



**STATE BOARD OF ELECTIONS**

133 Fayetteville Street Mall  
Suite 100  
Raleigh, North Carolina 27601

GARY O. BARTLETT  
Executive Secretary-Director

April 6, 1998

**Mailing Address:**  
P.O. BOX 2169  
RALEIGH, NC 27602  
(919) 733-7173  
FAX (919) 715-0135

**MEMORANDUM 98-7**

*Transmitted by facsimile or first class mail*

To: County Boards of Elections  
From: Gary O. Bartlett  
Subject: Redistricting

As you have probably heard or read by now, the U.S. District Court for the Eastern District of North Carolina issued an Order on Friday, April 3, 1998, enjoining the primary and general election for congressional offices under the redistricting plan enacted as 1997 N.C. Session Laws, Chapter 11 (the current plan). A copy of the court order is enclosed.

The court's order also provides that the General Assembly shall have an appropriate time period to correct the "constitutional defects in the 1997 plan" and to develop an election schedule "which provides for a primary election process culminating in a general congressional election to be held...November 3, 1998."

For your reference, I am enclosing a copy of my affidavit that is being sent to the U.S. Supreme Court today supporting a motion to stay the ruling. We expect quick action on this motion.

Be patient as much as you can. You will be informed of any changes or adjustments that need to be made as soon as the State Board has identified them.

Enclosure

**FILED**

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION  
CIVIL NO. 4:96CV104-BO(3)

APR 3 1998

DAVID W. DANIEL, CLERK  
U. S. DISTRICT COURT  
E. DIST. NO. CAR.

MARTIN CROMARTIE, et al.,	)
Plaintiffs,	)
	)
v.	)
	)
	)
JAMES B. HUNT, JR., in his	)
capacity as Governor of the	)
State of North Carolina,	)
et al.,	)
Defendants.	)

ORDER AND  
PERMANENT INJUNCTION

THIS MATTER is before the Court on Plaintiffs' motion for preliminary injunction, Plaintiffs' motion for summary judgment, and Defendants' motion for summary judgment.

Following a hearing on Tuesday, March 31, 1998, the Court took these motions under advisement and now issues the following ruling:

- 1) Finding that the Twelfth Congressional District under the 1997 North Carolina congressional redistricting plan is unconstitutional, the Court hereby **GRANTS** Plaintiffs' motion for summary judgment as to the Twelfth Congressional District.
- 2) Based upon the Court's finding that the Twelfth Congressional District is unconstitutional, it is further **ORDERED** that Plaintiffs' motion for a preliminary injunction and Plaintiff's request for a

---

No. \_\_\_\_\_

---

In the  
**Supreme Court of the United States**  
October Term, 1997

---

JAMES B. HUNT, JR., in his official capacity as  
Governor of the State of North Carolina, *et al.*,  
*Petitioners,*

v.

MARTIN CROMARTIE, *et al.*,  
*Respondents.*

---

**AFFIDAVIT OF GARY O. BARTLETT**

---

Gary O. Bartlett, under penalty of perjury, deposes and says:

1. I am the Executive Secretary-Director of the North Carolina State Board of Elections and have those duties prescribed by law.
2. The filing period for all candidates seeking party primary nominations for federal, state and local offices opened at 12:00 noon on January 5, 1998, and closed at 12:00 noon on February 2, 1998.
3. On February 5, 1998, the State Board of Elections certified the name, address, and party affiliations of each person who filed to run for office in the United States House of Representatives, the North Carolina State House of Representatives, and the North Carolina State

APR 03 '98 05:03PM CLERKS OFFICE

P. 3/3

permanent injunction as contained in its complaint are GRANTED. Defendants are hereby ENJOINED from conducting any primary or general election for congressional offices under the redistricting plan enacted as 1997 N.C. Session Laws, Chapter 11.

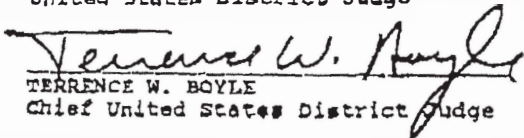
- 3) It is further ORDERED that the parties file a written submission no later than Wednesday, April 8, 1998, addressing the following issues:
- a) An appropriate time period within which the North Carolina General Assembly may be allowed the opportunity to correct the constitutional defects in the 1997 plan, in default of which the Court would undertake the task.
  - b) A proposed election schedule to follow redistricting which provides for a primary election process culminating in a general congressional election to be held on Tuesday, November 3, 1998.

This order and permanent injunction are entered by a majority of the three-judge panel. Circuit Judge Sam J. Ervin, III, dissents. Memoranda with reference to this order will be issued as soon as possible.

TKIA the third day of April, 1998.

