

STATE OF MICHIGAN
COURT OF APPEALS

IN RE APPORTIONMENT OF OAKLAND
COUNTY – 2011,

MARY KATHRYN DECUIR, DAVID POTTS,
and JANICE DANIELS,

UNPUBLISHED
November 15, 2011

Petitioners,

v

No. 304696

OAKLAND COUNTY APPORTIONMENT
COMMISSION,

Respondent.

Before: SERVITTO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

This petition for review of the adopted apportionment plan for the Board of Commissioners of Oakland County comes before this Court under MCL 46.406. In a July 28, 2011 order, this Court granted the petition, and set the matter for further briefing and argument.

Under MCL 46.406, this Court will review a county apportionment plan to determine if the plan meets the requirements of the laws of this state. The Court will sustain a plan where it constitutes a reasonable choice in the reasoned exercise of judgment. *Apportionment of Wayne Co Bd of Comm'rs – 1982*, 413 Mich 224, 264; 321 NW2d 615 (1982).

Petitioners raise three issues in challenging the plan adopted by the commission. They first assert that the plan does not comport with the requirement of MCL 46.404(c): “All districts shall be as compact and of nearly square shape as is practicable, depending on the geography of the county area involved.” Petitioners assert that the alternate plan supported by the minority of the commissioners was more square and compact than the adopted plan.

In stating that the districts shall be compact and square as practicable, the Legislature stated a goal which is to take precedence over preserving the boundary lines of local governmental units to the extent that there are alternative plans by which those boundary lines could be preserved. Where there is a choice between alternative plans both of which preserve such boundary lines, the plan

which is more compact and square in shape is to be selected because compactness and squareness has a higher stated order of importance.

Compactness and squareness (criterion [c]) is not an end in itself but rather a means of avoiding gerrymandering. It was not intended that criterion (c) be implemented to the extent of entirely subordinating boundary lines criteria (d), (e), and (f). [*Apportionment of Wayne Co Bd of Comm'rs – 1982*, 413 Mich at 260-261].

Here, the two plans differed on compactness and squareness, and also on preservation of boundary lines. Respondent was not required to entirely subordinate the factors relating to boundary lines in order to maximize the compactness of the districts. The balancing of the factors by respondent is a “reasonable choice in the reasoned exercise of judgment” and should be sustained. *Id.* at 264.

Petitioners next argue that the districts were drawn to effect partisan political advantage, contrary to MCL 46.404(h). Petitioners have the burden of proving that the actions of respondent constituted an intentional and systematic political gerrymander disenfranchising large numbers of voters. *Apportionment of Kent Co Bd of Comm'rs – 1972*, 40 Mich App 508, 513; 198 NW2d 915 (1972). In the absence of evidence that the adopted plan unfairly alters the existing allocation of political power vis-à-vis voting strength, judicial interest is at its lowest ebb. *Gaffney v Cummings*, 412 US 735, 754; 93 S Ct 2321; 37 L Ed 2d 298 (1973); *In re Apportionment of Clinton Co – 1991 (After Remand)*, 193 Mich App 231, 239; 483 NW2d 448 (1992). Petitioners have presented minimal evidence to support their claim of partisanship. None of the evidence presented shows that the adopted plan unfairly alters the existing allocation of political power in Oakland County.

Finally, petitioners assert that creating an additional majority-minority district would improperly dilute minority voting power and may violate the federal Voting Rights Act, 42 USC 1973. However, they have not addressed the requirements to establish a violation of the act. See *Thornburg v Gingles*, 478 US 30, 50-51; 106 S Ct 2752; 92 L Ed 2d 25 (1986). Petitioners have failed to show that the adopted plan provides minorities with less opportunity than other members of the electorate to elect representatives of their choice. See *Bartlett v Strickland*, 556 US 1, 26; 129 S Ct 1231; 173 L Ed 2d 173 (2009).

The apportionment plan adopted by the Oakland County Apportionment Commission is deemed to be constitutional and otherwise in compliance with the laws of the state, and it is the official apportionment plan for the county until the next United States official decennial census figures are available. See MCL 46.408.

The petition to declare the adopted plan invalid is denied and the apportionment plan is affirmed.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens