

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 BEAUFORT DIVISION

Priscilla Fraser, George M. Hood,)
 Louise Rawlings, and Anthony)
 Cannick,)
 Plaintiffs,)

Civil Action No. 9:14-2578-RMG

v.)

ORDER

Jasper County, South Carolina School)
 District; Bert Riley, in her official)
 capacity as Chair of the Board of)
 Trustees of Jasper County School)
 District; Jasper County, South Carolina,)
 Board of Elections and Registration)
 Commission; Jeanine M. Bostic, in her)
 official capacity as Director of Jasper)
 Elections and Voter Registration; James)
 H. "Jay" Lucas, in his official capacity)
 as Speaker of the SC House of)
 Representatives; Clementa C.)
 Pinckney, in his official capacity as a)
 state Senator, Tom Davis, in his official)
 capacity as the South Carolina State)
 Senator for District 46,)
 Defendants.)

This case is before the Court for adoption of a redistricting plan for the Jasper County School District to bring the county into compliance with the constitutional requirement that election districts be "as nearly of equal population as is practicable" and to otherwise adopt a plan that meets statutory and constitutional requirements. *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). All parties agree that the South Carolina General Assembly's failure to adopt a lawful election plan over two decennial census cycles resulted in unconstitutional malapportionment of the Jasper County School District election districts. By order dated September 15, 2014, the Court found that the existing Jasper County School District election district plan was

unconstitutional and allowed the parties until March 1, 2015 to work toward the adoption of an acceptable reapportionment plan by the South Carolina General Assembly. (Dkt. No. 35). The Court also appointed a mediator to assist the parties in fashioning a potential compromise plan. (Dkt. No. 41). Each of these efforts was unsuccessful. The Court thereafter invited the parties to submit any proposed plans that they wished the Court to consider and set a hearing on the adoption of a remedial plan for April 27, 2015. (Dkt. Nos. 45, 58). The Court also appointed a court expert, Mr. Bobby Bowers, the State Demographer, and elicited the assistance of his staff in drafting a proposed Court Plan.

The Court received two reapportionment plans for a nine-member school board from the parties for consideration.¹ One plan, which was passed by the South Carolina House of Representatives, was supported by Speaker of the House Lucas and Senator Davis (hereafter referred to as the “House Plan”). (Dkt. No. 50-1). The other plan was proposed by the Plaintiffs and supported by Senator Pinckney (hereafter referred to as the “Plaintiffs’ Plan”). (Dkt. Nos. 47-1, 47-2). Both plans had essentially zero deviations (with the greatest deviation consisting of one voter per district), and seven of the nine districts were identical. The only differences in the two proposed plans involved the treatment of the Sun City Precinct, a newly-created precinct in which there has been tremendous population growth (relative to the rest of the county) since the 2010 census. The Plaintiffs’ Plan moved the Sun City Precinct, which had previously been in District 7, into District 6. The House Plan retained the Sun City Precinct in District 7. Minor

¹ The Court also received from the House a seven-member plan. Since the Court determined it could design a lawful plan with the existing nine districts and the size of the school board is a matter of state policy, the Court declined to consider the seven-member plan.

adjustments were made in District 7 in the Plaintiffs' Plan to accommodate for the loss of the population of the Sun City Precinct. All parties agreed that the proposed plans met traditional districting principles² and were drawn in a manner consistent with the Voting Rights Act, and their sole concern centered on the impact of the growth of population in the Sun City Precinct since 2010. All plans also continued the prior practice of conducting nonpartisan elections for the school board.

Plaintiffs and Senator Pinckney argued that the tremendous growth in the Sun City Precinct since 2010 would create massive overpopulation in District 7, raising one person, one vote concerns. Their solution, which was to move the Sun City Precinct in its entirety to District 6, seemed to the Court simply to transfer the problem from one election district to another.

The Court consulted with Mr. Bowers and his staff about the various plans because the state demographers provided technical assistance to the parties in the preparation of their plans. Data provided by Mr. Bowers at the Court's request demonstrated that voter registration in the Sun City Precinct had grown at a rate substantially higher than in any other area of the county and that the inclusion of the entire precinct in any one district would lead to vote dilution in the district where the precinct was located. (Dkt. No. 61, Court Exhibits 2, 3). In reviewing the proposed plans with Mr. Bowers and his staff, the Court learned that growth areas in other parts of the county had been intentionally spread among several election districts, but the highest growth area around Sun City was placed in both plans within a single district.

