VOTING RIGHTS IN NORTH CAROLINA: 1982–2006

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INTRODUCTION TO THE VOTING RIGHTS ACT

North Carolina's experience since the reauthorization of the Voting Rights Act in 1982 has been a mixed one of slow progress, setbacks and new challenges. Only forty of the state's one hundred counties are covered by Section 5 of the Act,[1] resulting in greater protections for some areas of the state. While many of the gains in minority representation at all levels have come about as the result of litigation under Section 2, Section 5 arguably has had the greatest impact in the state because numerous objections have prevented the implementation of election changes that would have made it harder for black voters to participate in elections. Indeed, the ability of Section 5 preclearance to protect and, thereby, reinforce Section 2 gains has been an important part of the minority voting rights story in North Carolina.

Of the counties that are covered, most are rural counties in the eastern part of the state.[2] Indeed, North Carolina's two largest cities, Charlotte and Raleigh,[3] are not among the covered counties.[4] Durham and Winston-Salem also are not covered.[5] Thus, it is remarkable that although so few of the state's citizens are covered by Section 5, there have been forty-five objection letters issued since 1982 relating to an even greater number of changes in voting practices and procedures.[6] Of those forty-five objection

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1 28 C.F.R. 51 app. (2007).

2 *See id.*

3 *See* U.S. Census Bureau, 2000 Census Summary File 1, at tbl.P1, *available at* http://factfinder.census.gov (last visited Feb. 15, 2008).

4 *See* 28 C.F.R. 51 app.

5 *See id.*

6 *See* Department of Justice, Section 5 Objection Determinations: North Carolina, http://www.usdoj.gov/crt/voting/sec_5/nc_obj2.htm (last visited Feb. 15, 2008). The Department of

letters, ten involved multi-county or statewide changes, including state redistricting plans, changes relating to the election of judges and proposed delays in implementing mail-in registration procedures.[7]

There are ten instances of North Carolina Section 5 submissions being withdrawn from consideration since 1982—five of them since 2000.[8] This is a strong indication of the beneficial effect of Section 5 review, short of the Department of Justice issuing a formal objection. In at least one instance, the submission related to subsequent attempts by a local jurisdiction to modify an election method that had been put in place following litigation under Section 2.[9] The Department of Justice, by raising questions about the proposed change, was able to prevent the dismantling of a system that gave minority voters an opportunity to elect candidates of their choice, thus preserving the gains obtained through earlier litigation without the need for the original plaintiffs to return to court.[10]

It also is clear from recent testimony by local activists that election officials in covered jurisdictions do consult with representatives of the local NAACP or other African-American leaders in the community before changing polling places or making other election-related changes.[11] Motivated by the fact that any change will be reviewed in Washington, local officials are more conscious of the impact that such changes may have on the ability of black voters to participate in elections. Although prior to 1982 there was significant non-compliance with Section 5's preclearance requirement,[12] local election officials in the covered counties are now generally in favor of keeping the process in place.[13]

Justice listing contains a detailed summary of each objection. One objection letter may relate to several changes that were contained in a single submission.

[7] *See id.*

[8] See Appendix A for a list of submissions from North Carolina that have been withdrawn and the date they were withdrawn.

[9] *See* Appendix A (Submission No. 2001-4063).

[10] *See id.* For prior litigation, see *Moore v. Beaufort County*, 936 F.2d 159 (4th Cir. 1991).

[11] *Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, North Carolina A&T University, Greensboro, North Carolina*, 41–42 (Nov. 14, 2005) [hereinafter Greensboro Hearing] (testimony of Bobbie Taylor of Yanceyville, North Carolina) (transcript on file with the Center for Civil Rights, University of North Carolina School of Law).

[12] *See* William R. Keech & Michael P. Sistrom, *North Carolina, in* QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965–1990 155, 162 (Chandler Davidson & Bernard Grofman eds., 1994).

[13] *See The Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 3149 (2005) [hereinafter *Hearing*] (statement of Anita Earls, Director of Advocacy, UNC Center for Civil Rights).

There has been extensive voting rights litigation since 1982.[14] In recent years, significant state court litigation has examined the interaction between state constitutional provisions, Sections 2 and 5 of the Voting Rights Act and their implications for minority voting rights.[15] North Carolina has the dubious distinction of being the state that produced both the *Thornburg v. Gingles*[16] decision in 1986, which held that the state legislature unlawfully diluted the voting strength of minority voters in its legislative redistricting plan following the 1980 Census, and the *Shaw v. Reno*[17] litigation in the mid-1990s, which held that the state legislature violated the equal protection rights of white voters by creating non-compact majority-minority congressional districts. There continues to be considerable controversy over redistricting, voter registration, provisional balloting and minority voter intimidation—all in a state where racially polarized voting has not significantly decreased since the *Gingles* decision.

Before examining the details of Section 5 objections since 1982, Section 2 litigation and the barriers that African-American and Latino voters in North Carolina continue to face, it is important to review the history of discrimination in voting in this state and to understand the current socio-economic factors that create the context for current minority political participation.

I. DISCRIMINATION IN VOTING IN NORTH CAROLINA[18]

A. PRIOR TO 1982

Even after enactment of the Fifteenth Amendment to the Constitution in 1870, which gave all men, regardless of race, color or previous condition of servitude, the right to vote, many states continued to use various methods to prevent people of color from voting, including literacy tests, poll taxes, the disenfranchisement of former inmates, intimidation, threats and even physical violence.[19] In North Carolina, African-American political

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[14] See Appendix B for detailed summaries of all federal court voting rights litigation in North Carolina since 1982.

