

STATE OF NORTH CAROLINA

FILED

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

CASWELL COUNTY

2021 NOV 16 P 11

21 CvS 363

RICHARD DAVID WRENN,
TIMOTHY DALE COBB, and
CHARLES KEITH TATUM,

Plaintiffs,

vs.

CASWELL COUNTY BOARD OF
ELECTIONS and Larry Cowan,
Yvonne Saul, Crystal King,
Gladys Graves and Dora Ward,
in their official capacities as members
of the Board of Elections;
Robert Webb in his official
Capacity as Executive Director of
the Caswell County Board of
Elections; and
CASWELL COUNTY BOARD OF
COMMISSIONERS and
David Owen, William E. Carter,
Jeremiah Jefferies, Nathaniel Hall,
Steve Oestreicher, Rick McVey and
John D. Dickerson in their official
capacities as members of the Caswell
County Board of Commissioners,

Defendants.

VERIFIED COMPLAINT
(DECLARATORY JUDGMENT,
MOTION FOR TEMPORARY
RESTRAINING ORDER
AND
PRELIMINARY INJUNCTION)

Plaintiffs allege the following:

INTRODUCTION

1. This is a facial challenge to the constitutionality of a resolution passed by the Caswell County North Carolina Board of Commissioners

(hereinafter the “resolution”), in violation of the Equal Protection Clause, the Fifteenth Amendment and Article 1, Sections I, Sections 1,2,3,10,14,19,35, and 36 of the North Carolina Constitution. The resolution separates Caswell County voters and county commission election candidates into five voting districts (“districts”) in that in enacting the map, color and race predominated in the making of the non-compact districts which divide precincts irrationally with the use of bizarrely shaped districts for the purpose of nomination and election of county commissioners in the 2022 elections. See Exhibit A attached hereto and incorporated herein as if fully set out.

2. The transactions and occurrences alleged in this Complaint present a common nucleus of law proving the resolution violates rights guaranteed under the North Carolina Constitution Article I, Sections 1,2,3,6,14,19,35, and 36; as well as rights guaranteed under the United States Constitution’s First, Fourteenth and Fifteen Amendments.

3. The rights guaranteed under the North Carolina Constitution supplement rights guaranteed in the United States Constitution, including the “core” political rights to vote, be eligible for election to office and participate in political affairs on an equal basis.

4. The impairment of the right to cast an undiluted vote and an equal vote is both irreparable harm per se and a violation of a fundamental right as is the right to be free of racial stigmatization in drawing election

boundaries unless a compelling state interest requires it and it is narrowly tailored to achieve this interest.

5. State and Federal equal protection claims are analogous to one another because they both protect the core political rights to vote, to assemble, to petition, to be eligible to be elected to office, to free and fair elections free from invidious classifications and structural election mechanisms which dilute those rights.

6. The plan purports to comply with a 1987 federal consent order entered into by Caswell County and the NAACP in a case entitled "National Association for the Advancement of Colored People vs Caswell County, North Carolina" (USMDNC, C-86-676-G and 708G) but the plan fails to produce two districts in which **African-American voters** constitute a numerical **majority** so to be able to have an equal chance to elect a candidate of their choice.

7. In addition, the new plan violated the North Carolina Open Meetings Law and failed to make requisite findings of fact and conclusions of law required by state statute and the Plaintiffs are entitled to have the motion voided by a superior court judge for such violation by state statute. (cite)

PARTIES

8. Plaintiff, Richard David Wrenn is an adult citizen, taxpayer and registered voter in Caswell County, North Carolina. Plaintiff intends to be a candidate for the office of Caswell County Commissioner in the election of

2022. A copy of his voter registration card is attached hereto and incorporated herein as if fully set out in Exhibit B.

9. Plaintiffs Timothy Dale Cobb and Charles Keith Tatum are adult citizens, taxpayers and registered voters in Caswell County North Carolina residing in differing new Commissioner districts. A copy of their voter registration cards are attached hereto and incorporated herein as if fully set out as Exhibit B.

10. The Plaintiffs bring this complaint on behalf of themselves and those residents, voters and taxpayers that are similar situated and those persons who exercise their rights to free speech, right to petition, right and otherwise associate with them to elect officials and to be free of racial discrimination.