TERRENCE W. BOYLE  
Chief United States District Judge  
RICHARD L. VOORHEES  
United States District Judge

BY:

  
TERRENCE W. BOYLE  
Chief United States District Judge

Senate. Thirty-one candidates filed for the twelve federal congressional seats. Contested primaries involving nineteen candidates will be held in eight of the twelve congressional districts. A list of the candidates running for the United States House of Representatives is attached as Exhibit A.

4. Two hundred eighteen candidates filed for the one hundred twenty State House of Representative seats. Contested primaries involving sixty-eight candidates will be held in twenty-three districts in the State House of Representatives election. A list of candidates running for the State House of Representatives is attached as Exhibit B.

5. Ninety-nine candidates filed for the fifty State Senate seats. Contested primaries involving thirty-five candidates will be held in fourteen districts in the State Senate election. A list of candidates running for State Senate is attached as Exhibit C.

6. The State Board of Elections designs and lays out ballots for elections for the United States House of Representatives, the State Senate, and the State House of Representatives. It also approves the design and lay-out of ballots used by county boards of elections. The State Board has ballots printed for a number of counties that still vote by paper ballot and other voting machine counties that use a paper ballot for absentee, provisional, or curbside voting.

7. Counties that use voting machines also submit the designs and lay-outs of the candidates names for approval. Programming and testing voting machines is accomplished during the same period when paper ballots are being prepared and printed. Some counties program their machines themselves, others contract for the service.

8. The State Board and county boards of elections usually have about six weeks from the close of the filing period to the beginning of the absentee voting period to complete the process

of designing the ballots, programming election machines, choosing ballot colors (the ballots for the respective political parties in the primary are printed on different colored paper), correcting and returning proofs, having ballots printed, and distributing the ballots. The number of primary ballots printed and available for each party primary must be at least equal to the number of registered voters affiliated with the party plus the number of unaffiliated voters registered in the county. The State Board's contracts for printing primary ballots were awarded, and ballots have been printed and distributed.

9. State law requires that persons entitled to vote by absentee ballot must be furnished with regular official ballots. The State Board and county boards of elections were required to complete the process of approving, printing and distributing primary ballots by March 16, 1998. Absentee voting for the May 5, 1998 primary began on that date.

10. The first notice of the primary election and registration deadline were published in local newspapers by March 21, 1998. This was also the last day to publish changes of precinct or voting places. April 4, 1998, is the last day to publish the third and final notice of election and registration deadline for the primary. The last day to register to vote for the May primary is April 10, 1998, when the registration books close.

11. It would not be possible to hold the primaries as scheduled on May 5, 1998, if congressional or state districts were to be redrawn and a new candidate filing period allowed. There is not sufficient time to allow candidates to file, to design, print and distribute ballots, to reprogram voting machines, and to conduct absentee voting before the scheduled primary.

12. Boards of elections have been working since October, 1997, to update records indicating to which congressional districts voters are assigned, and some counties have sent out voter identification cards identifying the federal, state, and local districts to which each voter is assigned. District voter lists/labels also have been made available to candidates for campaign purposes. If new districting plans were adopted and put into effect for State House, State Senate, or Congress, some period of time (probably several months), would be necessary, between their adoption and the opening of a new filing period to allow county boards of elections to make adjustments to place voters in the correct districts, inform voters of their new districts, and to allow candidates to make decisions about filing for office based on the reconfigurations of the districts. Providing candidates voter lists/labels in the new time frames may not be possible. For many counties, which must manually reassign districts, this is a lengthy, labor intensive process, and depending on the numbers of reassignments, the problems are three-fold if there are three new redistricting plans. Boards of elections usually have months to make these reassignments before any election is held.

13. Should the voting districts change, boards of elections will be required to expend funds not currently in their budgets for the costs of notifying voters of the changes, additional advertising, and special primary and legal notices. Additional staff may be necessary if reassignment of voters must be done on a shortened schedule. Most county boards of election are currently understaffed. Some counties have only one individual working at their boards of elections. The hiring of additional labor, and/or the compensation for overtime, may be required to meet these needs, placing further unforeseen demands on the budgets of boards of elections, and in turn, driving up the direct costs to the public.

14. Voting equipment has been programmed, and certification or testing of equipment has begun. In addition, county boards of elections have already begun printing ballots, and some counties have completed this process. They do not have sufficient funds in their budget for another ballot printing. Budgets are estimated to cover a primary, and a second primary at best. The financial impact on the counties of an additional election would be substantial.

15. Absentee ballot votes have already been cast. Changing the primary schedule would require voiding all previously mailed ballots as well as cast ballots. New ballots, once they are printed, would have to be mailed to absentee voters. This will be confusing for voters, and election staff would have to separate voided ballots from valid ones.