[15] *See, e.g.*, Pender County v. Bartlett, 649 S.E.2d 364 (N.C. 2007); Stephenson v. Bartlett, 582 S.E.2d 247 (N.C. 2003).

[16] 478 U.S. 30 (1986).

[17] 509 U.S. 630 (1993).

[18] For a more extensive review of pre- and post-1982 problems and incidents of discrimination in North Carolina, see *Hearing*, *supra* note 13, 3181–92 (statement of Anita Earls).

[19] J. MORGAN KOUSSER, *A Century of Electoral Discrimination in North Carolina*, *in* COLORBLIND INJUSTICE: MINORITY VOTING RIGHTS AND THE UNDOING OF THE SECOND RECONSTRUCTION 243, 245, 259 (1999).

activity was suppressed at every level.[20] Only 15% of North Carolina's African-Americans were registered to vote in 1948, and only 36% were registered in 1963.[21] It was virtually unheard of for an African-American to attempt to run for political office.[22] In fact, no African-American person was elected to the North Carolina General Assembly from 1900 until 1968.[23]

In 1965, Congress passed the Voting Rights Act (VRA).[24] The VRA primarily protected the right to vote as guaranteed by the Fifteenth Amendment, but it was also designed to enforce the Fourteenth Amendment and Article I, Section 4 of the Constitution.[25] The VRA succeeded in removing some of the direct and indirect barriers to voting for African-Americans. In fact, after enactment of the VRA, African-American voter registration in North Carolina reached 50%.[26]

Prior to 1982, the VRA was amended three times. The 1970 amendments instituted a nationwide, five-year ban on the use of tests and devices as prerequisites to voting.[27] In 1974, the first two black State Senators, John W. Winters and Fred Alexander, were elected.[28] In 1975, the ban on literacy tests was made permanent and the coverage of the act was broadened to include members of language minority groups.[29] In 1980, African-American voter registration in North Carolina was 52%, and by 1990, the statewide proportion of eligible blacks registered was 63%.[30]

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[20] *Id.*

[21] *Id.* at 245.

[22] *Id.*

[23] Keech & Sistrom, *supra* note 12, at 166.

[24] Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2006)).

[25] Richard A. Williamson, *The 1982 Amendments to the Voting Rights Act: A Statutory Analysis of the Revised Bailout Provisions*, 62 WASH. U. L.Q. 1, 2 (1984) (citing H.R. REP. NO. 89-439, at 6 (1965)).

[26] KOUSSER, *supra* note 19, at 245.

[27] Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, §§ 2–5, 84 Stat. 314, 315 (codified as amended at 42 U.S.C. § 1973b (2006)).

[28] N.C. LEGISLATIVE BLACK CAUCUS, NORTH-CAROLINA AFRICAN AMERICAN LEGISLATORS 1969–2005 (on file with authors).

[29] *See* Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, §§ 203, 206, 207, 89 Stat. 400, 401–02 (codified as amended at 42 U.S.C. §§ 1973(a), 1973b(f), 1973d, 1973k, 1973l(c)(3) (2006)).

[30] Keech & Sistrom, *supra* note 12, at 161.

B. 1982 TO THE PRESENT

The 1982 VRA amendments made it clear that proof of intent to discriminate was not required for a claim under the Act.[31] These amendments were necessary to strengthen and improve the VRA, but they did not immediately result in greater rates of African-American voter registration in North Carolina.[32] In 1986, only 57.1% of eligible African-American voters were registered to vote.[33]

In 1986, in *Thornburg v. Gingles*,[34] the Supreme Court upheld the constitutionality of the new Section 2 language. In this landmark decision, the Court affirmed the district court's conclusion that

> North Carolina had officially discriminated against its black citizens with respect to their exercise of the voting franchise from approximately 1900 to 1970 by employing at different times a poll tax, a literacy test, a prohibition against bullet (single-shot) voting and designated seat plans for multimember districts. The court observed that even after the removal of direct barriers to black voter registration, such as the poll tax and literacy test, black voter registration remained relatively depressed; in 1982 only 52.7% of age-qualified blacks statewide were registered to vote, whereas 66.7% of whites were registered.[35]

In 1989, the number of blacks in the State Legislature increased to nineteen—at that time, the highest number of black legislators in the state's history.[36] Subsequently, the number of black elected officials continued to grow.[37] Currently, there are twenty-five black legislators—seven Senators and eighteen Representatives—representing 14% of 170 members of the General Assembly.[38] The average (mean) representation over all sessions is fifteen black members, or 8%.

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[31] *See* Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 3, 96 Stat. 131, 134 (codified as amended at 42 U.S.C. § 1973(a) (2006)).

[32] *See* Kim Q. Hill & Jan E. Leighley, *Racial Diversity, Voter Turnout, and Mobilizing Institutions in the United States*, AM. POL. Q., July 1999, at 275, 292.

[33] U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1986 27 tbl.4 (1987), *available at* http://www.census.gov/population/socdemo/voting/p20-414/tab04.pdf.

[34] 478 U.S. 30 (1986).

[35] *Id.* at 38–39.

[36] N.C. LEGISLATIVE BLACK CAUCUS, *supra* note 28.

[37] *See generally* DAVID A. BOSITIS, JOINT CTR. FOR POLITICAL & ECON. STUDIES, BLACK ELECTED OFFICIALS: A STATISTICAL SUMMARY 2001 (2001), *available at* http://www.jointcenter.org/publications1/publication-PDFs/BEO-pdfs/2001-BEO.pdf.

[38] *Id.* at 14 tbl.2.

