning
16 districts, as opposed to the 2016 map which yielded 10
17 Republican-leaning districts and 3 Democrat. This
18 8-to-5 split, the Legislative Defendants point out, is
19 the same as the most frequent and most likely outcome of
20 the thousands of simulations generated by Plaintiffs'
21 experts. Legislative Defendants argue that to advocate
22 for a different split, say 7 to 6, is to advocate for a
23 partisan result far less likely to occur through
24 non-partisan map drafting, according to Plaintiffs' own
25 expert simulations.

1 Plaintiffs, on the other hand, argue that one
2 should not focus on the numerical split but rather
3 concentrate on -- or rather the concentration of
4 Democrats in the 5 Democratic-leaning districts and the
5 concentration of Republicans in the 8 Republican-leaning
6 districts which show, according to the Plaintiffs, an
7 intention to pack voters in into districts making each
8 district impervious to the true will of voters and to
9 lock in the 8-to-5 split in virtually all realistic
10 election environments.

11 But Legislative Defendants disagree, saying
12 that the districts are not as impervious as the
13 plaintiffs contend because when their expert used widely
14 cited online redistricting tool planscore.org to analyze
15 the newly enacted districts, he reported that
16 the PlanScore analysis of the 2019 congressional maps
17 show 7 Democratic-leaning districts to 6 Republican
18 districts. Plaintiffs challenge the accuracy of the
19 PlanScore algorithm.

20 Rulings on factual issues such as this cannot
21 be hastily made by this Court. Our judicial system
22 operates under a rule of law. Our judicial decision --
23 decisions are forged in the crucible of an adversarial
24 process. The decision of this Court in Common Cause
25 versus Lewis that declared the legislative districts

1 enacted by the legislative -- by the General Assembly
2 for House and Senate districts to be unconstitutional
3 was the week of nearly a year of vigorous adversarial
4 litigation culminating in a two-week trial.

5 Likewise, the record before the Court
6 supporting its preliminary injunction of the 2016
7 congressional maps was based on a record compiled before
8 a federal three-judge panel through vigorous adversarial
9 litigation that spanned nearly three years. The
10 thorough and methodical judicial review of redistricting
11 issues is not merely necessitated by the complexity of
12 redistricting challenges, which is certainly a factor,
13 but more importantly is necessary because the
14 Plaintiffs, in challenging maps crafted by the General
15 Assembly, are required through evidence and law to
16 overcome the strong presumption of the constitutionality
17 of acts of the General Assembly and to persuade the
18 Court that there is no reasonable doubt that the
19 districts are unconstitutional and cannot be upheld on
20 any ground. Due process does not allow shortcuts to a
21 thorough and complete judicial review.

22 Much has been argued as to whether this action
23 is moot due to the enactment of the new congressional
24 districts. The Court does not reach that issue today but
25 takes this issue under advisement.

1 But one thing is for certain: The Court, in
2 entering its preliminary injunction on October 28, 2019,
3 expressed grave concerns about delaying and disrupting
4 the voting process and urged the General Assembly to
5 adopt a new congressional map through a process similar
6 to the one undertaken to remedy the House and Senate
7 maps in the Common Cause versus Lewis litigation. The
8 General Assembly did enact a new congressional map, and
9 although one can certainly argue that the process was
10 flawed or that the result is far from ideal, the net
11 result is that the grievous -- grievously flawed 2016
12 congressional map has been replaced.

13 This Court's concern about delaying the
14 electoral process is even more pronounced today than on
15 October 28th. In this regard, the Court finds that the
16 balance of equities has shifted over the past month.
17 This action was commenced by the Plaintiffs on
18 September 27, 2019, late in the election cycle. Had it
19 been commenced earlier, say immediately after the
20 United States Supreme Court June 2019 ruling in Rucho
21 versus Common Cause, the adversarial process could more
22 fully have run its course to allow for a more thoughtful
23 and informed decision. As a practical matter, in the
24 Court's view, there's simply not sufficient time to
25 fully develop the factual record necessary to decide the

1 constitutional challenges to the new congressional
2 districts without significantly delaying the primary
3 elections.

4 After fully considering the record proper and
5 the arguments of counsel, the Court has determined that
6 it will not invoke its equitable authority to further
7 delay the election of members of Congress in
8 North Carolina. It is time for the citizens to vote.
9 The injunction entered by the Court on November 20,
10 2019, delaying the filing period for congressional
11 candidates until further order of this Court is set
12 aside, and it is ordered that the North Carolina State
13 Board of Elections may immediately accept for filing any
14 notices of candidacy from candidates seeking party
15 primary nominations for the United States House of
16 Representatives for congressional districts as defined
17 by the newly enacted Session Law 2019-249, which we've
18 also referred to as House Bill 1028.

19 Much has changed with respect to redistricting
20 in North Carolina in the past 90 days, both with respect
21 to the law and with respect to the process by which maps
22 have been drawn. The results are not perfect, and
23 indeed some may contend that the results are far from
24 perfect, but the current legislative and congressional
25 maps resulting from a decade of litigation will

1 themselves be replaced after the 2020 election cycle
2 because of the upcoming decennial census. It is the
3 Court's fervent hope that the past 90 days becomes a
4 foundation for future redistricting in North Carolina
5 and that future maps are crafted through a process
6 worthy of public confidence and a process that yields
7 elections that are conducted freely and honestly to
8 ascertain fairly and truthfully the will of the people.

9 So ordered.

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STATE OF NORTH CAROLINA)
) C E R T I F I C A T E
COUNTY OF WAKE)

I, DENISE MYERS BYRD, Court Reporter and Notary Public, do hereby certify that the transcription of the recorded Decision by Superior Court Three-Judge Panel for Redistricting Challenges was taken down by me stenographically to the best of my ability and thereafter transcribed under my supervision; and that the foregoing pages, inclusive, constitute a true and accurate transcription of said recording.

Signed this the 22nd day of April 2020.

Denise Myers Byrd
CSR 8240, RPR, CLR 102409-2