

Summary of SC92200, *Kenneth Pearson, et al. v. Chris Koster, et al.*, Consolidated with SC92203, *Stan McClatchey, et al. v. Robin Carnahan, et al.*, Appeals from the Cole County circuit court, Judge Daniel R. Green, Both separately argued and submitted January 12, 2012; opinion issued January 17, 2012.

Attorneys: In SC92200, the voters were represented during arguments by Gerald P. Greiman of Spencer Fane Britt & Browne LLP in St. Louis, (314) 863-7733.

In SC92203 The voters were represented during arguments by Jamie B. Landes, an attorney from Lee's Summit, (816) 877-3891.

In both cases, the state was represented by State Solicitor James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321; and the legislators were represented by Edward D. Greim of Graves Bartle Marcus & Garrett LLC in Kansas City, (816) 256-4144.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Article III, section 45 of the Missouri Constitution states that when the General Assembly must redistrict Missouri for the election of members to the United States House of Representatives, the districts “shall be composed of contiguous territory as compact and nearly equal in population as may be.” Plaintiffs alleged in their petitions that the districts were not drawn “as compact ... as may be,” specifically referring to the redistricting map and the configuration of certain districts. Defendants filed a motion to dismiss for failure to state a claim, or, in the alternative, a motion for judgment on the pleadings. The circuit court ruled, “[h]aving reviewed the pleadings, briefs, and points raised at oral argument and having considered only facts appearing in the pleadings, the court hereby grants both motions and dismisses both cases.”

In a unanimous, per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri reverses the circuit court’s judgment and remands (sends back) the case, holding that a motion to dismiss may not be sustained “if the facts alleged meet the elements of a recognized cause of action.” The pleadings, including the map illustrating House districts 3 and 5, raise issues of fact concerning whether various districts, particularly House districts 3 and 5, are “composed of contiguous territory as compact ... as may be.” Mo. Const. art. III, sec. 45.

In both these cases, Judge John E. Parrish, a senior judge from the Missouri Court of Appeals, Southern District, sat by special designation in place of Chief Justice Richard B. Teitelman; Judge Joseph M. Ellis, a judge from the Missouri Court of Appeals,

Western District, sat by special designation in place of Judge Mary R. Russell; and Judge Karen King Mitchell, a judge from the Missouri Court of Appeals, Western District, sat by special designation in place of Judge George W. Draper III.

Facts: The results of the 2010 United States Census revealed that the population of the state of Missouri grew at a lower rate than the population of other states and Missouri would lose one member of its delegation to the United States House of Representatives. Article III, section 45 of the Missouri Constitution requires the Missouri General Assembly to redistrict the congressional districts after each census. Over the governor's veto, the General Assembly adopted House Bill No. 193, adopting a map for the congressional redistricting.

Six Missouri citizens and qualified voters residing in various areas of the state brought an action in the Circuit Court of Cole County against Attorney General Chris Koster and Secretary of State Robin Carnahan, in her official capacity as the chief elections officer for the State, challenging the validity of the congressional redistricting plan. A second group of citizens and qualified voters filed an action in the Circuit Court of Cole County against Secretary Carnahan, seeking declaratory and injunctive relief. Collectively, both sets of plaintiffs (hereinafter "Plaintiffs") seek to invalidate the Map and prevent Secretary Carnahan from conducting elections in accordance with the map.

After oral argument, but without conducting an evidentiary hearing or making any finding of facts, the circuit court dismissed both cases.

REVERSED AND REMANDED.

Court en banc holds: Article III, section 45 of the Missouri Constitution sets out three requirements for the redistricting of seats in Missouri for the United States House of Representatives; the districts "shall" be composed of "contiguous territory as compact and as nearly equal in population as may be." A claim that a district lacks compactness following redistricting is justiciable.