C. CURRENT SOCIO-ECONOMIC FACTORS AFFECTING THE ABILITY OF AFRICAN-AMERICANS TO VOTE

The VRA, when taken in tandem with the broader social and economic experiences of black voters, has been insufficient to remedy all the effects of voting discrimination.[39] Despite the VRA, black voters are still experiencing the socio-economic consequences of past discrimination that critically impede their political participation.[40]

Today, blacks comprise more than 21.5% of North Carolina's total population.[41] The 2000 Census counted 1,737,545 residents of North Carolina who reported their race as black alone and another nearly 35,000 who reported black in combination with another race.[42] The black population of North Carolina has increased by approximately 18% since 1990.[43]

Although the population of blacks is growing, the percentage of black families living below the federal poverty level ($17,603 annual income for a family of four) in 1999 was 22.9%, compared to 8.4% for whites.[44] Approximately 29% of black families were headed by females, compared to 7.5% for white families.[45] Thirty-five percent of the families headed by black females lived in poverty.[46]

Even more disturbing is the fact that more than 60% of black adults age twenty-five and older had a high school education or less, compared to 47% for whites.[47] Furthermore, the unemployment rate for blacks was 2.6 times that of whites (10.3% versus 3.8% in 2000),[48] leaving 19% of blacks

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[39] *See generally* KOUSSER, *supra* note 19.

[40] *See* FAIRDATA2000, SELECTED SOCIO-ECONOMIC DATA: NORTH CAROLINA: AFRICAN AMERICAN AND WHITE, NOT HISPANIC (2000), http://www.fairdata2000.com/SF3/contrast_charts/Statewide/Black/North%20Carolina_SF3_Black.pdf.

[41] *See* U.S. Census Bureau, 2000 Census Summary File 1, at tbl.P3 *available at* http://factfinder.census.gov (last visited Feb. 15, 2008).

[42] *See id.*

[43] *See id*; U.S. Census Bureau, 1990 Census Summary File 1, at tbl.P006, *available at* http://factfinder.census.gov (last visited Feb. 15, 2008).

[44] OFFICE OF MINORITY HEALTH & HEALTH DISPARITIES & STATE CTR. FOR HEALTH STATISTICS, N.C. DEP'T OF HEALTH AND HUMAN SERVS., RACIAL AND ETHNIC DISPARITIES IN NORTH CAROLINA: REPORT CARD 2003 3 (2003), *available at* http://www.schs.state.nc.us/SCHS/pdf/FinalReportCard.pdf.

[45] *See* FAIRDATA2000, *supra* note 40, at Chart 1.

[46] *See* U.S. Census Bureau, 2000 Census Summary File 3, at tbls.P146B, P160B, *available at* http://factfinder.census.gov (last visited Feb. 15, 2008).

[47] *See* FAIRDATA2000, *supra* note 40, at Chart 3.

[48] *Id.* at Chart 4.

with no current health insurance and five times more likely than whites to use Medicaid.[49]

In sum, low income, low education levels and high unemployment are all factors associated with blacks in North Carolina. Moreover, those same factors are associated with a higher rate of health problems, ranging from mental disorders to physical aliments.[50] In fact, the infant death rate among black North Carolinians is more than double the rate for whites.[51] All of these factors hinder the ability of blacks to participate in political activities.

II. SECTION 5 OBJECTIONS, 1982–PRESENT

Four decades after its enactment, Section 5 of the Voting Rights Act remains one of the primary mechanisms for ensuring minority voters access to the political process. In North Carolina, Section 5 has prevented the implementation of numerous voting systems that would have diminished minority voters' ability to elect candidates of their choice. Section 5 also has guaranteed that after minority voters successfully bring Section 2 suits, cities and counties design systems that actually improve opportunities for minority residents to participate in the political process. Department of Justice Section 5 objection letters show that during the past two decades, voters in North Carolina's forty covered counties have relied on the preclearance provision to protect their right to vote in local, county and statewide elections.

Enforcement of Section 5 has continued to prevent the implementation of numerous election systems that would have cut minority voters out of the political process. Examples of dilutive practices that Section 5 has protected against include staggered terms, residency requirements, annexation of predominately white areas, majority vote and runoff requirements, unfair drawing of districts and maintenance of at-large voting.[52] Residency requirements—systems under which the entire county or city votes for each seat, but the candidate is required to reside in a particular area—have been especially common proposals used in this state to weaken black voting

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[49] *See* OFFICE OF MINORITY HEALTH & HEALTH DISPARITIES & STATE CTR. FOR HEALTH STATISTICS, *supra* note 44, at 5.

[50] *See* Ziya Gizlice & Emmanuel M. Ngui, *Relationships Between Health and Perceived Unequal Treatment Based on Race: Results from the 2002 North Carolina BRFSS Survey*, SCHS STUD. SPECIAL REP. (N.C. Dep't of Health & Human Servs., Raleigh, N.C.) Sept, 2004, at 1, *available at* http://www.schs.state.nc.us/SCHS/pdf/SCHS144.pdf.

[51] Henry J. Kaiser Family Foundation, Infant Death Rate by Race/Ethnicity – North Carolina, http://www.statehealthfacts.org/profileind.jsp?ind=48&cat=2&rgn=35 (last visited Apr. 23, 2008).