² Traditional race neutral districting principles include compactness, contiguity, respect for political subdivisions or communities of interest, and incumbency protection. *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1270 (2015).

At the Court's request, Mr. Bowers and his staff investigated the possibility of dividing the Sun City Precinct to spread this growth between two election districts. The Court was advised that the Sun City Precinct was made up of three census blocks, which carry the last four numbers of 2196, 2197 and 2179. The total number of new registered voters since 2010 in the Sun City Precinct is 1,130 (growing from 73 to 1,203).³ The greatest number of newly-registered voters was in Census Block 2196 with 955 new voters (growing from 69 to 1,024). Census Block 2197 had 53 new voters (growing from 2 to 55 new voters) and Census Block 2179 had 191 new voters (growing from 2 to 193 new voters). (Dkt. No. 61, Court Exhibit 3).

A census block is the smallest denomination in the Census and cannot be subdivided. Thus, within the Sun City Precinct, the growth cannot be evenly disbursed between Districts 6 and 7, but the growth can at least be spread by placing Census Block 2196 in one election district and Census Blocks 2197 and 2179 in another election district. Determining which District received which census block(s) was relatively easy because under both plans Census Block 2196 was contiguous with District 6 (as was Census Blocks 2197 and 2179), but if the Court elected to place Census Blocks 2197 and 2179 in District 6 there would be no contiguity between Census Block 2196 and District 7. Therefore, to spread the growth at Sun City between Districts 6 and 7 requires Census Block 2196 to be placed in District 6 and the Census Blocks 2197 and 2179 placed in District 7. A copy of the proposed Court Plan is attached to this order at Exhibit A.

³ The Sun City Precinct was created by the General Assembly in 2014 by subdividing the Okatie precinct and creating separate Okatie and Sun City Precincts. Mr. Bowers's office was able to match new voter registration information to Census Blocks 2196, 2197, and 2179 so that voter registration by census block could be determined.

The Court's utilization of recent countywide and precinct-level voter registration information is not intended to supplant the use of census data to draw and populate the Jasper County School District election districts. Indeed, Census figures are presumed to be accurate, and there is no indication here that the data as of 2010 was not reliable. *McNeil v. Springfield Park*, 851 F.2d 937, 946 (7th Cir. 1988). Thus, the Court reapportioned the districts based exclusively on 2010 Census data. In other words, the Court used the 2010 Census data to determine the total number of voters in Jasper County, the number of voters that should be in each district such that the districts have an equal number of voters, and the number of voters contained in a proposed district. The Court Plan has essentially zero deviations (with the greatest deviation consisting of one voter per district) based on 2010 Census data.

The parties argue convincingly, however, that the Court should acknowledge recent growth in the Sun City Precinct in designing a new plan, and voter registration data is available that reliably identifies where that growth has occurred. The Court has elected to consider the recent voter registration information only to identify areas of recent growth and to spread that growth between multiple election districts, at least to the extent possible under the Court's reapportionment.

The splitting of any precinct raises the issue of dividing a community of interest, and the Court's effort to avoid undue population disparity is admittedly accomplished by dividing the Sun City community. It is essentially impossible to design any election district that complies with every traditional districting principle, and it is often necessary to balance competing and conflicting districting principles to adopt a reapportionment plan. In regard to the splitting of the

Sun City Precinct, the Court regards this as a lesser evil than imposing on any single election district this massive growth area. Further, the moving of Census Block 2196 involves a small change in the core area of District 7, but some areas must inevitably move from District 7 to remedy the overpopulation of the district.

Plaintiffs also raised Voting Rights Act issues in regard to the House Plan because the new growth in the Sun City Precinct is almost entirely made up of white voters. The Court's review of all of the proposed plans does not appear to raise legitimate retrogression or other Voting Rights Act issues. The Benchmark Plan for District 7 had a non-Hispanic black population of 43.04% and a non-Hispanic white population of 47.20%. (Dkt. No. 61, Court Exhibit 1). All of the proposed plans for District 7 provide for a black population between 52-53%, based on 2010 Census data. There is obviously no retrogression issue present in the House Plan; Plaintiffs' concern related more to the "racial fairness" of keeping a rapidly expanding white community wholly within District 7..

