Tellames v. Congressional Reapportionment Comm'n, 8 ROP Intrm. 142 (2000)

SALVADOR TELLAMES, et al.,
Appellants,

v.

CONGRESSIONAL REAPPORTIONMENT COMMISSION,
Appellee.

CIVIL APPEAL NO. 99-37
Civil Action Nos. 99-202, 99-228

Supreme Court, Appellate Division
Republic of Palau

Argued: March 3, 2000
Decided: March 10, 2000

Counsel for Appellants Gregorio Ngirmang et al.: William Ridpath

Counsel for Appellants Salvador Tellames et al.: Raynold Oilouch

Counsel for Appellee: Daniel M. Pacheco, Assistant Attorney General

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

NGIRAKLSONG, Chief Justice:

Appellants appeal from the Trial Division's December 12, 1999 Order upholding the constitutionality of Appellee's Reapportionment and Redistricting Plan. We affirm.

I.

On June 16, 1999 Appellee, the 1999 Reapportionment Commission, published its 1999 Reapportionment and Redistricting Plan. This Plan, in contrast to past multi-district plans, provides for nine senators "to be popularly elected in a Single Senatorial District (nationwide)." [1] Appellants, who are Koror residents and voters, alleged that the Plan's failure to create multiple districts violated Article IX, Section 4(a) of the Constitution, which commands that every eight years a commission "shall publish a reapportionment or redistricting plan for the Senate based on

[1] The first Plan, established in the Constitution, allocated eighteen senators among eight districts. *See* ROP Const. art. XV § 13(a). The 1984 Plan, as amended by the courts, allocated fourteen senators among six districts. *See Eriich v. Reapportionment Comm'n*, 1 ROP Intrm. 134, 148 (Tr. Div.), *aff'd in part and amended in part*, 1 ROP Intrm. 150, 151-53 (1984). The 1992 Plan, also judicially amended, allocated fourteen senators among three districts. *See Yano v. Kadoi*, 3 ROP Intrm. 174, 190 (1992).

population." On cross-motions for summary judgment, the trial court held that nothing in Article IX, Section 4(a) required multiple districts, and entered judgment for Appellee. Appellants then brought this appeal.[2]

⊥143 **II.**

We review rulings on cross-motions for summary judgment *de novo* to determine whether the trial court correctly found that there was no genuine issue of material fact and that the prevailing party was entitled to judgment as a matter of law. *Becheserrak v. ROP*, 5 ROP Intrm. 63, 64-65 (1995). Because the facts are not in dispute, this appeal turns solely on whether the trial court erred as a matter of law in upholding the constitutionality of Appellee's 1999 Plan. We conclude that it did not.

A.

Appellants contend that the "reapportionment or redistricting" language of Article IX, Section 4(a), as understood according to both its plain meaning and its framers' intent, requires a "multiplicity of districts." Thus, Appellants argue, Appellee's single-district plan was neither a "reapportionment" nor a "redistricting" within the meaning of the Constitution.

1.

When constitutional language is clear and unambiguous, we must apply its plain meaning, *Senate v. Nakamura*, 7 ROP Intrm. 212, 214 (1999); *Yano v. Kadoi*, 3 ROP Intrm. 174, 182 (1992); *ROP v. Etpison*, 5 ROP Intrm. 313, 317 (Tr. Div. 1997), which we may discern by consulting both general and legal dictionaries. *See Board of Educ. v. Mergens*, 110 S. Ct. 2356, 2365 (1990); *Koyo Seiko Co. v. United States*, 36 F.3d 1565, 1571 n.9 (Fed. Cir. 1994). Because "reapportionment" and "redistricting," as used in a clause defining the duties of a specialized reapportionment commission, are terms of art that hold a particular legal significance in the electoral context, we find it appropriate to rely on their legal definitions rather than on general dictionary definitions. *See United Techs v. Browning-Ferris Indus., Inc.,* 33 F.3d 96, 99 (1st Cir. 1994) ("legal terms . . . are . . . presumed to have been intended to convey their customary legal meaning"); 16 Am. Jur. 2d *Constitutional Law* § 73 at 448 (where context suggests a legal meaning was intended "legal words and phrases . . . should be given . . . legal . . . significance").

