

Sides left to await redistrict decision

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A panel of three federal judges is considering how to resolve a lawsuit over whether Arkansas' Senate districts were drawn to dilute the black vote. One redistricting trial expert said it could be months before the court rules whether there is a problem with the boundaries.

The lawsuit seeks to prohibit Arkansas from using district boundaries approved last summer by the state Board of Apportionment and make the state draw districts that the plaintiffs say would better serve black voters in the eastern Arkansas Delta region, particularly in District 24.

The judges announced through an order Friday that they would not stop the primary election because early voting is taking place. Early voting began May 7. The primary is May 22.

The case is *Future Mae Jeffers v. Mike Beebe*. Plaintiffs in the case were part of lawsuits in the 1980s and 1990s that created some House and Senate districts where black voters are in the majority. These districts were created to enhance the influence of black voters. They sought to make up for lower rates of black voting caused, experts said, by institutionalized bias.

In this suit, the plaintiffs alleged that the boundaries of District 24 dilute black voters' chance to elect the candidate of their choice and that the dilution was intentional.

The black voting-age population percentage of District 24 is 52.88 percent.

Gov. Mike Beebe, Attorney General Dustin McDaniel and Secretary of State Mark Martin make up the board and are defendants in the suit. On Wednesday the panel cleared Martin of the intentional-dilution charge after all three men testified that Martin had little input on the final map approved by the board.

Martin largely sided with the plaintiffs in the case.

The lawsuit contends that the boundaries of District 24 violate Section 2 of the Voting Rights Act of 1973 as well as the 14th and 15th amendments to the U.S. Constitution, which were ratified after the Civil War to protect blacks' civil rights.

Chief U.S. District Judge J. Leon Holmes, District Judge Susan Webber Wright and 8th U.S. Circuit of Appeals Judge Lavenski Smith, a former Arkansas Supreme Court justice, heard the case.

Loyola Law School professor Justin Levitt said the judges' decision not to delay the primary could signal they need time to make a ruling.

"It doesn't mean much," he said. "It could be a signal that the judges don't particularly think they're going to find the district's unlawful or it could be a sign their minds are wholly not made up. It may be a while. There's no particular deadline on them."

Levitt runs allaboutredistricting.org, which tracks how each state completes congressional and legislative redistricting, and legal challenges that are raised.

He said that if the judges rule that the lines dilute voter strength, a lot depends on how egregious they determine the violation to be.

"It is conceivable but unlikely that the court will order a new primary between now and the general election," he said. "Chances are the results of the primary will stick for November."

Starting over would mean either the judges would redraw the boundaries based on maps submitted

by parties in the case or the boundaries would be sent back to the board, he said.

The plaintiffs offered up two maps as possible options during the trial.

One that was created April 4 would give the district a black voting-age population percentage of 58.41 percent. It would include all of St. Francis and Lee counties as well as southern and western Crittenden County and portions of Cross and Monroe counties.

Beebe said he “absolutely” would consider that map if the district is redrawn.

Any of the parties in the case can appeal directly to the U.S. Supreme Court, which cannot refuse to consider the case.

“There’s a special federal statute for constitutional challenges to state legislative redistricting — and in this case, the plaintiffs have alleged not only violations of the Voting Rights Act, but intentional racial discrimination that’s prohibited by the 14th and 15th Amendments,” Levitt said. That statute is 28 U.S.C. 2284.

Federal statute 28 U.S.C. 1253 sets up a special procedure for appealing these cases.

HOW MUCH IS ENOUGH?

At no point in the four-day trial did a witness provide an exact percentage for what the black voting-age population needs to be so that blacks in a majority-black district will have a fair chance to choose the candidate of their choice.

Levitt said there is no static population percentage that states have to reach when creating majority-minority districts. Instead, it depends on the size of the population, how racially polarized election patterns are and whether the state has a history of discrimination.

He said states that have to draw majority-minority commonly perform an analysis of voter behavior in those districts before drawing the lines.

“Not everybody does, but most should. It’s a safeguard against violating the law,” Levitt said. “If you haven’t done the analysis and somebody sues you, then you don’t know whether or not you broke the law.”

