
Coates' Canons Blog: Time for Cities, Counties, and School Boards to Redistrict, But No Numbers!

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Update March 4, 2021: *In the days since this blog was posted, readers have sent me corrections to my lists. I am very grateful. The post below is updated to fix the lists. I think they are right now, but if anyone spots problems, please let me know.*

Here is the updated post:

These North Carolina cities have a problem, and there may be little they can do about it except wait and see if the General Assembly gives them some direction:

Ahoskie, Cary, Charlotte, Clinton, Edenton, Elizabeth City, Enfield, Erwin, Fayetteville, Greensboro, Greenville, Henderson, Hickory, Jacksonville, Kings Mountain, Lake Waccamaw, Laurinburg, Lexington, Longview, Lumberton, Mooresville, Mt. Olive, New Bern, Plymouth, Princeville, Raleigh, Roanoke Rapids, Rocky Mount, Sanford, St. Pauls, Siler City, Smithfield, Statesville, Tarboro, Whiteville, and Wilson.

They all have city elections coming up in 2021, and they all elect city council members from true electoral districts—meaning that only the voters of that district vote for that council seat. Every time there is a federal census, as there was in 2020, they must take the new census numbers, apply them to the old electoral districts, and determine whether the districts have gotten out of population balance over the course of 10 years since the last census. If they have, then the city council must draw new districts to bring them back into balance. Failure to do that is a violation of the U.S. Constitution.

After the census of 1990, cities drew new districts in 1991. And after the 2000 census, they drew new districts in 2001. And again after the 2010 census, new districts in 2011.

The schedule was always tight. The census numbers always came out in February or March, and the new districts had to be in place in time for the July candidate filing period ahead of the November elections. Cities had to hustle to get it done.

This year is dramatically different. The U.S. Census Bureau has said that the numbers needed for redistricting will not be available in February or March. In fact, they may not be available until the end of September.

Well, that just doesn't work. The candidate filing period for these cities for the election in November 2021 runs from July 28 to August 13. You have to have the districts in place before the filing period, so candidates know what seat to file their notices of candidacy for. But the new numbers are not expected until September.

So what are cities with true electoral districts to do?

Here is the answer, as far as I can figure it out.

First, wait for the General Assembly

For now, the thing cities can do is wait to see what, if anything, the General Assembly does.

The General Assembly, by statute, sets the time of municipal elections, and sets the time of candidate filing. The General Assembly can, if it chooses, delay the 2021 municipal elections, giving cities time to receive the new census numbers, draw the new districts, have candidates file, and go through the election. If the General Assembly does that, it will, at the

same time, extend the terms of incumbent city council members who were to be up for re-election in 2021. They would simply stay in office until after the delayed elections. Yes, the General Assembly has the authority to do that.

It seems to me likely that the General Assembly will take some step to give guidance to cities.

Maybe the elections will be held at the time of the March 2022 primaries

In 2022, North Carolina will have elections for lots of offices—seats in the General Assembly, county commissioners, and many others. As the law now stands, the primaries for those elections are in March. The candidate filing periods are in December 2021. The General Assembly could delay the municipal elections until the time of the March primaries. That way, cities could get the census numbers in September and have districts in place in time for candidate filing in December. That's tight. Real tight. Even tighter than the way things worked in 1991 and 2001 and 2011.

Or maybe the March 2022 primaries will be moved to May 2022

In times past, the primaries ahead of the November elections were not in March but in May. The General Assembly could go back to that schedule, and set the delayed municipal elections for that time. That would create more breathing room, with the candidate filing period coming in February. If the census numbers become available in September, there should be time for city councils to draw districts by February.

Whatever the General Assembly decides, that's what cities with districts must do

If the General Assembly enacts legislation addressing the redistricting numbers problem, cities will, of course, be bound to do whatever the new law says. The General Assembly might say, simply, hold your 2021 elections using your old districts and redistrict in time for the 2023 elections.

What if the General Assembly does not enact new law?

What is a city to do if the General Assembly does not act?

Cities could continue on their regular schedule, using the old districts

Cities might think they are in a pickle if the General Assembly does not act. But I don't think they are. I think that if the General Assembly does not pass legislation, then cities that use true electoral districts must simply hold their 2021 elections on the regular schedule using their old districts.

Gasp!

Doesn't that mean that they may be using districts that are so out of whack, so imbalanced in population, that they violate the U.S. Constitution? Cities already have preliminary numbers that, for many of them, show that their districts are out of balance. Would they not be vulnerable to lawsuits challenging them on the imbalance?

Yes, I guess so. But, in fact, it seems to me that there is no alternative. And surely, a judge in such a lawsuit would understand the problem the city faced.

May cities delay their elections themselves?

The General Assembly can delay elections, in order to give cities time to draw new districts. But can cities do it on their own?

No.

When the census is normal, and the numbers arrive on the regular schedule, there is, in fact, a state statute that allows cities, on their own, to delay their elections after a census. If they determine that it would "most likely not be possible" to draw new districts by the filing period, then the city can, on its own, delay the elections for a year.

But that statute—G.S. 160A-23.1—assumes that the city has the census numbers and, for whatever reason, cannot get

new districts in place. It begins this way: “As soon as possible after receipt of the federal decennial census information,” the city council is to decide whether delay is required.