The legal dictionary defines "reapportionment" as "[r]ealignment of a legislative district's boundaries to reflect changes in population," and to "redistrict" as to "organize into new districts, esp. legislative ones; reapportion." *Black's Law Dictionary* 1272, 1283 (7th ed. 1999). Under a

[2] Appellants base their appeal on Article IX, Section 4(a)'s "reapportionment or redistricting" language and do not pursue the arguments they raised below that the 1999 Plan, in failing to provide separate representation for Koror as the most populous state, violated the Equal Protection Clause and the command that the Plan be "based on population." These arguments, even if pressed on appeal, are without merit because at-large plans do not dilute the strength of votes cast in populous districts, but rather give each vote equal weight. *See Wesberry v. Sanders,* 84 S. Ct. 526, 530 (1964).

fair reading of these definitions as understood in the electoral context, the terms "reapportionment" and "redistricting" may be used interchangeably, *see id.* at 1283 (defining "redistrict" as "reapportion"), and may denote any "[r]ealignment of a legislative district's boundaries," irrespective of the number of resulting districts. *Id.* at 1272.[3] Because nothing in these definitions requires multiple ⊥144 districts, Appellee's Plan realigning district boundaries to create a single, nationwide district accomplishes a "reapportionment" or a "redistricting" within the plain meaning of these terms and thus constitutes a "reapportionment or redistricting plan" within the meaning of the Constitution.[4]

2.

Even if we were to find Section 4(a) ambiguous,[5] constitutional language must be understood as "expressive of general ideas rather than . . . narrow distinctions," and "no forced, strained, unnatural, [or] narrow . . . construction should ever be placed upon [it]." 16 Am. Jur.2d *Constitutional Law* § 72 at 446-47. Likewise, because constitutions must be capable of accommodating future developments, their provisions "do not deal in details, but enunciate . . . general principles and general directions." *Id.* § 3 at 346-47. These canons of construction counsel in favor of interpreting Section 4(a) broadly to encompass any reconfiguration of district boundaries, rather than narrowly to denote only configurations that produce multiple districts.

The framers' intent, which we may consult to resolve ambiguities in the constitutional text, *see Gibbons v. Salii* , 1 ROP Intrm. 333, 339 (1986); *Palau Chamber of Commerce v. Ucherbelau*, 5 ROP Intrm. 300, 302 (Tr. Div. 1995), further supports this broad, flexible construction. The framers stated that, "[r]eapportionment means reallocating the number of legislators among the same districts. Redistricting means redefining the district boundaries but retaining the same total number of legislators." Con. Con. Comm. Rep. No. 22 at 8. The framers' definition of "redistricting" does not refer to multiple districts, but only to "redefining . . . district boundaries," much as the legal dictionary definition refers only to "realigning" district

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[3] Contrary to Appellants' suggestions that a "district" must be one of several divisions, so that creating a single district is not "districting" at all, a single district constitutes the geographic unit that forms the basis of the electoral system, and thus is properly described as a "district." *See, e.g., Mobile v. Bolden*, 100 S.Ct. 1490, 1505 (1980) (describing at-large voting scheme as employing a "unitary electoral district").

[4] Appellants also cite the general dictionary, which defines "reapportion" as "apportion again" and in turn defines "apportion" as "divide and distribute proportionately" and to "redistrict" as to "organize into new territorial and esp. political divisions." *Webster's Third New Int'l Dictionary* 105, 1891, 1903 (3d ed. 1981). Having found that the 1999 Plan satisfies the commonly understood legal definition of the phrase "reapportionment or redistricting," which we find to be the most appropriate definition in this context, we need not consider whether it satisfies any other definition.

[5] Though we find no ambiguity as to whether the definitions of "reapportionment" or "redistricting" require multiple districts, some ambiguity arguably arises from the fact that the legal dictionary defines the terms interchangeably, while the framers, by using the disjunctive "or," apparently used them distinctly. *See In re Espy*, 80 F.3d 501, 505 (D.C. Cir. 1996) (disjunctive language generally denotes "distinct alternatives").

boundaries. Thus, Appellee's Plan, in altering district boundaries to create one district, "redefin[es] . . . district boundaries," and thus satisfies the framers' conception of "redistricting."[6]

⊥145 Furthermore, in explaining the purposes behind Article IX, Section 4(a), the framers stated that redistricting and reapportionment "will allow for not only increases in population, but also for large shifts in population location," *id.*, and will provide "the flexibility necessary to adjust to the future." Spec. Comm. on the Legis. Standing Rep. No. 46 at 3. These statements do not express any intent to require at least two districts or to circumscribe the Commission's power, but rather reflect an intent to afford the Commission flexibility to devise new schemes in response to future circumstances. [7] These statements thus belie any assertion that Article IX, Section 4(a) was intended to mandate multiple districts. We therefore conclude that the trial court properly characterized Appellee's single-district Plan as a "reapportionment or redistricting plan" in accordance with both the plain meaning and the intended purpose of Article IX, Section 4(a).[8]

3.

The case law, though sparse, further supports this conclusion.[9] In one analogous case, the

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[6] Appellee's Plan need not reapportion in addition to redistricting in order to constitute a "reapportionment or redistricting plan." Yet, it may permissibly do so. *See infra* Part II. B. Thus, we need not consider whether Appellee's Plan effects a "reapportionment" as well as a "redistricting" in accordance with the framers' formulations of these terms. We note, however, that despite the framers' use of the plural word "districts" in their definition of "reapportionment," in an apparent allusion to the eight initial districts, we find no indication that they intended to require multiple districts in perpetuity.