[52] *See* Department of Justice, *supra* note 6.

strength.[53] Such requirements limit minority voters' ability to use single-shot voting to elect candidates of their choice.[54] In the six-year period from 1982 through 1987, Section 5 enabled the Attorney General to interpose objections to residency districts in the counties of Beaufort, Bertie, Camden, Edgecombe, Guilford, Martin, Onslow and Pitt.[55]

Section 5 also has forced county and local officials to implement fair voting systems in response to Section 2 suits. In Pasquotank County, for example, after black voters and the NAACP filed suit opposing Elizabeth City's at-large method of election, the city agreed in a consent decree to implement single-member districts.[56] Ultimately, however, the city adopted a plan with four single-member districts and four at-large residency districts.[57] The plaintiffs to the suit opposed continued use of such extensive at-large voting because it unnecessarily diluted black voting strength.[58] When the city applied for preclearance, the Attorney General interposed an objection, explaining that the city had chosen a plan that would elect half the governing body "in a manner identical to that which the decree was designed to eliminate."[59] Though the use of limited at-large voting might be acceptable, the plan chosen contained "the very features that characterized the plan abandoned by the consent decree" and was adopted over readily available alternatives that would allow some at-large representation without "unnecessarily limiting the potential for blacks to elect representatives of their choice to office."[60] The plan was, in fact, enacted "with knowledge of the disparate impact" that it would have.[61] Elizabeth City has since adopted an election scheme with four wards that each elect two council members.[62] There are currently four black members on the council.[63] In the case of Elizabeth City and elsewhere, Section 5 has

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[53] *See id.*

[54] *E.g.*, Letter from William Bradford Reynolds, Assistant Attorney Gen., Civil Rights Div., Dep't of Justice, to John W. Halstead, Jeannette, Morrison, Austin & Halstead, at 1 (Nov. 9, 1987) (on file with author).

[55] *See* Department of Justice, *supra* note 6.

[56] *See* NAACP v. Elizabeth City, No. 83-39-CIV-2 (E.D.N.C. 1984).

[57] Letter from James P. Turner, Assistant Attorney Gen., Civil Rights Div., Dep't of Justice, to M.H. Hood Ellis, Wilson & Ellis, at 1 (Mar. 10, 1986) (on file with author).

[58] *See id.* at 2.

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *See* City of Elizabeth City, Form of Government, http://www.cityofec.com (select "City Government" hyperlink; then select "Form of Government" hyperlink) (last visited Feb. 15, 2008).

[63] Race of Elizabeth City Council members determined based on personal knowledge of the authors. *See also* City of Elizabeth City, NC, http://www.cityofec.com (last visited Apr. 23, 2008) (providing information on the current Elizabeth City Council and method of election).

provided a long-term guarantee that the promises made in Section 2 suits actually are implemented.

In 1987, the Department of Justice acted under Section 5 to stop the Pitt County Board of Commissioners from implementing a plan "calculated to minimize minority voting strength."[64] That same year, Section 5 enabled the Attorney General to halt the execution of changes to the method of electing the Bladen County Board of Commissioners, after finding the Board had taken "extraordinary measures to adopt an election plan which minimizes minority voting strength."[65]

As the above summaries of letters of objection from the Attorney General demonstrate, Section 5 has been repeatedly used in North Carolina to combat invidious discrimination. Absent this protection, minority voters would have been repeatedly denied the opportunity to participate in elections, and the promises of the Voting Rights Act would not have been fulfilled.

III. VOTING RIGHTS ACT CASES, 1982–PRESENT

North Carolina has been a major testing ground for the Voting Rights Act. With a history of racial segregation and violence, the state suffered well into the twentieth century from low rates of minority voter registration, and it continues to endure voter intimidation and election schemes that effectively disenfranchise black voters. Since its inception in 1965, and especially since it was amended in 1982, the Voting Rights Act has been an effective tool for black voters to overturn election systems that dilute minority voter strength and prevent election of representatives of their choice.

Both Section 5 and Section 2 have been used by individual black voters, the Attorney General and minority advocacy groups, including the NAACP, to halt or reverse the implementation of discriminatory, undemocratic voting systems.[66] Section 5 has been important in shaping both statewide election systems and local elections in the forty covered counties. Section 2 has enabled black voters to win suits by proving the existence of dilutive voting systems, and even more important, it has formed the basis for dozens of consent decrees, whereby election officials and black voters

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[64] Letter from William Bradford Reynolds, Assistant Attorney Gen., Civil Rights Div., Dep't of Justice, to Michael Crowell, Tharrington, Smith & Hargrove, at 2 (Dec. 29, 1987) [hereinafter Letter from Reynolds, Dec. 1987] (on file with authors).

[65] Letter from William Bradford Reynolds, Assistant Attorney Gen., Civil Rights Div., Dep't of Justice, to W. Leslie Johnson, Jr., Johnson & Johnson, at 3 (Nov. 2, 1987) [hereinafter Nov. 1987 Reynolds Letter] (on file with authors).

[66] *See* Appendix B.

agreed to change the voting system to provide minority voters a meaningful opportunity to elect their preferred candidates.[67]

Individual voters have used Section 5 to ensure that they have a voice in statewide and local elections. The preclearance requirement also has enabled the Attorney General to interpose objections to changes in voting processes that would weaken minority voting strength. For example, plaintiffs have filed several suits related to the whole county provision of the North Carolina Constitution, which provides that no county can be divided in the formation of a Senate or Representative district.[68] If implemented strictly, this provision could have serious consequences for black voters in areas where voting countywide would dilute their voting strength. Upon review, the Department of Justice, therefore, disallowed use of the whole county criterion where following it would result in the failure to comply with the Voting Rights Act, and courts have affirmed that result.[69] Section 5 also has been used by black voters to obtain an injunction to prevent state election officials from changing the procedure for electing superior court judges without obtaining preclearance for covered counties.[70]

