

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE SUPERIOR COURT DIVISION

2010 FEB 12 A 7 59

MARGARET DICKSON, *et al.*,)
Plaintiffs,)

v.)

11 CVS 16896

ROBERT RUCHO, *et al.*,)
Defendants.)

NORTH CAROLINA STATE)
CONFERENCE OF BRANCHES OF)
THE NAACP *et al.*,)
Plaintiffs,)

v.)

11 CVS 16940

THE STATE OF NORTH CAROLINA,)
et al.,)
Defendants.)

(Consolidated)

**ORDER AND JUDGMENT ON REMAND FROM THE
NORTH CAROLINA SUPREME COURT**

THIS MATTER comes before the undersigned three-judge panel upon remand from the North Carolina Supreme Court.

Procedural History

The above-captioned matters were filed in November 2011. Plaintiffs alleged, among other claims, that numerous congressional and state legislative districts drawn by the North Carolina General Assembly in 2011 were unconstitutional because they were drawn predominantly on the basis of race and

were not justified by the Voting Rights Act or any other compelling governmental interest. In July 2013, the undersigned three-judge panel concluded, with respect to these claims, that for almost all of the districts challenged by the Plaintiffs, those districts were racial classifications, subject to strict scrutiny, but nonetheless upheld them as narrowly tailored to advance a compelling governmental interest. In December 2014, the North Carolina Supreme Court affirmed judgment for the Defendants. *Dickson v. Rucho*, 367 N.C. 542, 575 (2014)(*Dickson I*). Four months later, the United States Supreme Court vacated the 2014 decision of the North Carolina Supreme Court and remanded it for consideration in light of *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (March 25, 2015).

Concurrently, separate groups of plaintiffs filed lawsuits in federal court challenging many of the same congressional and state legislative districts. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 609 (M.D.N.C. 2016); *Covington v. North Carolina*, 316 F.R.D. 177, 129 (M.D.N.C. 2016). A federal court three-judge panel invalidated Congressional Districts 1 and 12, also challenged here, on February 5, 2016, holding that North Carolina had no compelling governmental interest for the predominant manner in which it used race to construct those districts. *See Harris*, 159 F. Supp. 3d at 627. Likewise, a different federal court three-judge panel invalidated twenty-eight state legislative districts, the same ones challenged here, on August 11, 2016, again finding that the districts were unconstitutional racial gerrymanders. *See Covington*, 316 F.R.D. at 176. The United States Supreme Court noted probable jurisdiction and affirmed the decision in *Harris*. *See*,

McCrorry v. Harris, 136 S.Ct. 2512 (2016)(probable jurisdiction noted); *Cooper v. Harris*, 137 S. Ct. 1455, 1482 (2017)(affirming judgment of District Court). The Supreme Court affirmed the ruling in *Covington. North Carolina v. Covington*, 137 S.Ct. 2211 (2017).

On February 19, 2016, the North Carolina General Assembly enacted a new 2016 Congressional Plan. See N.C. Sess. Law, 2016-1. Congressional elections were conducted under the 2016 Congressional Plan during the 2016 General Election.

On August 31, 2017, the North Carolina General Assembly, pursuant to the *Covington* district court's order, enacted new legislative plans. See N.C. Sess. Laws 2017-207, 2017-208. These 2017 plans were challenged by the *Covington* plaintiffs as not curing all of the racial gerrymandering identified by the federal court. The federal court three-judge panel appointed a Special Master, and on January 19, 2018, ordered that the 2017 enacted legislative plans, as modified by the Special Master's Recommended Plan, be used in future North Carolina legislative elections. See *Covington v. North Carolina*, No. 1:15-cv-00399 (M.D.N.C. January 19, 2018).¹ The Legislative Defendants sought an emergency stay from United States Supreme Court, which denied the stay as to all districts other than House districts located in Wake and Mecklenburg Counties. *Order in Pending Case, North Carolina v. Covington*, 17A790 (February 6, 2018).

¹ This order was amended on January 21, 2018.

On January 9, 2018, a federal court three-judge panel concluded the 2016 Congressional Plan was unconstitutional, enjoined further elections under that Plan, and ordered new maps drawn by the General Assembly. *See Common Cause v. Rucho*, No. 1:16-CV-1026 and *League of Women Voters v. Rucho*, No. 1:16-CV-1164 (M.D.N.C. 2017). On January 18, 2018, the United States Supreme Court granted a stay of that order pending appeal. (*See generally, Rucho v. Common Cause*, 17A 745 (docket entry for January 18, 2018).

Meanwhile, in this case, the North Carolina Supreme Court reaffirmed its 2014 decision on December 18, 2015. *Dickson v. Rucho*, 368 N.C. 481, 486 (2015)(*Dickson II*). Plaintiffs once again appealed to the United States Supreme Court and, on May 30, 2017, that Court again vacated the decision of the North Carolina Supreme Court, remanding it this time for reconsideration in light of *Harris*. 137 S. Ct. 2186 (2017). On the second remand, the North Carolina Supreme Court issued an order to this three-judge panel, directing the trial court to determine whether:

1. In light of *Cooper v. Harris* and *North Carolina v. Covington*, a controversy exists or if this matter is moot in whole or in part;
2. There are other remaining collateral state and/or federal issues that require resolution; and
3. Any other relief that may be proper.

