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Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-000508-MR

J. SCOTT WANTLAND AND OTHER
APPELLANTS AS NAMED IN THE
NOTICE OF APPEAL APPELLANTS

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 02-CI-00569

KENTUCKY STATE BOARD OF ELECTIONS
AND TREY GRAYSON AS SUCCESSOR
OF JOHN Y. BROWN III, KENTUCKY
SECRETARY OF STATE APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

KNOPF, JUDGE: The General Assembly's 2002 reapportionment of the House of Representatives assigned segments of Bullitt County to four different legislative districts.[1] District 18 comprises

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[1] KRS 5.200 - KRS 5.300.

all of Hancock and Breckinridge Counties and portions of Daviess, Hardin, and Bullitt Counties. District 27 comprises Meade County and portions of Hardin and Bullitt Counties. District 49 is contained entirely within Bullitt County. And District 50 comprises Nelson County and portions of Bullitt and Spencer Counties. In March 2002, eligible Bullitt County voters from each of these districts brought suit in the Bullitt Circuit Court seeking a declaration that the multiple divisions of Bullitt County violated the county-integrity provision of § 33 of the Kentucky Constitution and that District 18 violated § 33's district-contiguity requirement.[2] The plaintiffs also sought that the Secretary of State and the Board of Elections be enjoined from implementing the allegedly unlawful apportionment.

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[2] Section 33 provides that "[t]he first General Assembly after the adoption of this Constitution shall divide the State into thirty-eight Senatorial Districts, and one hundred Representative Districts, as nearly equal in population as may be without dividing any county, except where a county may include more than one district, which districts shall constitute the Senatorial and Representative Districts for ten years. Not more than two counties shall be joined together to form a Representative District: Provided, In doing so the principle requiring every district to be as nearly equal in population as may be shall not be violated. At the expiration of that time, the General Assembly shall then, and every ten years thereafter, redistrict the State according to this rule, and for the purposes expressed in this section. If, in making said districts, inequality of populations should be unavoidable, any advantage resulting therefrom shall be given to districts having the largest territory. No part of a county shall be added to another county to make a district, and the counties forming a district shall be contiguous."

After transfer to Franklin Circuit Court,[3] the plaintiffs moved for summary judgment. By order entered February 27, 2004, the trial court denied the plaintiffs' motion and instead entered summary judgment for the defendants. The court ruled that the apportioning of Bullitt County among four house districts did not violate § 33 of the constitution and that the various segments of District 18 are contiguous. It is from that ruling that the Bullitt County plaintiffs have appealed. We affirm.

A fundamental principle of democracy is that each person's vote is to have the same weight. To give substance to this principle, both the federal and the Kentucky Constitutions require that state legislative districts contain substantially equal populations.[4] Section 33 of the Kentucky Constitution also envisions legislative districts comprising, for the most part, undivided counties. Our Supreme Court has held that "when the goals of population equality and county integrity inevitably collide, the requirement of approximate equality of population must control."[5] Accordingly, the Court has adopted

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[3] *See* KRS 5.005.

[4] Voinovich v. Quilter, 507 U.S. 146, 113 S. Ct. 1149, 122 L. Ed. 2d 500 (1993); Fischer v. State Board of Elections, 879 S.W.2d 475 (Ky. 1994).

[5] Jensen v. Kentucky State Board of Elections, 959 S.W.2d 771, 774 (Ky. 1997).

> plus-or-minus 5% as the maximum population variation allowable in creating House and Senate districts. . . . [T]he next priority of a reapportionment plan is the preservation of county integrity, which is accomplished by dividing the fewest possible number of counties.[6]

Applying these standards in Jensen v. Kentucky State Board of Elections,[7] our Supreme Court upheld the 1996 House reapportionment notwithstanding the fact that several counties whose populations exceeded that of the ideal district had been subjected to multiple divisions such that no district lay entirely within the county. Such divisions, the Court said, were unavoidable. "No one now suggests that any redistricting plan could be drafted without some such multiple divisions."[8]

The appellants do not allege that the 2002 reapportionment violates the equality requirement or divides more counties than necessary to achieve that goal. Nor do they complain about district 49, which lies entirely within Bullitt County. They argue rather, as did the appellants in Jensen, that by attaching relatively small segments of their county to districts (18, 27, and 50) dominated by other counties, the 2002 reapportionment dilutes the votes of the Bullitt countians by

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[6] *Id.* at 774-775 (citing Fischer v. State Board of Elections, *supra*).