At the local level, Section 5 has prevented counties and cities from changing their voting systems to dilute black voter strength. In *United States v. Onslow County*, the court stopped elections under a voting system that had been changed in 1969, but was never precleared.[71] The court agreed with the Attorney General that the use of staggered terms would deny black voters an equal opportunity to elect candidates of their choice, and it ordered the county to hold elections for all five seats on the board of commissioners.[72] The county wanted to hold elections for only two of the seats whose members' terms would normally expire by the next election, but the court found that because the staggered terms "deprived black voters of their best opportunity to elect a commissioner of their choice," it could not allow those elected under the unfair system to stay in office or "that

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[67] *See id.*

[68] Cases brought under Section 5 related to the whole county provision include: *Bartlett v. Stephenson*, 535 U.S. 1301 (2002) (refusing to issue a stay to applicant state election officials seeking to invalidate the holding by the North Carolina Supreme Court in *Stephenson v. Bartlett*, 562 S.E.2d 377 (N.C. 2002)); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Cavanagh v. Brock*, 577 F. Supp. 176 (E.D.N.C. 1983); *Sample v. Jenkins*, No. 5:02-383 (E.D.N.C. filed June 6, 2002).

[69] *See supra* note 68.

[70] *See* Haith v. Martin, 618 F. Supp. 410 (E.D.N.C. 1985), *aff'd*, 477 U.S. 901 (1986).

[71] 683 F. Supp. 1021 (E.D.N.C. 1988).

[72] *Id.* at 1023–24.

evil would not be corrected."[73] The suit ended with the removal of the unlawful voting system.[74]

While Section 5 has helped prevent the enactment of dilutive voting systems, Section 2 has enabled black voters to remedy problematic voting systems already in place. North Carolina provided the first major test case for the Supreme Court on the 1982 amendments to Section 2, which made clear that a showing of purpose to dilute black voting strength was not required.[75] In *Thornburg v. Gingles*, the Court articulated a test by which Section 2 claims would be evaluated.[76] This test has since been used to evaluate voter dilution claims in North Carolina and nationwide and has provided black voters with a means of effecting change.

In North Carolina, the significance of Section 2 is clear. In Halifax County, a change in the voting system allowed voters to elect the first black county commissioners of the twentieth century.[77] In Vance County, a Section 2 suit resulted in the first ever election of a black woman to the county board of commissioners.[78] In the Town of Benson, with a population that was over 32% black, a consent decree entered in a Section 2 suit enabled black voters to elect the first black town commissioner.[79] These cases are not aberrations, but rather, are generally representative of the outcomes of Section 2 cases.

Since the 1982 amendments, black voters have had regular success in bringing Section 2 suits. The majority of those suits have been voluntarily terminated when the parties reached an agreement to change the voting system.[80] The most common solutions adopted in consent decrees are the removal of staggered terms and the creation of voting districts, both of which limit the effects of white bloc voting and increase black voters' opportunity to elect preferred candidates.[81] Other changes have included the elimina-

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[73] *Id.* at 1023.

[74] *Id.* at 1024.

[75] *See* Thornburg v. Gingles, 478 U.S. 30 (1986).

[76] *Id.* at 47–80.

[77] *See* Johnson v. Halifax County, 594 F. Supp. 161 (E.D.N.C. 1984); *see also* Halifax County, Board of Commissioners, http://www.halifaxnc.com/board.cfm (last visited Apr. 23, 2008) (providing information on the current Halifax County Board of Commissioners).

[78] *See* Ellis v. Vance County, No. 87-28-CIV-5 (E.D.N.C. 1987); *see also* Vance County, Board of Commissioners, http://www.vancecounty.com/Commissioners.htm (last visited Apr. 23, 2008) (providing information on the current Vance County Board of Commissioners).

[79] *See* Johnson v. Town of Benson, No. 88-240-CIV-5 (E.D.N.C. 1988); *see also* Town of Benson, Benson's Town Commissioners, http://www.townofbenson.com/government/commissioners.cfm (last visited Apr. 23, 2008) (providing information on the current Town of Benson Commissioners).

[80] *See* Appendix B.

[81] *See id.*

tion of run-off elections and the establishment of longer terms to reduce the resource strain of frequent elections.[82]

As a number of cases demonstrate,[83] the Voting Rights Act unquestionably has benefited black voters in North Carolina. Even in counties where black citizens comprise nearly half the population, black voters have relied on Section 2 and Section 5 to remedy the systemic denial of voting rights. And yet, the work of the Voting Rights Act remains incomplete. In Onslow County, for example, where staggered elections were halted, the at-large method of voting still prevents black voters from electing preferred candidates.[84] No black individual currently sits on the board of commissioners.[85] In Cumberland County, black voters were successful in bringing a Section 2 suit to change the method of election from at-large to a mixed district/at-large system, but could not obtain a pure district system, as they had hoped.[86] As the plaintiffs anticipated, black candidates have been successful in black majority districts, but the at-large seats are occupied only by white members.[87]

In North Carolina, the Voting Rights Act continues to be necessary as a means for black voters to achieve equal opportunity in voting, and in those areas where greater equality has been obtained, to prevent a rollback of such advances.

IV. CURRENT BARRIERS TO EFFECTIVE POLITICAL PARTICIPATION BY MINORITY VOTERS

Current problems facing minority voters in North Carolina range from allegations of voter intimidation to a lack of assistance for disabled voters.[88] Research surrounding the 2000 elections documented a multitude of problems, such as poor voting equipment, confusing ballots, elimination of voters' names from voter registration lists, intimidation of voters at the polls and overall lack of funding for boards of elections, many of which

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[82] *See id.*

[83] *Id.*

[84] *See* United States v. Onslow County, 683 F. Supp. 1021 (E.D.N.C. 1988).

