

2008 Virginia Women in History

Decision of the Virginia Supreme Court
in

Wilkins v. West (2002)

Written by Judge Elizabeth B. Lacy

S. Vance Wilkins, Speaker of the House of Delegates, et al., v. Douglas MacArthur West, et al.
November 1, 2002

In litigation challenging the redistricting of numerous House and Senate electoral districts enacted by the General Assembly in 2001, the judgment of the circuit court, which had invalidated certain of the districts and enjoined their use in elections, is reversed.

Based on the 2000 Census reports, the General Assembly in 2001 enacted various redrawn electoral districts. Shortly after the legislation was signed into law, a bill of complaint was filed by 46 complainants, alleging that numerous districts were designed with the avowed, race-based goal of maximizing the number of minority voters in violation of Article I, §§ 1 and 11 of the Constitution of Virginia, that the pairing of incumbent female legislators in the legislation intentionally and disproportionately increased the odds against re-election of certain Democratic female legislators, and that the redistricting plans unconstitutionally discriminated against Virginia voters on the basis of political viewpoint by disproportionately pairing incumbent Democratic legislators. The complaint further asserted that 17 House Districts and nine Senate Districts were not comprised of contiguous and compact territory as mandated by Article II, § 6 of the Constitution of Virginia. Certain claims were dismissed on motion, and a three-day, ore tenus hearing was then held. While the trial court granted a motion to strike some of the remaining claims, it concluded that three Senate and three House Districts did not satisfy the contiguity and compactness requirements of Article II, § 6 of the Constitution of Virginia. The trial court also held that the challenged House Districts and six Senate Districts violated Article I, § 1 and 11 on a finding that the General Assembly of Virginia has subordinated traditional redistricting principles to race in drawing district lines. The trial court enjoined the defendants from conducting any elections under present legislation, and granted other injunctive relief. Defendants' petition for appeal, and motion for stay pending appeal, were granted.

Opinion:

On appeal, the defendants raise eight assignments of error. The first three assignments address the substantive findings of the trial court in this matter: (1) whether the complainants lacked standing to pursue the litigation; (2) whether certain districts met the constitutional requirement of compactness and contiguity; and (3) whether certain districts were racially gerrymandered. These issues, in our view, are dispositive of this appeal.

I. STANDING

The defendants argue that the trial court should have dismissed the bill of complaint because the complainants failed to establish that they had standing to pursue the claims asserted. Relying on this Court's precedent, the defendants maintain that standing to challenge an electoral district should not be inferred solely from residency in that district. Rather, the defendants argue, standing requires "a personal stake in the outcome. . . ."

The complainants contend that proof of residency in a particular district is sufficient to establish standing to challenge actions in other districts as well as the district of residence....

The complainants claim that any citizen of the Commonwealth has standing to challenge any district based on violations of Article I, §§ 1 and 11 or Article II, § 6 because an unconstitutional configuration of one district may have an impact on the drawing of all other districts. We reject this rationale as a basis for establishing standing. . . .

2008 Virginia Women in History

Applying these principles to the record in this case, we conclude that the trial court erred in denying the defendants' motion to dismiss those claims challenging electoral districts in which no complainant resides and no evidence of injury to non-resident complainants was produced.

II. COMPACT AND CONTIGUOUS DISTRICTS

Article II, § 6 of the Constitution of Virginia requires that electoral districts adopted by the General Assembly be "composed of contiguous and compact territory." The trial court held that the contiguity requirement included a reasonable opportunity for travel within the district. . . .

Senate District 2 is comprised of part of the City of Hampton, part of the city of Newport News, one precinct of the City of Suffolk, and one precinct of the City of Portsmouth. The Portsmouth-Suffolk portion of the district is separated from the Hampton Newport News portion by the Hampton Roads body of water. Travel by motor vehicle between the two portions of the district is possible by driving four to five miles on the Hampton Roads Beltway, Interstate Highway I-664. . . .

In this case, the trial court found that Senate District 2 failed the constitutional requirement of contiguity, not because there was no access between the two portions of the district, but because the access was unreasonable. The trial court cites no record evidence supporting its position that travel required was unreasonable and our review shows none. . . .

In our view, the evidence in this record does not rise to a level of proof implicating application of the fairly debatable standard. And it is wholly insufficient to support a conclusion that Senate District 2 clearly violates or is plainly repugnant to the compactness and contiguity requirements of Article II, § 6. Accordingly, we will reverse the trial court's judgment in that regard. . . .