[7] *supra.*

[8] *Id.* at 776.

separating them from their community of interest and by making it unlikely that they will be able to elect representatives of their choice. District 18, they contend, is particularly egregious. Beginning in the west, that district comprises eastern Daviess County, all of Hancock and Breckinridge Counties, and then continues to the east through a narrow strip of Hardin and southern Bullitt Counties. This ungainly conglomeration of counties and pieces of counties, the appellants insist, tends unfairly to favor the voters of Breckinridge County and makes a mockery of the constitution's goal of county integrity.

Addressing the same concerns in Jensen, however, our Supreme Court held that

> the mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm. Unconstitutional discrimination in reapportionment occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole.[9]

As noted above, moreover, Jensen recognizes that achieving the goal of population equality will sometimes necessitate substantial deviations from the goal of county integrity. The constitution requires only that the General

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[9] *Id.* at 776.

Assembly divide as few counties as possible. Within that constraint, which counties to divide and how to arrange the resulting pieces are matters of legislative discretion. The appellants do not allege that the General Assembly overstepped that constraint. Otherwise, as the trial court observed, District 18 arguably "is a snaking, poorly shaped, and regrettable House District that may have been better fashioned."[10] Nevertheless, the Court's "only role in this process is to ascertain whether a particular redistricting plan passes constitutional muster, not whether a better plan could be crafted."[11]

But district 18 violates the constitutional requirement of county integrity in another way, the appellants contend. Section 33 provides in part that "the counties forming a district shall be contiguous." The appellants argue that under this provision, if a district includes parts of counties then those parts must be contiguous with the rest of the district. District 18, which runs through Fort Knox, violates this requirement, the appellants insist, because the federal enclave divides it into non-contiguous eastern and western portions.

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[10] Wantland, et al. v. Kentucky State Board of Elections, et al., No. 02-CI-00569, slip opinion at 9 (Jefferson Circuit Court February 27, 2004).

[11] *Id.* at 776.

The appellants' argument depends upon the old notion that a federal enclave constitutes a state within a state, separate for all purposes from local government. And it is true that Kentucky has ceded jurisdiction over the "land and premises" of Fort Knox to the federal government.[12] The United States Supreme Court, however, has long since discarded this notion of a federal state within a state.[13] Federal enclaves, even those as completely ceded as Fort Knox, do not cease to be geographical parts of the states and counties that contain them.[14] The appellants do not contend that the constitutional "contiguity" requirement refers to anything other than physical or geographical contiguity. District 18 is geographically contiguous, notwithstanding the fact that Fort Knox is jurisdictionally distinct and may preclude intra-district travel from one end of the district to the other.[15] Because the segments of district 18 are contiguous, we need not address whether Section 33 of our constitution requires them (or only the counties that contain them) to be so.

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[12] KRS 3.030; Lathey v. Lathey, 305 S.W.2d 929 (Ky. 1957).

[13] Howard v. Commissioners of Sinking Fund of City of Louisville, 344 U.S. 624, 73 S. Ct. 465, 97 L. Ed. 617 (1953).

[14] Evans v. Cornman, 398 U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970).

[15] In re Constitutionality of House Joint Resolution 25E, 863 So.2d 1176 (Fla., 2003).

In sum, in Jensen our Supreme Court upheld a reapportionment scheme that subjected several counties to multiple divisions such as Bullitt County has been subjected to by the 2002 House reapportionment. The Court recognized that the overriding goal of population equality across districts requires such divisions and that the resulting districts may in some cases deviate substantially from the ideal of county integrity. We agree with the trial court that the appellants have failed to distinguish the results of the 2002 reapportionment of which they complain from the results approved in Jensen. The appellants have not offered to show that the apportionment fails to achieve substantial equality of district population, that it divides more counties than necessary, or that it tends to discriminate against them in a constitutionally meaningful way. Accordingly, we affirm the February 27, 2004, summary judgment of the Franklin Circuit Court.

ALL CONCUR.

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