

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

ENTERED  
APR 18 2002  
NMH

COLLETON COUNTY COUNCIL; STEVEN )  
MURDAUGH, individually and in his )  
official capacity as Chairman of )  
Colleton County Council; DR. )  
JOSEPH FLOWERS, individually and )  
in his official capacity as a )  
member of Colleton County Council; )  
JANICE H. ALEXANDER, ANDREW F. )  
CALCUTT, JOSEPH HAMILTON, HAZEL )  
HARRELSON, JAS. P. HARRELSON, )  
WILLIAM K. PADGETT, DAISY F. RIZER, )  
I.N. RIZER, DAVID M. SMALLS, A.L. )  
SMOAK, JR., KATHLEEN V. STEEDLY, )  
WENDELL M. STEEDLY, CHERYL R. )  
TILMAN, and W. GENE WHETSELL, )

Plaintiffs, )

and )

SEL HEMINGWAY, individually, )

Intervenor-Plaintiff, )

v. )

GLENN F. McCONNELL, in his )  
official capacity as the President )  
*Pro Tempore* of the South Carolina )  
Senate; DAVID H. WILKINS, in his )  
official capacity as the Speaker )  
of the South Carolina House of )  
Representatives, and JAMES H. )  
HODGES, in his official capacity )  
as the Governor of South Carolina, )

Defendants. )

FILED

APR 18 2002

LARRY W. PROPES, CLERK  
COLUMBIA, SC

C/A No. 01-3581-10

HUGH K. LEATHERMAN, individually )  
and as Senator from the 31st )  
District, SCOTT H. RICHARDSON, )  
individually and as Senator from )  
the 46th District, and ROBERT W. )  
HAYES, JR., individually and as )  
Senator from the 15th District, )

Plaintiffs, )

C/A 3:01-3609-10

v. )

GLENN F. McCONNELL, in his )  
capacity as President *Pro Tempore* )  
of the Senate and Chairman of the )  
Senate Judiciary Committee, )  
DAVID H. WILKINS, in his capacity )  
as Speaker of the House of )  
Representatives, and JAMES F. )  
HENDRIX, in his capacity as )  
Executive Director of the State )  
Election Commission, )

Defendants, )

JAMES H. HODGES, in his official )  
capacity as the Governor of South )  
Carolina, )

Intervenor-Defendant. )

---

KAMAU MARCHARIA, JAMES MELVIN )  
HOLLOWAY, ANN JOHNSON, and ELDER )  
JAMES JOHNSON, )

Plaintiffs, )

C/A No. 3:01-3892-10

vs. )

James H. Hodges, in his official )  
capacity as Governor of South )  
Carolina; GLENN F. McCONNELL, in )  
his official capacity as )

President Pro Tempore of the South )  
Carolina Senate; DAVID H. WILKINS, )  
in his official capacity as )  
Speaker of the South Carolina )  
House of Representatives; and )  
JAMES F. HENDRIX, in his official )  
capacity as Executive Director of )  
the South Carolina State Election )  
Commission, )

Defendants. )

---

### ORDER OF CLARIFICATION

By order dated March 20, 2002, this three-judge panel issued an order declaring the existing electoral districts for the South Carolina Congressional Delegation to the United States Congress, the South Carolina House of Representatives, and the South Carolina Senate unconstitutionally malapportioned and enjoining the State of South Carolina from conducting any further elections under the existing electoral schemes. Such action, the court held, was necessary because the elected officials of South Carolina had failed to redistrict the state's General Assembly and its six Congressional Seats and were at an impasse on the issue, and there was no chance that the governing officials would be able to reach a compromise in time for the regularly-scheduled primary and general elections scheduled for June 11, 2002, and November 5, 2002, respectively.

On April 4, 2002, the South Carolina Attorney General advised the court that two special elections were currently scheduled to

fill two existing vacancies in the South Carolina General Assembly -- one in the South Carolina House of Representatives and one in the South Carolina Senate. While advocating no position on the issue, the Attorney General expressed some question as to whether the two special elections could proceed under the existing electoral districts as planned without running afoul of this court's March 20, 2002 redistricting plan and order.

Although the State of South Carolina is not technically a party to this litigation, the court is sensitive to the unusual circumstances of this case and to the State's request that we clarify our intentions under the March 20th ruling in order to ensure that the upcoming special elections and any future special elections not be unnecessarily subjected to challenge under our decision. Accordingly, we agree that a clarification of our ruling is appropriate.