16. Provisions for absentee voting are an important part of the election process. Failure to provide an adequate time for absentee voting would deprive substantial numbers of voters, especially persons in military service, elderly persons in nursing homes, and other persons who are handicapped, an opportunity to vote. The fifty-day time period for absentee voting is necessary to accommodate the time required for voting by citizens assigned to duty out-of-state or overseas by Department of Defense agencies. Reducing the time would make the absentee voting process meaningless and would likely generate vigorous objections by the United States Department of Defense. If separate primaries and a shortened election schedule were required, adequate provisions for absentee voting could be compromised.

17. Precinct judges and precinct assistants have already been appointed and most have gone through the mandatory training period (for which they receive payment). Many precinct officials plan in advance their work and vacation schedules based on the calendar of elections

established each election year. It would be difficult to locate additional assistants for another election, particularly since many individuals are unavailable because of vacations planned during the summer months, or they cannot arrange their schedules to accommodate a new election schedule. Moreover, recruitment for additional precinct assistants will require an inordinate amount of staff time.

18. Facilities such as church fellowship halls, fire stations, public libraries, and recreational facilities have already been reserved for polling places based on the established election calendar. As summer approaches, the timing of a separate election would conflict with activities already planned for some of these polling places. Logistically, the impact of a special election would cast an inordinate financial and emotional burden on county elections boards and their staff, who would have to hurriedly organize the additional election. This would be stressful for an already over-extended staff.

19. Voters are accustomed to two major elections in an election year. Introducing an additional election schedule will produce voter burnout and voter confusion. Voters are turned off by the waste of their tax dollars and additional trips to vote. To the extent that election participation is a matter of habit, holding a separate and additional election that is not part of that habit will result in low voter turnout. Voters do not understand special elections and do not expect to have to participate in them. Past experience by the State Board of Elections has demonstrated that separate special primaries or general elections normally attract much smaller voter turnouts than regularly-scheduled elections or primaries in which voters cast ballots simultaneously for candidates for all offices up for election that year. The expected turnout in a separate election would be dismal. For

example, in one special election held in the Ramseur precinct, not one ballot was cast. In some counties, local elections such as the sheriffs' races generate local interest and increase voter turnout for other offices. Historically, North Carolina has held its primaries in the spring, and only once, in 1976, voluntarily scheduled a primary as late as August. That experiment lasted for the one primary election and was never repeated by the legislature, although a fall primary on occasion has been debated. A summer primary or general election is unthinkable.

20. The State Board and county boards of elections would incur significant costs if the impending primary elections were disrupted, new legislative and congressional districts adopted, and a separate primary election required. A statewide election, either primary or general, costs approximately \$4,300,000. This includes the costs of printing ballots, paying for polling places, paying precinct officials, and programming election machines. There are approximately 2,500 precincts statewide, each of which must be staffed with a minimum of three people each election day. A quick survey of the costs incurred by the county boards of elections shows that as of March 15, 1998, boards have already spent a minimum of \$835,400. Estimated total expenses for conducting the May 5th primary are in excess of \$3,348,700. (Ninety-seven counties responded to the survey, and this figure represents only a rough estimate. Additionally, some counties did not include expenses for salaries.) These figures will practically double if a separate election for Congress, State House, or State Senate is required.

21. Scheduling an additional election will require additional campaign expenditures for all candidates, already in the midst of a very costly undertaking. For the campaign reporting period covering July 1, 1997 through December 31, 1997, nineteen congressional candidates filed campaign

finance reports showing contributions totaling \$3,164,419 and expenditures totaling \$1,526,452. Contributions reported for the North Carolina House and Senate elections total \$2,080,595; expenditures reported total \$1,182,937. Thus, in North Carolina, almost eight million dollars had been raised and spent before the candidate filing period opened and closed. The next federal and state campaign reports are due from candidates on or about April 10, 1998. Those reports will show campaign finances from January 1 through March 31, 1998.

22. If voting districts are redrawn, it is possible that some candidates may not represent the same areas in which they have been campaigning. Time, effort and money spent campaigning in areas removed from current districts will be lost. Candidates may not even be eligible to run in a redrawn district because of failure to meet residency requirements. With new districts candidates may drop out of local elections to run for an office in a new district in the special election. At this point in time it is not possible to remove names and qualify new candidates for the elections which would continue to go forward under the regular election schedule.

23. I share the sentiments of the county boards of elections that a change in election districts at this late hour would have a negative impact on voters, boards of elections and precinct workers; it would result in a waste of tax dollars and be unfair to the candidates who have been campaigning steadily. Enjoining any of the State's elections would throw the whole election process into chaos. I concur with the opinions of several county boards of elections officials surveyed, that the greatest cost of all is a hidden cost with no price tag -- a chilling effect on voters who might lose their confidence in the election process and not participate.

24. I am a registered voter, over the age of eighteen and am competent to make this declaration stating facts of which I have personal knowledge.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 4th day of April, 1998.

---

Gary O. Bartlett