The Court presented the proposed Court Plan at the April 27, 2015 hearing and adjourned the proceedings to allow the parties to review the maps and data and consult with Mr. Bowers' staff. Upon resuming the hearing, all of the parties indicated that they were satisfied with the plan and voiced no objections. Counsel for Plaintiffs' counsel declared that he found the plan "racially fair." Having considered all of the parties' proposed plans and having resolved the small area of disagreement by dividing the Sun City Precinct census blocks, the Court finds that the Court Plan meets all of the constitutional and statutory requirements and is a fair and just

resolution of this dispute. Therefore, the Court adopts the Court Plan, attached at Exhibit A, as the order of the Court.

All nine school board seats will be filled during a special election. The even-numbered seats (Districts 2, 4, 6, and 8) will serve for a term ending in 2018 in accord with the provisions of South Carolina Code § 59-19-315. Future elections will be held for the even-numbered districts every four years thereafter during the regular general election. The odd-numbered seats (Districts 1, 3, 5, 7, and 9) will serve for a term ending in 2020 in accord with the provisions of South Carolina Code § 59-19-315. Future elections will be held for the odd-numbered districts every four years thereafter during the regular general election.

The Court expects the special election to be conducted forthwith, understanding that the mechanics of setting up the election with a new election plan cannot be handled instantly. The parties are directed to confer and, if possible, submit to the Court a proposed election schedule within 10 days of this order. If a joint proposal cannot be agreed upon, the parties shall submit to the Court their separate proposals within 10 days of this order.

An issue was raised by counsel for the Jasper County Election Commission regarding which governmental entity would be financially responsible for conducting this election. In an effort to enable for the Court to address and resolve any future dispute over whether the funding of this special election is the responsibility of the county government or the school district, the Court orally granted, at the April 27, 2015 hearing, Plaintiffs' motion that Jasper County be made a party defendant to this action. Plaintiffs are directed to file and serve an amended complaint in this matter within 30 days of this order.

The Court anticipates that the court-appointed mediator will soon be submitting an invoice, and that Plaintiffs will be filing a fee petition. The Court urges the parties to attempt to work out an equitable division of these costs. If that cannot be accomplished, the Court will schedule a hearing and enter appropriate orders to address these matters.

AND IT IS SO ORDERED.