First, although not raised as an issue by any of the parties before it, the court specifically asked all parties during the trial whether the special election for the South Carolina Senate seat -- which had been vacated by Congressman Joe Wilson and of which the court had become aware -- would be impacted by this litigation. The Governor's counsel affirmatively represented that

it was not so impacted, and no other parties raised a contrary position.<sup>1</sup>

Second, to the extent our March 20, 2002 order can be read to require the pending special elections to be conducted under the 2002 court-ordered redistricting plans, or that any other special elections held prior to the next round of regularly-scheduled elections be conducted under the 2002 court-ordered redistricting plans, we disavow that intent. Such an interpretation would be neither prudent nor practical. In every case, the new district lines omit some persons and/or add others and, in the case of two state House districts, the districts have been completely collapsed

---

<sup>1</sup> Pursuant to the court's inquiry, the following colloquy took place:

Judge Traxler: Is the special election in Lexington County to fill Senator's Wilson's seat impacted by this litigation? Does everybody agree there is no impact on that particular election in this litigation?

Mr. Parks: That's right.

Mr. Gergel: (Nods head in the affirmative).

(Transcript of Trial, February 1, 2002, p. 7).

In response to the Attorney General's request, all parties have remained consistent with their position at trial on this issue -- except the ACLU, which has now taken the position that the court-ordered plans should apply to all special elections which occur prior to the next applicable round of regularly-scheduled elections. We believe the ACLU is barred from raising a contrary position at this late date. However, our decision to clarify the order pursuant to our authority under Fed. R. Civ. P. 60(a) should suffice to address their position.

and moved to high-growth areas of the state. If special elections held prior to the next round of regularly-scheduled elections were to be held under the new district lines, the effect would be to leave some persons with no representation and others with double representation.<sup>2</sup> Such a situation is obviously not one that the United States Constitution would allow, much less require. Cf. Gaona v. Anderson, 989 F.2d 299 (9th Cir. 1993) (per curiam) (rejecting Voting Rights Act challenge to use of old version of state senate district for an interim special election); Political Action Conference of Illinois v. Daley, 976 F.2d 335 (7th Cir. 1992) (holding that city need not alter its redistricting scheme even though four-year terms of aldermen elected in 1991 resulted in a four-year delay in using new 1990 census data); French v. Boner, 963 F.2d 890 (6th Cir. 1992) (holding that city had no constitutional duty to re-conduct elections held after the new decennial census data became available in 1991, but before a new apportionment plan could be put into effect).

---

<sup>2</sup> For example, under the March 20, 2002, redistricting plan for the South Carolina House of Representatives, House District 68, located in the severely under-populated Pee Dee area, was collapsed and moved to a substantially over-populated coastal area in Horry County. If the current representative of House District 68 were to leave office and a special election conducted, the new representative would be elected from Horry County, leaving Horry County residents in the "new" District 68 with two representatives in the House and "old" District 68 residents in the Pee Dee with none.

Under our March 20, 2002 order, the State of South Carolina is only enjoined from conducting the regularly-scheduled 2002 primary and general elections under the existing electoral districts for the United States Congress and for the South Carolina House of Representatives, and after the November 2002 General Election, from conducting any further elections under the existing electoral districts for the United States Congress and the South Carolina House of Representatives. All such regularly-scheduled elections, and all special elections held after the November 2002 General Election, must be conducted in accordance with the redistricting plans for the South Carolina Congressional Delegation and South Carolina House of Representatives adopted by this court in its March 20, 2002 order, unless and until the South Carolina General Assembly, with the approval of the Governor and in accordance with § 5 of the Voting Rights Act, ends its current impasse and enacts an alternative redistricting plan for the legislative body at issue.

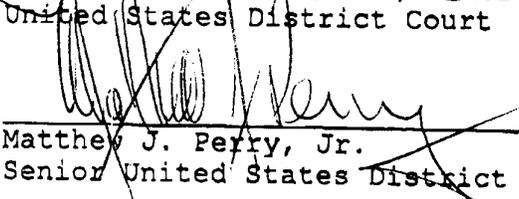
The State of South Carolina is likewise enjoined from conducting the regularly-scheduled 2004 primary and general elections under the existing electoral districts for the South Carolina Senate and, after the November 2004 General Election, from conducting any further elections under the existing electoral districts for the South Carolina Senate. All such regularly-scheduled elections, and all special elections held after the

November 2004 General Election, must be conducted in accordance with the redistricting plans for the South Carolina Senate adopted by this court in its March 20, 2002 order, unless and until the South Carolina General Assembly, with the approval of the Governor and in accordance with § 5 of the Voting Rights Act, ends its current impasse and enacts a redistricting plan for the South Carolina Senate.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
William B. Traxler, Jr.  
United States Circuit Judge

  
\_\_\_\_\_  
Joseph F. Anderson, Jr., Chief Judge  
United States District Court

  
\_\_\_\_\_  
Matthew J. Perry, Jr.  
Senior United States District Judge

April 18, 2002  
Columbia, South Carolina