11. Defendants Larry Cowan, Yvonne Saul, Crystal King, Gladys Graves and Dora Ward are members of the Caswell County Board of Elections and are sued in their official capacity.

12. Defendant Robert Webb is the executive director of the county Board of Elections and is sued in his official capacity only.

13. Defendant Caswell County Board of Elections is responsible for conducting and certifying the results of primary and general elections in Caswell County, North Carolina. This Board presently is composed of those individual Commissioners named as defendants herein.

14. Defendant David Owen is the Chairman of the Caswell County Board of Commissioners and is sued in his official capacity only.

15. Defendants William E. Carter, Jeremiah Jefferies, Nathaniel Hall, Steve Oestreicher, Rick McVey and John D. Dickerson are members of the Caswell County Board of Commissioners and are sued in their official capacity only.

16. Defendant Caswell County is a duly organized unit of local government in the State of North Carolina and its governing body is the Board of County Commissioners, which presently is composed of those individual Commissioners named as defendants herein above.

JURISDICTION

17. Jurisdiction and Venue are proper in Caswell County pursuant to N.C. Gen. Stat. §§ 1-81.1(a1) and 1-267.1

18. This Complaint asks that a superior court judge enjoin the use of the maps contained in the resolution, declare the rights, status and other legal relations of the Plaintiffs with respect to the challenged resolution, award nominal damages, and for costs and attorneys' fees. This matter involves an actual case or controversy under federal law and a "justiciable" controversy under state law.

19. The Complaint further requests a judge issue a temporary restraining order and a preliminary injunction to preserve the status quo and

prevent irreparable injury and then a permanent injunction invalidating the motion in question. Plaintiffs will suffer irreparable injury if elections for county commission are to be elected under the recently enacted resolution. This court has jurisdiction to enter a preliminary injunction under N. C. Gen. Stat. 1-485, Rule 65 of the N.C. Rules of Civil Procedure and 42 USCA 1983 and 1988.

20. This matter is timely and ripe for determination in that the filing for election is less than 1 month away and is necessary to allow an orderly process of the decisions of potential contestants including the Plaintiff Wrenn and those similarly situated. These decisions will need to be made with respect to the December 6th filing of notices of candidacy for the primary and general election contests to be conducted in March of 2022. Because the Caswell County Board of Elections will have to “code” or assign voters and candidates to district pursuant to a legal resolution, time is of the essence.

21. This Court has concurrent subject matter jurisdiction over claims arising under 42 U.S.C. § 1983 which claims arise out of the same set of facts as the State claims.

STANDING AND NEED FOR INJUNCTIVE RELIEF

22. All Plaintiffs have standing to challenge the constitutionality of the resolution in that they are registered voters in Caswell County who regularly vote, donate to political candidates or receive donations, and associate with other voters to achieve their political goals. Under the present

electoral plan, without the issuance of a preliminary and permanent injunction, Plaintiffs have no other adequate remedy at law.

23. The Plaintiffs are injured in part by being stigmatized by being divided by race and color for purposes of electing county commission districts having their votes diluted unconstitutionally.

FACTUAL AND LEGAL ALLEGATIONS COMMON TO ALL COUNTS

24. Prior to 1987 the County Board of Commissioners consisted of a five member board in numbered seats in five district elections throughout Caswell County.

25. In 1965, Caswell County, along with 40 other counties in North Carolina, was designated by the United States Attorney General, a "covered" jurisdiction under Section 5 of the Voting Rights Act based upon a formula legislated in Congress by Section 4 of the Voting Rights Act which measured low participation in elections by African-American voters based upon their historic voting and registration history prior to 1965 relative to that of white voters.

26. In 1987, Caswell County Board of Elections, Commissioners and the Elections Board were sued by African-American citizens and the NAACP to alter its method of electing County Commissioners. Said lawsuit resulted in a settlement by order, a copy of which is attached hereto and incorporated herein as Exhibit C.

27. The factual “Gingles” preconditions required by the Section 2 of the 1965 Voting Rights Act, no longer exist in Caswell County so that racial remedies would not be required today.