Beebe, McDaniel and their staff members testified that no analysis was done before the boundaries were approved. They couldn’t give a reason why Senate District 24’s black voting-age population of 52.88 percent was sufficient. The 2010 census showed that the old district that encompassed much of the same space, District 16, had a black voting-age population of 65.1 percent.

Senate District 24 has the lowest black voting-age population of the four majority-minority districts.

District 25 has a black voting-age population percentage of 55.85 percent; the 30th’s is 53.19 percent and the 31st’s is 58.26 percent.

During the public meetings before new districts were approved, board coordinator Joe Woodson said the informal standard for black voting-age percentages in the districts would be 55 percent.

“My intention was to say this is a ballpark, it’s what it has been in the past,” he testified at the trial.

Beebe and McDaniel testified they were not aware Woodson used that number. Both said their goal was to maximize the number of black voters in the majority-minority districts.

“I didn’t have an arbitrary number in mind,” Beebe said.

The two men said they were most concerned that all districts meet the commonly held redistricting

“principles.”

Those include that districts need to have less than 10 percent population variance; not be drawn solely based on race; be designed with all parts connected and compact; avoid splitting political entities such as cities; keep similar communities together; maintain the core of existing districts; protect incumbents; and minimize gerrymandering, which is drawing districts to protect a political party.

THE HISTORY

Thirty-eight years ago Arkansas had no black legislators — although in the 1800s Arkansas had about two dozen — but redistricting and a series of legal battles over the shape and racial composition of legislative districts led to an increase in the number of black lawmakers.

Currently, 15 of Arkansas’ 135 legislators are black.

“We still have to recognize the historic impact of discrimination,” Martin’s attorney, Asa Hutchinson, said. “History is essential in this matter. It’s about the next generation of African-Americans that simply want the opportunity to elect that candidate of their choice.”

Attorney James Valley and the plaintiffs tried to show that voting in the Delta continues to be racially polarized and that black candidates struggle to win county positions.

District 24 includes all of Crittenden County and parts of Cross, Lee, Phillips and St. Francis counties.

Former Sen. Roy “Bill” Lewellen of Marianna testified that black voters went so long without being represented in government, that there is still a pervasive attitude that it won’t do any good to vote.

“The biggest problem was basically changing the attitude in the black community,” he said. “It’s something that has gone on for hundreds of years. You are not going to change it in 20.”

He said in some counties polling places aren’t in black communities. And without public transportation, it is difficult to get black voters, especially poor voters, to the polls.

“That’s the way it’s always been,” he said.

In his closing arguments Valley drew parallels between the current lawsuit and the cases that increased the number of majority black districts, calling it “same stuff, different decade.”

In 1989, M.C. Jeffers of Forrest City and others sued the state over the 1981 redistricting map, which included four majority-black House districts and one such Senate district. In the case, *Jeffers v. Clinton*, the U.S. District Court ruled that the state’s map violated the federal Voting Rights Act.

The court ordered an increase to 13 majority-black House districts and three such Senate districts for the 1990 election. In that case the board was reconvened to draw the lines, Valley said.

Several of the plaintiffs in that case, including Jeffers’ widow and daughter, are plaintiffs in the current case.

During redistricting after the 1990 Census, the Board of Apportionment kept that same number of majority-black districts. The same plaintiffs again challenged the state map in U.S. District Court. But a three-judge panel ruled that the state’s changes were sufficient.

In 2002 a U.S. District judge threw out a lawsuit from the National Association for the Advancement of Colored People that challenged the constitutionality of the realigned legislative districts after the 2000 Census.

Assistant Attorney General David Curran said that in the old district, then labeled District 16, black voters were able to elect the candidate of their choice. He pointed out in his closing argument that

the sitting senator, Jack Crumbly, D-Widener, is black.

“The idea that the old District 16 wasn’t working defies common sense,” he said.

He said the plaintiffs were basing their argument that the old district wasn’t effective on a single 10-year-old Senate race in which the white candidate beat the black candidate.

In the 2002 Democratic primary after the 2001 redistricting, the black sitting senator, Alvin Simes, received 36.47 percent of the vote and lost to Steve Higginbotham.

Curran said the years the district was held by a white senator shows that the district was fair to both blacks and whites.