[85] *See* Onslow County, Board of Commissioners, http://www.co.onslow.nc.us/commissioners/default.aspx?id=3156 (last visited Apr. 23, 2008) (providing information on the current composition of the Onslow County Board of Commissioners).

[86] *See* Fayetteville, Cumberland County Black Democratic Caucus v. Cumberland County, 927 F.2d 595 (4th Cir. 1991).

[87] Cumberland County, Board of Commissioners, http://www.co.cumberland.nc.us/commissioners.asp (last visited Apr. 23, 2008) (providing information on the current Cumberland County Board of Commissioners).

[88] UNC CTR. FOR CIVIL RIGHTS, FINAL REPORT: 2004 ELECTION PROTECTION NORTH CAROLINA 7–8 (2005), *available at* http://www.law.unc.edu/documents/civilrights/briefs/epreport.pdf.

disproportionately affect minority voters.[89] These problems continue to plague the state's elections. In 2002, North Carolina did not count 3.3% of its votes as a result of several problems, including the refusal of some polling officials to provide challenged voters with provisional ballots and the purging of names of voters who had not voted since 1998 from registration rolls.[90] Other documented problems have included ex-felons receiving incorrect information about their right to vote and polling sites being moved without sufficient notice.[91]

Such voting irregularities generally affect black voters in greater percentages than white voters.[92] Today, despite the VRA, it is still difficult for black citizens to register, vote and elect candidates of their choice.[93] In North Carolina, black voters also report voter intimidation at an alarming rate.[94] Voter intimidation is not a relic of the past, but rather, a strategy used with disturbing frequency in recent years. One stark illustration occurred in the context of the hotly contested Jesse Helms-Harvey Gantt U.S. Senate race, which involved the first black senatorial candidate with a realistic chance of success.[95] In 1990, on the eve of the general election, 125,000 black voters were mailed postcards headed "Voter Registration Bulletin" that incorrectly stated that they could not vote if they had moved within thirty days of the election.[96] As a result, many black voters were confused about whether they could vote.[97] The Department of Justice ob-

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[89] Democracy South, Voting Rights in the South, http://www.democracysouth.org/improving/rights-disenfranchisment.html (last visited 2006); *see also* Jo Becker & Dan Keating, *Problems Abound in Election System: Outmoded Machinery is Still Widespread*, WASH. POST, Sept. 5, 2004, at A01.

[90] Memorandum from Voter Task Force, Mecklenberg Voter Coal., Recommendations to Correct Irregularities and Confusion in the Voting Process in the November 2000 General Election (Mar. 28, 2001) (on file with authors).

[91] MELISSA SIEBERT, INST. FOR S. STUDIES, VOTING RIGHTS PROJECT, PROTECTING THE INTEGRITY OF NORTH CAROLINA'S ELECTIONS: TOP TEN BREAKDOWNS AND THE NEED FOR ELECTION PROTECTION 6 (2002).

[92] Am. Civil Liberties Union, *Reaffirmation or Requiem for the Voting Rights Act?*, PUBLIC POLICY ALERT, May 1995, *available at* http://academic.udayton.edu/race/04needs/voting03a.htm.

[93] *Id.*; *see also* U.S. COMM'N ON CIVIL RIGHTS, THE VOTING RIGHTS ACT: TEN YEARS AFTER 330 (1975); Charles Cameron et al., *Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?*, AM. POL. SCI. REV., Dec. 1996, at 794.

[94] Citizens' Commission on Civil Rights, Voting, http://www.cccr.org/justice/issue.cfm?id=17 (last visited Feb. 15, 2008).

[95] *See* TERESA JAMES, PROJECT VOTE, CAGING DEMOCRACY: A 50 YEAR HISTORY OF PARTISAN CHALLENGES TO MINORITY VOTERS 13–14 (2007), *available at* http://projectvote.org/fileadmin/ProjectVote/Publications/Caging_Democracy_Report.pdf.

[96] *Id.*

[97] *See id.* at 14.

tained a consent judgment banning the practice in *United States v. North Carolina Republican Party*.[98]

Black voters are not the only minority group to be targeted for intimidation campaigns. In the weeks leading up to the November 2004 general election, the sheriff of Alamance County publicly announced that he would be sending deputies to the homes of every new registrant with a Hispanic surname in the county to inquire whether they were citizens.[99] Sheriff Terry Johnson contend[ed] that illegal residents are registering at Division of Motor Vehicle offices when they obtain driver's licenses or other forms of identification."[100] Sheriff Johnson and the County Attorney obtained a list of 125 Hispanics registered to vote in the county, thirty-eight of which were confirmed to be in the country legally.[101] He assumed that the remaining voters were either using false names or in the country illegally.[102] Latino advocates were outraged because Sheriff Johnson's actions were making Latino citizens fearful of being harassed if they tried to vote.

There also were numerous problems documented during the 2004 general election, including the exclusion of voters' names from the rolls of precincts where they had properly registered and voters' inability to find proper polling places due to insufficient notice and signage.[103] Significant problems also arose with provisional ballots and absentee ballots.[104] Alarmingly, reports from across the state recounted voter intimidation and lack of assistance for handicapped voters.[105]

One example of the type of barrier encountered by black voters in the state involved a 2004 incident at North Carolina Central University (NCCU). Student leaders at NCCU in Durham decided that a march to an early voting polling place would be a good way to honor and inspire their community.[106] "Marching is unique in the African American tradition," said D'Weston Haywood, an NCCU senior and president of NCCU's Stu-

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[98] Consent Judgment, United States v. N.C. Republican Party, No. 5:92-00161 (E.D.N.C. Feb. 27, 1992).