But in 2021, the census numbers won't be coming in time to make such a determination. I don't think this statute applies in 2021. And, further, the statute says that if districts cannot be available in time, and the elections are not delayed a year, then “the election shall be held on the regular schedule using the current electoral districts.”

So, what to do?

If, in the end, the General Assembly does not enact new laws addressing elections in cities with true electoral districts, then those cities should, I think, simply carry on in their regular way, with elections in 2021.

This is a tough prescription. Cities would be holding elections in November 2021 that they know for a fact are unconstitutionally unbalanced. They will know that because by that time they will, presumably, have the new census numbers. They may be sued. But I do not see how cities can, without authorization from the General Assembly, do anything else.

Ten city special cases

Two cities with districts and even-year elections. In addition to the cities listed at the start of this blog post, two other cities use true electoral districts and must redistrict, like all the others. But they, like about 20 or so other North Carolina cities, have moved to even-year elections. One is *Albemarle*. Albemarle will elect city council members from districts in 2022, and so they are in the same boat as counties, discussed below. *Winston-Salem* is the other one. Winston-Salem elects all its council members at the same time, every four years. Their next election is in 2024, so they have time.

Eight cities with districts but no district elections in 2021. Eight other cities that use true electoral districts and are on the normal odd-year schedule do not have districts elections in 2021. (They may have mayoral or at-large seat elections in 2021.) Their next district elections are in 2023. They are *Benson, Dunn, Fremont, Goldsboro, High Point, Reidsville, Robersonville, and Williamston*.

What about all the other cities?

The current problem directly affects cities that elect city council members from true electoral districts. But many, many cities in North Carolina—the vast majority—elect their city council members at-large. That is, all voters in the city vote for all seats. There are no districts. There is no need to redistrict. They are not affected by the delay in the census numbers. Unless the General Assembly should direct differently, they will hold their elections on the regular 2021 schedule.

In some cities, the voting is at large but the candidates must reside in defined districts. To be elected from District One, I must reside in District One, but everyone in the city votes for that seat. In that system there is no need to redistrict after a census, since the voting is done at large. These cities will hold their elections on the regular 2021 schedule, unless the General Assembly directs differently.

Whatever the General Assembly decides, that's what at-large cities must do

The General Assembly may enact new legislation to deal with the problem facing cities with true electoral districts. If the General Assembly delays elections for cities with districts, will it do the same thing for cities with at-large elections? I have no idea. But whatever the General Assembly provides by new law, that's what at-large cities must do.

What about counties with districts?

Cities have the biggest concern, because their elections are scheduled for this year. But these counties have the same concern, just not quite as urgent:

Anson, Bladen, Buncombe, Caswell, Chowan, Columbus, Craven, Cumberland, Duplin, Edgecombe, Forsyth, Franklin, Granville, Guilford, Halifax, Harnett, Jones, Lee, Lenoir, Mecklenburg, Montgomery, Nash, Orange, Pamlico, Pasquotank, Pitt, Robeson, Sampson, Vance, Washington, Wayne, and Wilson.

County elections are scheduled for 2022. The primaries are set for March and the candidate filing period is set for December 2021. So, if counties get their census numbers by the end of September, it is almost conceivable that they could have districts in place in time for candidate filing. But, in light of the statutory requirement for counties that redistricting plans must be in place 150 days before the primary, it would be difficult in the extreme.

So maybe the General Assembly will move the primaries to May and the filing period to February (or maybe March). That would give some breathing room.

Even if the General Assembly does delay the primaries to May, having the districts ready for February candidate filings will be a bit of a challenge.

What about school boards with districts?

Boards of education with members elected from true electoral districts have the same concerns.

Four of those school boards have members elected in odd-numbered years, including 2021, so they have the same concerns as cities. Those four are: *Charlotte-Mecklenburg, Hickory City, Lexington City, and Newton-Conover.*

The others elect their members in even-numbered years, so they have the same concerns as counties: *Alexander, Anson, Beaufort, Bladen, Caswell, Craven, Cumberland, Duplin, Durham, Edenton/Chowan, Edgecombe, Franklin, Granville, Guilford, Harnett, Iredell-Statesville, Lenoir, Madison, Martin, Montgomery, Nash-Rocky Mount, Pamlico, Pitt, Robeson, Rockingham, Union, Vance, Wake, Wayne, Whiteville City, Wilson, and Winston-Salem/Forsyth.*

Perhaps the General Assembly, if it enacts legislation affecting cities or counties or both will address school boards at the same time.

A final note: the Voting Rights Act

Cities, counties, and school boards across the state are free of a time pressure that in decades past affected many of them. In those past times, Section 5 of the Voting Rights Act of 1965 required that redistricting plans for units of government covered by Section 5 (not all were) had to be approved by the U.S. Department of Justice before they could be put into effect. That process of "pre-clearance" took up part of the time available between the receipt of the census numbers and the time of candidate filing.

Section 5 is no longer enforced. There is no longer any requirement that any units of government submit their redistricting plans to the Department of Justice. That bit of time pressure is relieved.

Links

- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-23.1.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-22.html