The trial court also concluded that House District 74 violated the compactness requirement of Article II, § 6 of the Constitution of Virginia because a 20-mile longstretch of land connected the northern portion of the district in Henrico County to the City of Hopewell, the southern portion of the district. Using its definition of constitutional contiguity, the trial court also found that District 74 violated Article II, § 6 because the City of Hopewell precincts were separated from the remainder of the district by the James River. No tunnel, road, or bridge connects this portion of the district with the remainder of the district and travel through other districts is required to access the remainder of District 74 from the Hopewell precincts. . . .

The record also shows that the incumbent member of the House of Delegates from House District 62 was a Republican. Removing the "highly Democratic" Hopewell precincts from District 62 made that district a "safer" Republican district.

The changes to House District 74 did not improve the district's rating with regard to compactness, but they did bring the district closer to the target population. The black voting age population (BVAP) fell from 65% to 60%, but the district continues to have more African Americans than any other district in HB 1. . . .

Given the strong presumption of constitutionality afforded legislative acts, and the fairly debatable standard we apply when considering the validity of such acts, we conclude that the trial court erred in holding that District 74 violated the compactness and contiguity requirements of Article II, § 6 of the Constitution of Virginia.

III. RACIAL GERRYMANDING

The defendants also assign error to the trial court's holding that certain house and senate districts violated Article I, §§ 1 and 11 of the Constitution of Virginia because they were the product of racial gerrymandering. . . .

We have not previously considered a challenge of this nature solely under Article I, § 11 of the Constitution of Virginia. . . .

In *Hunt v. Cromartie* . . . (2001), the most recent redistricting case involving a challenge of racial gerrymandering under the equal protection clause, the Supreme court recited The burden borne by the challenger. A party asserting that a legislative redistricting plan has improperly used race as a criterion

2008 Virginia Women in History

must show that the legislature subordinated traditional redistricting principles to racial considerations and that race was not merely *a* factor in the design of the district, but was *the* predominant factor. . . .

In the case, the defendants readily acknowledge that race was a consideration in drawing the district lines. . . .

Accordingly, to prevail in this case, the complainants were required to show that race was *the predominant factor* used by the General Assembly in drawing the districts at issue. Additionally, if the evidence showed a high correlation in the voting age population between race and political affiliation, the complainants were also required to produce districting alternatives which were comparably consistent with traditional redistricting principles and which could have brought significantly greater balance while still achieving legitimate political objectives. . . .

Based on our review of the record, we conclude that the complainants failed to carry their burden of proof that race was the predominant factor used by the General Assembly and that qualifying alternative plans were available. . . .

Senate District 2 is a majority minority district comprised of parts of the Cities of Hampton and Newport News, and one majority African-American precinct each in Portsmouth and in Suffolk. The trial court found that to create this district the General Assembly crossed the Hampton Roads body of water, “grabbing” isolated minority precincts to make up for minority precincts it “shed” closer to the Newport News/Hampton core of the district. Crossing geographic and political boundaries in this manner was “in utter disregard of traditional redistricting principles,” according to the trial court.

The complainants’ evidence included maps and charts, along with expert testimony, showing the district’s configuration, population by race, BVAP, and political voting patterns in the 1997 gubernatorial race. The complainants’ expert also addressed the Langely precinct in Hampton which was split between Senate Districts 1 and 2. The portion of the precinct placed in Senate District 2 had a 36.2% BVAP, while the portion assigned to the white majority district, Senate District 1, had a 20.4% BVAP, thus showing that the division was based on race, according to the complainants. Finally, the complainants’ expert also stated that there were “several bordering precincts with relatively high concentrations of Democrats and low concentration of African-Americans that are excluded from the District.” He concluded that placing the African-American Democratic precincts in the majority minority District 2 rather than the white Democratic precincts, further showed that race, not politics, was the predominant factor in drawing the district boundaries....

Based on this record, we conclude that the trial court erred in determining that race was the predominant factor in creating District 74. The record shows that race was a factor in designing the district along with traditional redistricting principles of retaining core areas, population equality, compactness and contiguity, partisan voting behavior, and protection of incumbents. The record does not support the conclusion that any of these factors were subordinated to race. Accordingly, we conclude that the trial court erred in holding that House District 74 was racially gerrymandered....

CONCLUSION

In summary, for the reasons stated above, we will vacate the trial court’s judgment with regard to House Districts 62, 83, 91, and 100 and Senate Districts 1, 6, and 13 because the complainants did not have standing to pursue claims against those districts.

We will reverse the judgment of the trial court holding that Senate District 2 and House District 4 violated Article II, § 6 of the Constitution of Virginia.

We will reverse the judgment of the trial court holding that Senate Districts 2, 5, 9, 16, and 18, and House Districts 69, 70, 71, 74, 77, 80, 89, 90, 92, and 95 violate Article I, §§ 1 and 11 of the Constitution of Virginia. Final judgment will be entered in favor of the defendants.