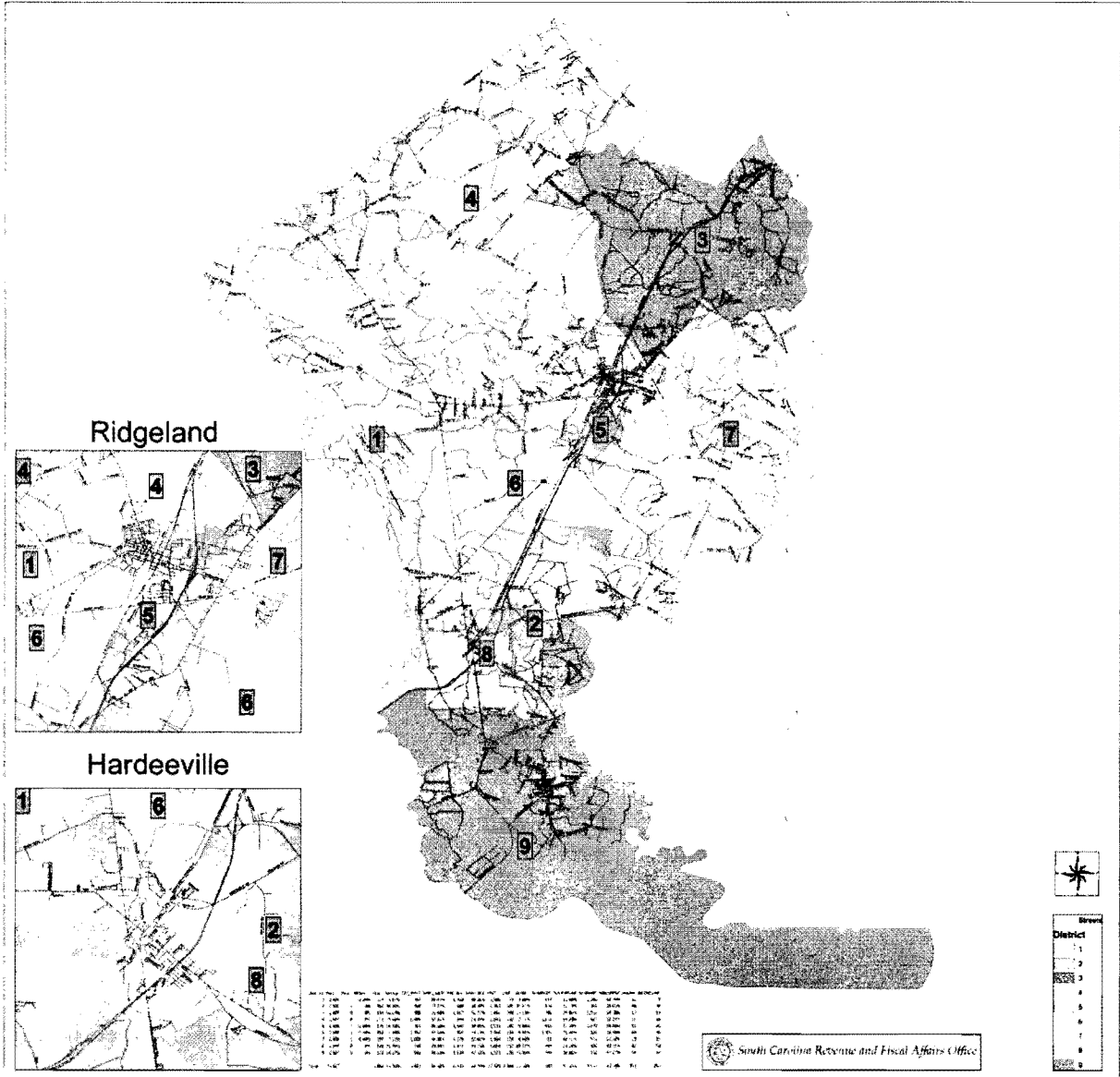
Richard Mark Gergel
United States District Court Judge

April 30, 2015
Charleston, South Carolina

EXHIBIT A

Federal Court Plan and Statistical Analysis

Jasper County School District Federal Court Plan



Jasper County School District Federal Court Plan

District	Pop	Dev.	%Dev.	Hisp	%Hisp	NH_WHT	%NH_WHT	NH_BLK	%NH_BLK	VAP	H18	%H18	NHWVAP	%NHWVAP	NHBVAP	%NHBVAP	AllOth	AllOthVAP
1	2,608	1	0.04%	127	4.87%	767	29.41%	1,702	65.26%	1,985	73	3.68%	617	31.08%	1,286	64.79%	12	9
2	2,607	0	0%	902	34.60%	969	37.17%	688	26.39%	1,953	590	30.21%	824	42.19%	501	25.65%	48	38
3	2,607	0	0%	434	16.65%	689	26.43%	1,467	56.27%	1,866	245	13.13%	556	29.80%	1,052	56.38%	17	13
4	2,607	0	0%	251	9.63%	1,494	57.31%	844	32.37%	1,945	150	7.71%	1,152	59.23%	627	32.24%	18	16
5	2,608	1	0.04%	276	10.58%	761	29.18%	1,540	59.05%	1,911	189	9.89%	618	32.34%	1,079	56.46%	31	25
6	2,608	1	0.04%	297	11.39%	1,751	67.14%	500	19.17%	1,966	193	9.82%	1,405	71.46%	326	16.58%	60	42
7	2,608	1	0.04%	197	7.55%	1,003	38.46%	1,379	52.88%	1,924	124	6.44%	811	42.15%	972	50.52%	29	17
8	2,607	0	0%	828	31.76%	546	20.94%	1,151	44.15%	1,854	552	29.77%	449	24.22%	800	43.15%	82	53
9	2,607	0	0%	372	14.27%	942	36.13%	1,239	47.53%	1,925	230	11.95%	748	38.86%	910	47.27%	54	37
Total	23,467			3,684	15.70%	8,922	38.02%	10,510	44.79%	17,329	2,346	13.54%	7,180	41.43%	7,553	43.59%	351	250

S.C. Revenue and Fiscal Affairs Office, 4-8-2015, WFR