Dickson v. Rucho, No. 201PA12-4, Orders of September 28, 2017 and October 9, 2017.

Conclusions of the Trial Court

The three-judge panel has considered the memoranda and arguments of counsel and concludes as follows:

In light of *Cooper v. Harris* and *North Carolina v. Covington*, there is no doubt, and indeed State and Legislative Defendants concede, that the United States Supreme Court has vacated the North Carolina Supreme Court's decisions in *Dickson I* and *II*, and that the 2011 First and Twelfth Congressional Districts and the 2011 majority black legislative districts have been found unconstitutional under the federal constitution by the United States Supreme Court. As such, this Court concludes that the Plaintiffs are entitled to declaratory judgment in their favor on the United States Constitutional claims asserted in Claims for Relief 22, 23 and 24 of the *Dickson v. Rucho* Amended Complaint (11 CVS 16896) and Claims for Relief 9, 10 and 11 of the *NAACP v. State of North Carolina* Amended Complaint (11 CVS 16940). Likewise, Plaintiffs are entitled to judgment in their favor on their Equal Protection claims brought under Article 1, § 19 of the North Carolina Constitution, as asserted in Claims for Relief 19, 20 and 21 of the *Dickson* Amended Complaint and Claims for Relief 1, 2 and 3 of the *NAACP* Amended Complaint. *See generally, S.S. Kresge Co. v. Davis*, 277 N.C. 654, 660 (1971)(The principle of equal protection of the law, made explicit in the 14th amendment of the U.S. Constitution, has been expressly incorporated in Art. I, § 19 of the North Carolina Constitution).

The Plaintiffs urge, in addition to judgment in their favor consistent with the decisions of the United States Supreme Court, that this trial court hold the matters

in abeyance so as to be available to aid in the fashioning and enforcement of an appropriate remedy should federal court remedies prove incomplete. Notably, Plaintiffs contend that despite their success before federal court forums, there may still be state constitutional issues that require resolution in the remedial legislative and congressional plans because the federal courts are only considering federal constitutional challenges. Plaintiffs urge this court to remain “poised to resume proceedings.”

Indeed, one such matter has arisen in the interim, and has been brought to this three-judge panel by way of a Joint Plaintiffs’ Emergency Motion for Relief filed February 7, 2018. Without addressing the issue of mootness, this three-judge panel endeavored to respond to that motion in the short window of time available. However, as may be surmised from our ruling on that Motion, significant practical difficulties, if not jurisdictional impediments, exist when one court is called upon to construe and enforce another court’s order that was made upon a distinct and separate record by distinct and separate plaintiffs.

Therefore, as to the Plaintiffs’ request to continue to hold this matter in abeyance, this three-judge panel concludes that the doctrine of mootness and judicial economy dictate that this litigation be declared to be concluded. The legislative and congressional maps now under consideration in federal courts are not the product of the 2011 redistricting legislation considered by this trial court, but rather the product of later acts of the General Assembly (*see, See N.C. Sess. Law, 2016-1 (Congressional Plan) and N.C. Sess. Laws 2017-207, 2017-208*

(Legislative Plan)) and the scrutiny of the federal courts. The 2011 Redistricting Plans no longer exist. There is no further remedy that the Court can offer with respect to the 2011 Plans. While Plaintiffs are certainly not foreclosed from seeking redress in the General Court of Justice of North Carolina for state constitutional claims that may become apparent in the 2016 and 2017 redistricting plans, those claims ought best be asserted in new litigation.

THEREFORE, this Court ORDERS the following:

1. With respect to Claims for Relief 22, 23 and 24 of the *Dickson v. Rucho* Amended Complaint (11 CVS 16896) and Claims for Relief 9, 10 and 11 of the *NAACP v. State of North Carolina* Amended Complaint (11 CVS 16940), judgment is entered in favor of the Plaintiffs, and against the Defendants, and the 2011 First and Twelfth Congressional Districts and the 2011 majority black legislative districts are declared to be unconstitutional in violation of the Equal Protection Clause of the United States Constitution.

2. With respect to Claims for Relief 19, 20 and 21 of the *Dickson* Amended Complaint and Claims for Relief 1, 2 and 3 of the *NAACP* Amended Complaint, judgment is entered in favor of the Plaintiffs, and against the Defendants, and the 2011 First and Twelfth Congressional Districts and the 2011 majority black legislative districts are declared to be unconstitutional in violation of Article 1, § 19 of the North Carolina Constitution.

3. For the reasons stated above, all remaining claims of the Plaintiffs asserted in their Amended Complaints are declared to be moot or, in the

alternative, this Court abstains from further consideration of those claims in deference to the parallel litigation in the federal courts.

4. Notwithstanding Paragraph 3 above, this this Court shall retain jurisdiction of any motions for costs and attorneys' fees and other such post-judgment matters appropriately brought by the parties.

This the 11th day of February, 2018.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

Certificate of Service

The undersigned certifies that the foregoing was served upon all parties by depositing the same in the custody of the United States Postal Service, first class postage prepaid, addressed as follow:

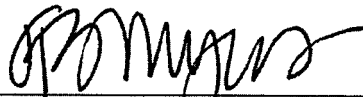
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This the 12th day of February, 2018.



Kellie Z. Myers, Trial Court Administrator
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