[7] Other constitutional provisions further reveal the framers' intent to afford Appellee broad discretion in devising election schemes. Article IX, Section 3 provides that the "Senate shall be composed of the number of senators prescribed from time to time by the reapportionment commission as provided by law." This provision, like Section 4(a), is devoid of any restrictions on the commission's power and reveals the broad scope of its constitutional mandate.

[8] Though the framers rejected a single-district plan in favor of an eight-district plan, *see* Con. Con. 47th Day Summ. Jour. (Mar. 15, 1979), they emphasized that their eight-district plan was "only temporary," as a commission would "continuously examine population . . . trends, and reapportion or redistrict accordingly." Spec. Comm. on the Legis. Standing Rep. No. 46 at 2-3; *accord* Spec. Comm. on the Legis. Standing Rep. No. 54 ("[t]he apportionment is transitional only"). While the framers may not have anticipated single-district plans, absent some indication that they intended to foreclose them, we concur with the trial court's observation that "neither unusual nor unexpected is the same as unconstitutional."

[9] Few courts have construed the terms "reapportionment" and "redistricting," which are not found in the United States Constitution. Courts have, however, upheld single-district plans despite evidence that the framers did not anticipate them. *See Norton v. Campbell,* 359 F.2d 608, 610-11 (10th Cir. 1966) (holding that although framers preferred multi-district plan, nothing in the Constitution "required it"); *Park v. Faubus*, 238 F. Supp. 62, 66 (E.D. Ark. 1965) (three-judge court) (holding that even if multi-district schemes were the "better practice," citizens had "no right" to have the state "divided into . . . districts"); *Gong v. Bryant*, 230 F. Supp. 917, 921 (S.D.

Tellames v. Congressional Reapportionment Comm'n, 8 ROP Intrm. 142 (2000) court rejected the contention that legislation adopting a single-district scheme exceeded the legislature's power under the state constitution to provide for "an alteration in the boundaries or divisions of the districts herein prescribed, and . . . for increasing or diminishing the number of . . . districts." *Nevada v. County Comm'rs* , 10 P. 901, 902 (Nev. 1886). While the court noted the use of the plural word "districts" and the framers' ⊥146 apparent concept of a "district" as one "portion of the state," it declined to infer therefrom any intent to require multiple districts because, as it explained, this inference placed "too much stress upon the form, [while] overlooking the substance" of the constitutional text. *Id.* at 905-06. Turning to the substance, the court reasoned:

> [i]s it not . . . evident that it was the intention of the framers . . . to invest the legislature with absolute power to arrange the number of . . . districts, and, if necessary . . . to reduce the number to one? . . . There is no prohibition upon the power . . . to increase the number of . . . districts; is there any restriction upon the power . . . to diminish the number . . .? There is no express, and, in our opinion, no implied, provision to this effect.

Id. at 903. Absent a mandate that the number of districts not be "diminished to less than two," the court thus found that the legislation combining seven districts into one was a "redistricting," despite its failure to create multiple districts, because it "district[ed] the state over again." *Id.* at 904, 908. We, like the *Nevada* court, find nothing in our Constitution limiting Appellee's power to reconfigure senatorial districts, and thus conclude that the 1999 Plan combining all existing districts into one constitutes a "redistricting" within the meaning of Article IX, Section 4(a).

B.

Appellants argue that even if Appellee's Plan constitutes a "redistricting," it is unconstitutional because it *both* reapportions *and* redistricts, and under the Constitution's requirement of a "reapportionment *or* redistricting plan," Appellee "must either reapportion *or* redistrict" but "cannot do both." Appellants did not raise this argument below, and thus may not do so on appeal. *See Ngiraked v. Media Wide, Inc.,* 6 ROP Intrm. 102, 104 (1997). Even if properly raised, however, this argument is without merit. Based on the framers' stated intent to afford the Commission flexibility to respond to future developments, *see* Con. Con. Comm. Rep. No. 22, we construe Article IX, Section 4(a) as an affirmative command that the Commission revise at least one aspect of the districting scheme, not as a negative restriction constraining the Commission's power. In the absence of some indication of an intent to restrict the Commission's authority, Appellants' objection to simultaneous reapportionment and redistricting is unfounded.

III.

For the foregoing reasons, we find no constitutional infirmity in Appellee's 1999

Fla. 1964) (noting that, though framers expected "district representation," elections had been held at large "from the inception of our system to the present"); *Moore v. Moore*, 229 F. Supp. 435, 439 (D.N.D. 1964) (three-judge court) ("[i]t is entirely valid and legal" to elect representatives "on a statewide basis").

Reapportionment and Redistricting Plan and accordingly AFFIRM the Trial Division's entry of judgment in Appellee's favor.