[99] UNC CTR. FOR CIVIL RIGHTS, *supra* note 88, at 11.

[100] *Sheriff Targets Voting Fraud; He Says Illegal Residents Register at DMV Offices with False Documents*, CHARLOTTE OBSERVER, Oct. 8, 2004, at 9B.

[101] *Id.*

[102] *Id.*

[103] Greensboro Hearing, *supra* note 11, at 86–87, 117–20.

[104] *Id.* at 181–83.

[105] *Id.* at 92.

[106] *Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, Shaw University, Raleigh, North Carolina*, 51–55 (Jan. 26, 2006) [hereinafter Raleigh Hearing] (testimony of Deondre Ramsey) (transcript on file with the Center for Civil Rights, University of North Carolina School of Law).

dent Government Association. "We thought it would be special and symbolic if we marched to the polls to cast our votes."[107]

The NCCU student leaders worked diligently to plan and prepare for the march.[108] The students contacted the board of elections on several occasions to give them notice of the march.[109] The students also requested that the board utilize extra staff to assist with the expected crowd of eager, young voters.[110]

The October 14 march drew approximately 1500 students, faculty and citizens who walked two miles from NCCU's campus to an early voting site at Hillside High School.[111] When the students arrived at the site, they waited for hours in long lines of over one hundred voters.[112] Despite NCCU's notice, the board of elections clearly made no attempt to prepare for this crowd and, as a result, hundreds of voters were deterred from voting.[113]

The action, or more appropriately, inaction, of the board of elections is unexplainable. Indeed, there was plenty of time for preparation and planning. Furthermore, even if adding more staff and other reasonable preparation was not feasible, the board of elections could have easily warned or informed the student leaders. As it turned out, hundreds of students spent hours trying to cast their vote, and many never cast a vote at all.[114] This was discouraging, and even demoralizing, for the students and the leaders. As one student said, the issues at the polls in Durham "turn[ed] them from voting and . . . le[ft] an impression. And you get to the point where, how can we tell students to get involved when we're having so many issues."[115]

Another example of barriers to voting encountered by black voters occurred in 2002 and resulted in the Duplin County Board of Elections staff being removed, following a number of allegations of fraudulent and criminal behavior.[116] The allegations included altered signatures, unauthorized

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[107] Barbara Solow, *Making History: NCCU Students Led a March to the Polls that Helped Boost Voter Turnout and Rekindle the Public Service Mission of their University*, INDYWEEK, Nov. 24, 2004, http://www.indyweek.com/gyrobase/Content?oid=oid%3A23147.

[108] *See* Raleigh Hearing, *supra* note 106, at 64–66.

[109] *Id.* at 51–52, 64.

[110] *Id.* at 51–52.

[111] *Id.* News accounts of the incident gave estimates that varied from 1000 to 1800 students, faculty and citizens. *See, e.g.*, Solow, *supra* note 107.

[112] Raleigh Hearing, *supra* note 106, at 51–53.

[113] *Id.*

[114] *Id.* at 52.

[115] *Id.* at 54.

[116] Democracy South, *supra* note 89.

voter address changes and voter intimidation at the polls.[117] For example, Jim Grant of Pender County reported the constant patrolling of a deputy sheriff's car during the early voting day in a primarily black neighborhood.[118] The car reportedly patrolled "back and forth in front of the polling place in an effort, I would assume, to try to intimidate people."[119]

Additionally, Bobbie Taylor, president of the Caswell Count Branch of the NAACP, reported incidents "where . . . on election day, the candidates—workers for the whites have been permitted to put up their tables, their tents, and whatever closer to the entrance of a polling place than we were allowed to."[120] In fact, as Taylor recounted, blacks were asked to move further away from the polling place.[121] Black voters also were spoken to rudely, and their questions were routinely dismissed.[122]

In another example, Reverend Savalas Squires testified at the public hearing held in Greensboro that Davie County had experienced problems with voter intimidation.[123] He recounted how black youth at Davie High School were given false information regarding when they could cast their vote.[124] Finally, in Forsyth County, black voters experienced problems with provisional ballots and long lines due to complications regarding voting machines.[125]

V. CONCLUSION

Section 5 has been an extremely effective measure to prevent the implementation of changes in voting practices and procedures that would unfairly disadvantage minority voters. It has served as a safety net to ensure that when plaintiffs are successful in Section 2 litigation and obtain court orders changing the method of election, new redistricting plans are not adopted following the next Census or, in the case of cities, following a substantial annexation, that essentially negate the hard-won gains from litigation. Effective implementation of the preclearance requirement has made local jurisdictions more sensitive to the impact of proposed changes on minority voters. The North Carolina experience demonstrates the powerful deterrent effect of Section 5. At this time, the failure to reauthorize the ex-

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[117] *Id.*
[118] Raleigh Hearing, *supra* note 106, at 32.
[119] *Id.*
[120] Greensboro Hearing, *supra* note 11, at 41.
[121] *Id.*
[122] *Id.* at 42.
[123] *Id.* at 97.
[124] *Id.* at 102.
[125] *See id.*

piring provisions of the Voting Rights Act would have devastating consequences for this state's minority voters.

