IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRATTARELLI, et al.	:	CIVIL ACTION
v.	:	
JOSEPH P. KELLY, et al.	:	NO. 97-1663

MEMORANDUM AND ORDER

FULLAM, Sr.J. JULY , 1997

Plaintiffs, all of whom reside within the Chichester School District, bring this action against the Director of the Delaware County Bureau of Elections in order to compel immediate school board elections. The plaintiffs are voters who in some cases profess a desire to run for a school board position; most appear to be affiliated with a self-described "taxpayer's group" known as Quest. As of 1990, according to the plaintiffs, the Chichester School District was divided into nine regions, each of which elected one representative to the school board. It is plaintiffs' contention that in the ensuing years, population shifts among these regions rendered this scheme constitutionally infirm in that it violated the equal protection principle of "one man, one vote."

In 1996, a state court challenge to the nine-region plan was filed by one Joseph DiMarco, who is not a plaintiff here. The DiMarco action resulted in a settlement that scrapped

the nine-region scheme in favor of a three-region plan, which is to be implemented in 1999. In the meantime, four school board seats are slated for elections in 1997. While plaintiffs' objections to the nine-region system are now clearly moot, it is plaintiffs' contention that two years is too long to wait for a constitutionally elected school board. Defendant has moved to dismiss the amended complaint, relying on principles of res judicata and collateral estoppel, and upon mootness and abstention doctrines. For the reasons that follow, the motion will be denied.

Defendant's reliance upon the principles of claim and issue preclusion is misplaced. First, none of the plaintiffs here was party or privy to the DiMarco action-- the filing of an amicus brief in DiMarco by plaintiffs is not a sufficiently close connection to the conduct of that litigation to make them so. Second, the burden is on defendant to demonstrate exactly what was determined in that state court proceeding; defendant has not done this. See Gruntal & Co. v. Steinberg, 854 F. Supp. 324, 337 (D.N.J.), aff'd, 46 F.3d 1116 (3d Cir. 1994). Instead, plaintiffs provided this Court with a copy of the DiMarco record, a review of which reveals precisely one mention of a federal constitutional issue: the Commonwealth Court cited Resident Electors of the Pennsbury School Board v. Pennsbury School Board, 572 A.2d 1303 (Pa. Commw. 1990), for the proposition that the United States Supreme Court had recognized that immediate implementation of a reapportionment plan may be impractical, and

that courts must rely on equitable principles to fashion remedies. The court concluded:

> [T]he trial court here fashined a remedy in which the reapportionment plan would be phased in, allowing current Board members to serve out the remainder of their terms, minimizing the disruption to the School District, and preserving the rotation of directors mandated by section 303(a) of the School Code.

In re Petition to Reapportion the School Director Regions of the Chichester School District ("DiMarco"), 688 A.2d 1275, 1281 (Pa. Commw. 1997). The action was remanded to the Court of Common Pleas of Delaware County with instructions that the trial court determine whether the Chichester reapportionment plan complied with the School Code, and if so, to "forthwith determine a plan that would best serve the school district." Id. at 1282. As DiMarco thereafter settled, it is apparent that this issue was not fully and finally litigated in the state courts. At best, any finding made concerning federal constitutional issues is too ambiguous to be accorded preclusive effect.

Defendant similarly misapprehends the scope of the various abstention doctrines. There is no unsettled question of state law at issue here.[1] There is no pending state proceeding with which a federal court should be reluctant to interfere;[2] nor do the interests of wise judicial administration counsel a hands-

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[1] See Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941), Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25 (1959) and Burford v. Sun Oil Co., 319 U.S. 315 (1943).

[2] See Younger v. Harris, 401 U.S. 37 (1971).

off approach.[3] Plaintiffs allege that their rights under the Constitution of the United States have been and are being violated by the current system of electing school board directors in the Chichester School District. Abstention is simply not an option under these circumstances.

Finally, as noted above, defendant is correct in that plaintiffs' objections to the former nine-district plan are now moot. Plaintiffs apparently concede this point, but contend that a two-year delay to fully implement the current three-region plan is unacceptable. See Wells v. Rockefeller, 394 U.S. 542, 547 (1969)(not error to permit election that was three months away to proceed despite constitutional infirmities, but election that was two years away must meet constitutional standards). Plaintiffs may pursue this theory.

An Order follows.

[3] See Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976).

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O R D E R

AND NOW, this day of July, 1997, IT IS ORDERED:

1. Defendant's motion to dimsiss is DENIED.

2. Plaintiffs' motion to strike affidavits is DISMISSED AS MOOT.

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Fullam, Sr.J.