28. On information and belief, it is alleged the Commissioners, did not conduct or consider the requisite empirical studies to determine whether present conditions in Caswell County continue to meet the “Gingles” preconditions.

29. Plaintiffs allege the Commission is under a duty to conduct such an empirical investigation in the event it determines it is necessary to maintain race-based districting in 2021.

30. Both federal and state courts have found that nowhere in North Carolina do the factual predicates required by Section 2, specifically racially statistically significant polarized voting by whites in Caswell County. Nothing in the 1987 federal order required the County Commission to permanently require two county commission districts to be drawn with a majority African-American or Black majority in perpetuity.

31. Since the 1987 judgment was entered, the law has changed in *Holder vs Shelby County* decision, Section 5 of the Voting Rights Act which required existing racial remedial districts be maintained at a “benchmark” level has been invalidated.

32. Since the 1987 judgment was entered, the law has evolved so that racial remedies are not automatically maintained unless a party advocating for maintaining such districts have a strong basis in evidence to show racial remedies must be maintained.

33. Since the 1987 judgment candidates of choice of the African-American community in Caswell have been nominated and/or elected in such numbers that racially remedial districts are no longer needed in Caswell County and in fact harm the electoral chances of candidates of both races by maintained unnecessary segregated districts and perpetuate racial polarization

34. On April 1, 2020 the United States Bureau of the Census took a census of the population of Caswell County.

35. On or about August 16, 2020, the United States Bureau of the Census released to North Carolina the results of the census for purposes of redistricting local units of government. The Census found the following demographic statistics for Caswell County: Total Population 22,736 of which 12,036 or 61.7% are white; 1002 or 4.4% are Hispanic; 7192 or 31.2% are Black; 146 or 0.6% are Asian; 467 or 2.1% are Native Americans and 47 or 0.2% are Pacific Islanders.

36. In using these terms in constructing their redistricting plans, the Defendants drew plans based on race and color using the term Minority to mean Non-white populations.

37. On or about November 1, 2021, near the time of the enactment of the resolution, the registered voters in Caswell County by precinct, race, party and percentage were as contained in Exhibit D.

38. On information and belief, it is alleged the County Commissioners during the redistricting process knew and are presumed to know the political demography of Caswell County.

39. Based on presentations at the meetings regarding the proposed maps, the County employed a racial goal or quota of creating at least 2 minority-majority districts.

40. Sometime after receipt of the census the Piedmont Triad Council of Governments ("PTCG Version 1") was contacted and requested by officials at Caswell County to draw a map of county commission districts in Caswell County for consideration by the County Commissioners.

41. The "PTGC "map was prepared and along with some limited demographic statistics were presented to the public at the County Commissioners meeting. The map and the limited demographic statistics are attached and the Map and Statistics is attached in Exhibit E, "Minutes of the County Commissioners Meeting held on November 1, 2021 and October 28, 2021".

42. The (PTCG Version 1) map meets recognized traditional redistricting principles as follows: (1) Districts are equally populated within

the legally required margins; (2) Districts are compact; (3) Districts do not unnecessarily divide precinct lines; (4) Districts enable both the African-American community and the “Minority” Community in Caswell County to nominate and elect candidates of their choice without the use of bizarrely shaped districts which separate voters on the basis of race or party; (5) Districts were contiguous; and, (6) Districts did not double bunk incumbents.

43. Subsequently a new map (Version 6) was drawn by the County and posted on the website prior to the November 1, 2021 Commissioners Meeting.

44. On October 29, 2021 at approximately 3:57 p.m. Counsel for the Plaintiffs sent a comment on the Version 6 plan to be heard on November 1, 2021 outlining some of the Plaintiff’s objections to the plan, placing the Board on Notice of its potential violations. A copy of this letter is attached as Exhibit F.

45. The Version 6 map does not meet or consistently apply recognized traditional redistricting principles as follows: (1) Districts are not compact; (2) Districts unnecessarily divide precinct lines making election administration and voter confusion inevitable; (3) While 2 Districts enable both the African-American and “Minority” community in Caswell County to nominate and elect candidates of their choice the plan does so using bizarrely shaped districts which separate voters on the basis of race; (4) Districts were drawn with an explicit racial or color quota; and, (5) The districts drawn do

create 2 majority-minority districts which means Non-White districts, it does not meet the goal of the order to create 2 Majority African-American Districts.