The applicable standard of review for a court in reviewing an article III, section 45 claim is the language of the constitution itself: whether the General Assembly divided Missouri into districts of "contiguous territory as compact and as nearly equal in population as may be. As long as the districts comply with these constitutional requirements, the circuit court shall respect the political determinations of the General Assembly and allow for minimal and practical deviations required to preserve the integrity of the existing lines of our various political subdivisions. Yet the duty to draw district lines of a contiguous territory as compact and as nearly equal in population as may be is one that is mandatory and objective, not subjective.

Here, Plaintiffs have alleged that various districts, and the Map as a whole, violate the compactness requirement of article III, section 45. Districts 3 and 5 are alleged to be particularly suspect, as can be confirmed by any rational and objective consideration of their boundaries. However, it is a question of fact, yet to be tried, whether those districts are “as compact and nearly equal in population *as may be.*” Mo. Const. art. III, sec. 45 (emphasis added).

It was error for the trial court to grant judgment on the pleadings and dismiss Count I of both petitions.

The Pearson Plaintiffs claim that the Map constitutes unconstitutional partisan gerrymandering in that it deprives equal protection of rights guaranteed in article I, sections 1 and 2 of the Missouri Constitution and the 14th Amendment of the United States Constitution. A partisan gerrymandering claim asserts that each political group in the State should have the same chance to elect representatives of its choice as any other political group – and one group has been denied this opportunity. This focus naturally precludes a claim of “bipartisan” gerrymandering, whereby a plaintiff claims each political party acted to foreclose the other party’s legitimate chance to successfully elect adequate representatives. There is no constitutionally protected right to a district that favors either an incumbent or a challenger.

The Pearson Plaintiffs argue that political gerrymandering claims have been recognized as justiciable by Missouri courts. A plurality of the United States Supreme Court recently voted to overrule its previous holding that political gerrymandering claims are justiciable, leaving the law in a state of flux. Justice Kennedy, while concurring with the plurality that held partisan gerrymandering claims to be nonjusticiable, also stated that the possibility of judicial relief should not be foreclosed in cases claiming partisan gerrymandering because a “limited and precise rationale” may yet be found to correct an alleged constitutional violation. However, Justice Kennedy and the other members of the Supreme Court that would find a claim of partisan gerrymandering justiciable were unable to establish a standard for determining how to state a claim of partisan gerrymandering or reviewing such a claim if it is stated.

Here, the grievance Plaintiffs assert is that political motivations of various types caused Missouri’s congressional districts to be reconfigured so as to eliminate a Congressional district now held by a Democrat. In light of the Supreme Court’s inability to state a clear standard, and because none of the varying standards proposed in recent United States Supreme Court cases and other cited cases suggest that such evidence alone states a legally satisfactory claim of partisan gerrymandering, this Court is unable to find that Plaintiffs have shown an entitlement to relief at this time.

It was not error for the trial court to grant judgment on the pleadings and dismiss Count II of both petitions.

The Pearson Plaintiffs claim that article I, sections 1 and 2 protect the right to vote and creates a cause of action when the right to vote is allegedly infringed upon.

Article I, sections 1 and 2 are aspirational in nature. The clauses describe the purpose and the goals of the Missouri government. There is no “specific directive or standard” for how the State must preserve or enhance the “good of the whole” or “the general welfare” of the citizens of Missouri. The language in sections 1 and 2 concerns policy decisions, and “political choices are left to the discretion of the other branches of government.”

It was not error for the trial court to grant judgment on the pleadings and dismiss Count III of the Pearson Plaintiff’s petition.

The Pearson Plaintiffs added a new Count IV in their amended petition, alleging that the Map constitutes “vote dilution” in violation of article I, section 25 and article VIII, section 2 of the Missouri Constitution. This Court has not recognized a “vote dilution” claim outside of a situation where districts are unequal in population.

It was not error for the trial court to dismiss Count IV.

A question of fact exists as to whether the districts were drawn as compact as may be. The cases are remanded to the circuit court. Because time is of the essence, the circuit court is directed to conduct its hearing and to enter its judgment no later than February 3, 2012, so that the General Assembly will have time to redistrict the state, if necessary.