The State ex rel. Walker et al. v. City of Bowling Green et al.
[Cite as State ex rel. Walker v. Bowling Green (1994), Ohio St. 3d .]

Mandamus to compel city of Bowling Green to apportion ward boundaries such that each ward contains substantially equal populations -- Complaint dismissed when, mandamus is not the appropriate remedy.

(No. 93-882 -- Submitted February 22, 1994 -- Decided June 1, 1994.)

In Mandamus.

This action is brought on relators' complaint for a writ of mandamus, which has been filed originally in this court pursuant to R.C. 2731.02 and Section 2(B)(1)(b), Article IV, Ohio Constitution. Relators, Kim A. Walker and Rodney J. Wichman, are residents and electors of the city of Bowling Green ("the city") and are registered to vote, respectively, in Ward 1 and Ward 2 of the city. Respondents are the city, the city council and its seven members, the mayor, the municipal administrator and the public works director.

Since its incorporation, the city has been divided into four wards. This division is geographical, based on the intersection of the two main highways that run through the city--Main Street (State Route 25) running north and south and Wooster Street (formerly U.S. Route 6) running east and west. Such division continued in its original form, despite one adjustment which expanded the boundaries of Ward 1 and curtailed the boundaries of Ward 2, after the city was chartered.

City council members are elected on an at-large/ward basis. Three at-large council members are elected citywide and four additional ward members are elected, one from each ward, for a total of seven members.

Relators, represented by Student Legal Services, Inc., at Bowling Green State University, allege that the ward boundaries, as currently drawn, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The thrust of their complaint is that the wards are not apportioned on a substantially equal population basis,

resulting in a dilution of their vote when compared to those who vote in the other wards. As such, relators' votes are worth less and they are thereby underrepresented on council.

Relators demand, among other things, that this court: "(1) Issue a Writ of Mandamus compelling Respondents, with all due speed and diligence, to apportion the ward boundaries of the City of Bowling Green such that each ward contains substantially equal populations; (2) Declare that the ward boundaries for electing City Council representatives, as currently drawn, are unlawful and unconstitutional and that all future elections under this system are void."

Gregory E. Bakies and Rodney A. Fleming, for relators.

Marsh & Marsh and Michael J. Marsh, for respondents.

Alice Robie Resnick, J. We must first determine whether mandamus is the proper remedy here.

In State ex rel. Corron v. Wisner (1971), 25 Ohio St.2d 160, 163, 54 O.O.2d 281, 283, 267 N.E.2d 308, 310-311, we stated that "[w]here, as here, an action in mandamus does not provide effective relief unless accompanied by an ancillary [preventive] injunction, it would appear that injunction rather than mandamus is the appropriate remedy." In State ex rel. Hodges v. Taft (1992), 64 Ohio St.3d 1, 4, 591 N.E.2d 1186, 1189, we indicated that this is a corollary to the rule established in State ex rel. Pressley v. Indus. Comm. (1967), 11 Ohio St.2d 141, 40 O.O.2d 141, 228 N.E.2d 631, paragraph four of the syllabus, that a complaint in mandamus must be dismissed for want of jurisdiction where "the substance of the allegations makes it manifest that the real object of the relator is an injunction ***."

Were this court to find the city's apportionment plan to be unconstitutional, we would "be under a clear and unmistakable duty to take such steps as will effectively accomplish the enforcement and vindication of the constitutional rights of the [relators]." Baker v. Carr (D.C.Tenn.1962), 206 F.Supp. 341, 350. This means that we would not render "a declaratory judgment in this case as to the validity or invalidity of the composition and apportionment of the legislature, apart from the [relators'] rights with respect to a future election or elections." Guntert v. Richardson (1964), 47 Hawaii 662, 669, 394 P.2d 444, 448. Thus, as the United States Supreme Court stated in the seminal case of Reynolds v. Sims (1964), 377 U.S. 533, 585, 84 S.Ct. 1362, 1393-1394, 12 L.Ed.2d 506, 541, absent special circumstances justifying the withholding of immediate relief such as where an election is imminent, "once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." See, also, Lucas v. Forty-Fourth Gen. Assembly of Colorado (1964), 377 U.S. 713, 736, 84 S.Ct. 1459, 1473, 12 L.Ed.2d 632, 647; Rural West Tennessee African-American Affairs Council, Inc. v. McWherter (W.D.Tenn.1993), 836 F.Supp. 447, 452, affirmed Millsaps v. Langsdon (1994), 510 U.S. , 114 S.Ct. 1183, 127 L.Ed. 2d 534, 1994 WL 11535.

It is clear that were this court to find the city's apportionment plan unconstitutional, mandamus would not provide effective relief unless accompanied by an ancillary preventive or prohibitory injunction. Indeed, relators seek such injunctive relief by asking for a declaration "that all future elections under this system are void." Although stated in positive language, the essence of such a request is to enjoin the city from conducting any future elections under the present apportionment system.

Accordingly, mandamus is not the appropriate remedy in this case and relators' complaint seeking such relief must be dismissed.

Complaint dismissed.

Moyer, C.J., A.W. Sweeney, Douglas, Wright and F.E. Sweeney, JJ., concur.

Pfeifer, J., dissents.