46. The Board of Commissioners had no evidence before it, that non-white racial groups in Caswell County are politically cohesive.

47. The "PTCG" map (Version 1) was rejected by the Commissioners for reasons undisclosed to the public but described during the meeting adopting the map as follows: "PTRC Proposed Districts meet the legal requirements for redistricting but not the priorities of the Board of Commissions. Other versions meet the priorities of the Board of Commissioners and the Consent Decree, but they may contain deficiencies in one area or the other". A transcript of the discussion of the version adopted at the hearing is found in Exhibit E along with a slide presentation presented.

48. Subsequently, a new map was produced at the County Commissioners meeting which differed distinctly from the 2010 map and the 2020 (PTCG) map. This map contained two bizarrely shaped districts which segregates voters into black and white areas and unnecessarily divided precincts. Plaintiffs allege this map was drawn with predominate racial intent and was not narrowly tailored to meet the requirements of the consent order, the law or the needs of the Caswell County.

COUNT ONE

(Violation of the Open Meetings Law and N.C. Gen. Stat. 153-22A)

49. The allegations of paragraphs 1 through 48 are hereby realleged and incorporated herein as if fully set out.

50. The Caswell County Board of Commissioner violated the Open Meetings Law by meeting in a closed session on November 1, without stating a valid reason for a closed session and without authority for a closed session. Redistricting discussions are public business and should be discussed openly. By conducting the deliberation portion of the hearing in such a manner as to keep the public and the plaintiffs from hearing these discussions.

51. On information and belief, it is alleged the closed session discussed redistricting legal issues regarding the Version 6 plan for redistricting which was subsequently adopted on the basis in part of the closed session meeting.

52. The Caswell County Board of Commissioners violated the Open Meetings Law by meeting in closed session on November 1, 2021, by stating a pretextual reason for the closed session and without authority for a closed session; and further violated the Open Meetings Law on November 1, 2021, by conducting the deliberation portion of the hearing in such a manner as to knowingly and intentionally prevent the Plaintiffs or members of the public from hearing their discussion.

53. The action taken by the Caswell County Board of Commissioners violated N.C. Gen. Stat. 153A-22 in that it failed to make required statutory findings by resolution necessary to adopt a redistricting plan.

COUNT TWO

(Violation of the Federal and State Equal Protection Clauses, the 15th Amendment, and the North Carolina Constitution).

54. The allegations of paragraphs 1 through 53 are hereby realleged and incorporated herein as if fully set out.

55. Article I, Section 19 of the North Carolina Constitution reads in relevant part as follows: No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

56. The Fourteenth Amendment reads in relevant part as follows: No state shall "deny to any person within its jurisdiction equal protection of the laws".

57. The Fifteenth Amendment reads in relevant part as follows: "The right of citizens of the United States to vote shall not be denied or abridged by . . . any state on account of race, color, or previous condition of servitude."

58. The shape of the districts in the resolution passed by the County Commission provides circumstantial evidence that race predominated over traditional redistricting principles in the crafting of the resolution.

59. The Commission ignored the traditional redistricting principle of compactness.

60. The Commission were told at the October 28, 2021 meeting what traditional redistricting principles included in North Carolina by the presentation of the County Manager, contained in Exhibit F as follows: ignored the traditional redistricting principle of compactness, contiguity, preserving communities of interest and minimizing split precincts.

61. The Commissioners were told at the October 28, 2021 meeting “The equal protection clause is violated when race is the “predominate consideration in drawing district lines and the legislature subordinates “traditional redistricting principle to race in order to create minority districts with a compelling state interest.

62. The Commissioners had a map (PTCG Version 1) alternative which did not use bizarrely shaped districts along racial lines which was consistent with neutral redistricting principles.

63. The Commissioners adopted a map which subordinated race to traditional redistricting principles.

64. While it is presumed the Commissioners know the racial makeup of a district, in this case, the commissioners paid unnecessary attention to race in the crafting of the districts.

65. As shown by the chart above, SL 2018-14 divided the county into two predominant racial groups and racially sorted the voters into districts, thereby unlawfully stigmatizing the voters in each district in violation of Article I section 19's constitutional guarantee to be free of racial discrimination.

66. The 15th Amendment is violated that in comparing the default plan for election of 5 commissioners at large with this plan the voting power of some voters is abridged or "shortened" on account of race, in that in an at large system, voters would have 5 votes and in a district system they would only have 3 votes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter judgment in their favor and against Defendant, and:

1. Declare that the Resolution is unconstitutional on its face on the basis of any one or more of the following grounds:
 - a. Because it violates the rights of residents and voters in Caswell County to equal protection to be treated equally within the county with voters whom they are similarly situated.
 - b. Because it dilutes the right to vote on an equal basis with all other citizens without either a compelling state justification

and/or fails to narrowly tailor the Commissioners districts used to further any purported interest by selecting the least intrusive means to do so.

- c. Because it was not adopted according to statute.
- d. Because it was adopted in violation of the open meetings law.

2. Declare the resolution is unconstitutional because it violates the rights of residents and voters in Caswell County under aforesaid pled Amendments to the U.S. Constitution including the 14th and 15th Amendment and the Voting Rights Act of 1965, as amended.

3. Enter an immediate temporary restraining order and preliminary injunction staying elections for County Commissioner in Caswell County until the County enacts new constitutional legislation in which all the voters of the county are not subject to districts which are drawn with a predominate racial motive, or in the alternative, pending the trial of this matter to require the primary elections in 2022 and general election in 2022 for county commissioner to be conducted county wide or order an interim court drawn map for use in the 2022 elections.

4. Declare that the Caswell County Board of Commissioners have violated the Open Meetings Law and declare that the decision of the board adopting the resolution void.

5. Order defendants to pay reasonable attorney's fees pursuant to G.S. 143-318.16B and G.S. 6-19.1;

6. Grant the Plaintiffs costs, expenses including reasonable attorneys' fees under 42 USCA 1988 and as provided by state case law and federal law.

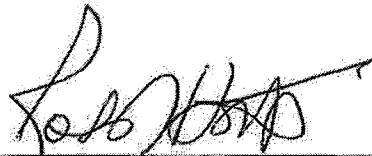
7. Accept this verified complaint as an affidavit in support of a motion for preliminary injunction under Rule 65 of the NC Rules of Civil Procedure and an affidavit in support of the Plaintiffs motion for preliminary injunction.

8. Award the Plaintiffs compensatory and/or nominal damages according to law.

9. Pursuant to the Rules of Evidence take judicial notice of the Exhibits attached to the complaint which contain adjudicated facts or which are not subject to disputation.

10. For such other and further relief, as may be just and proper.

Dated: November 16, 2021.



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Attorney for Plaintiffs

VERIFICATION

I have read the foregoing Complaint and the matters asserted therein are true of my own knowledge, except those matters alleged in information and belief, and as to those matters, I believe them to be true.

This the 15 day of November, 2021.

Richard David Wrenn
RICHARD DAVID WRENN

STATE OF NORTH CAROLINA

COUNTY OF Caswell

Sworn and subscribed to before me
this 15 day of Nov., 2021.

Antia B. Smith
Notary Public

My Commission Expires: 9/29/22

SEAL

9/29/22.

VERIFICATION

I have read the foregoing Complaint and the matters asserted therein are true of my own knowledge, except those matters alleged in information and belief, and as to those matters, I believe them to be true.

This the 15 day of November, 2021.

Timothy Dale Cobb
TIMOTHY DALE COBB

STATE OF NORTH CAROLINA
COUNTY OF Cashwell
Sworn and subscribed to before me
this 15th day of Nov., 2021.

Conita B. Smith
Notary Public

My Commission Expires: 9/29/22

SEAL

9/29/22

VERIFICATION

I have read the foregoing Complaint and the matters asserted therein are true of my own knowledge, except those matters alleged in information and belief, and as to those matters, I believe them to be true.

This the 15th day of November, 2021.



CHARLES KEITH TATUM

STATE OF NORTH CAROLINA
COUNTY OF Caswell

Sworn and subscribed to before me
this 15th day of Nov., 2021.



Notary Public

My Commission Expires: 9/29/22

SEAL

9/29/22