APPENDIX A: NORTH CAROLINA SUBMISSIONS WITHDRAWN, 1982–2005

Table 1.[1]

Sub. #	County	Type of Change	Date of Withdrawal
2001-4063	Beaufort	Redistricting	Apr. 16, 2002
1985-2944	Cleveland	Election Admin.	Mar. 21 1995
2001-3957	Craven	Redistricting	July 30, 2002
2001-1474	Edgecombe	Redistricting	Dec. 19 2001
1991-2011	Halifax	Redistricting	Aug 8, 1991
1990-3761	Martin	MOE, Districting	June 26, 1991
1994-3735	Northampton	Poll Place (changed)	Sept. 3, 1996
1996-2641	Pitt	Annexations (5)	Oct. 8, 1996
1999-3975	Rockingham	Staggered Terms, Term Office, Impl. Sched.	June 20, 2000
2000-0815	Rowan	Majority Vote Requirement	May 9, 2001

[1] Department of Justice, Freedom of Information Act Request (on file with authors).

APPENDIX B: SUMMARIES OF VOTING RIGHTS ACT CASES

RESEARCH METHODS

The data in this appendix were gathered from a variety of published and unpublished sources. For published cases, we relied on the court opinion for the summary. For unpublished cases, we relied on documents filed with the court, including complaints, judgments and consent decrees. Both plaintiff and defendant attorneys also provided details of cases where no documents were available.

Statistical data on racial composition of communities and voting populations were taken from court documents when available. Otherwise, that information was gathered from the 1980, 1990 and 2000 Censuses. Information on the current voting systems and numbers of minority members represented on government boards was obtained from government websites for the relevant area and from attorneys familiar with the case.

At the conclusion of our research, there were several cases that were listed on the district court docket as having been filed, but no further information was available.[1]

VOTING RIGHTS ACT CASE SUMMARIES, 1982–2005

Bartlett v. Stephenson[2]

North Carolina state election officials appealed a ruling by the North Carolina Supreme Court that invalidated the state redistricting plan under the state constitution. The appellants alleged that the state court order violated the Voting Rights Act.

The state supreme court held that the 2001 redistricting plan violated the "whole county provision" of the state constitution, which provided that no county could be divided in the formation of a Senate or Representative district. Because the redistricting plan would have violated this provision, the state supreme court ordered a new plan that would preserve county lines to the maximum extent possible, except where those lines could not be preserved to comply with Section 2 of the Voting Rights Act. The court

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[1] *See* Hole v. N.C. Bd. of Election, No. 1:00-cv-00477 (M.D.N.C. 2001); Kingsberry v. Nash County Bd. of Educ., No. 5:89-cv-00173 (E.D.N.C. 1989); Person v. Moore County Comm'n, No. 3:89-cv-0135 (M.D.N.C. 1989); Patterson v. Siler City, No. 1:88-cv-00701-NCT (M.D.N.C. 1989).

[2] 535 U.S. 1301 (2002).

ordered that a new plan be drawn and that officials seek Section 5 preclearance of the plan in counties covered by the Voting Rights Act.

Election officials appealed to the U.S. Supreme Court, contending that a 1981 letter from the Department of Justice (DOJ) disallowed consideration of the whole county provision in redistricting. The Supreme Court found, however, that the DOJ letter did not disallow the whole county criterion, but only rejected use of this criterion where following it strictly would result in failure to comply with the Voting Rights Act. Appellants sought a stay of the North Carolina Supreme Court decision, but the Supreme Court rejected this request, finding that the North Carolina Supreme Court properly ruled that the new plan should be developed and precleared before implementation.

Cannon v. Durham County Board of Elections[3]

Plaintiffs brought suit, alleging that a newly created method of electing members to the Durham County School Board violated constitutional provisions and Section 2 of the Voting Rights Act. The method of election in question originated when the Board of Commissioners for the County of Durham submitted a plan to the North Carolina State Board of Education for the merger of Durham County public schools and the city of Durham public schools. The state board approved the plan, under which the school board would be composed of seven members. Durham County would be divided into four individual single-member districts, which would each elect one representative. The four districts would then be combined to form two larger districts, which would each elect one representative. The final member would be elected at-large. The new plan would create three majority-minority districts.

Some of the plaintiffs, white voters, challenged the merger plan in state court and received a favorable decision. While appeal was pending, the North Carolina General Assembly passed a "curative" statute. The North Carolina Supreme Court then remanded the case, without ruling on the merits, to the trial court for consideration of the effect of the new statute. The defendants then filed a motion to dismiss for mootness. In response to the defendants' motion, plaintiffs raised the argument that the school board election plan discriminated against white voters. The trial court granted defendants' motion to dismiss. The appellate court reversed that decision, but the North Carolina Supreme Court ultimately affirmed

[3] 959 F. Supp. 289 (E.D.N.C. 1997).

the dismissal because plaintiffs had failed to allege racial discrimination in their initial pleadings.

Plaintiffs then brought suit in the Eastern District of North Carolina, alleging that the method of electing school board members violated constitutional provisions and Section 2 of the Voting Rights Act. The court granted summary judgment to the defendant, finding that the plaintiffs failed to show that white voters were entitled to protection. Specifically, the white voters had failed to show that black voters would act as a bloc to preclude election of white-preferred candidates. Defendants provided evidence permitting an inference that white voters were not a cohesive group. Generally, the court found that plaintiffs had failed to allege or prove the *Gingles* standards for Section 2 cases. Plaintiffs further failed on their constitutional claims for a variety of reasons, including an inability to show purposeful discrimination. The Fourth Circuit affirmed the holding in an unpublished opinion.

Cavanagh v. Brock[4]

Plaintiffs filed suit in state court and it was removed to federal court, where several actions were consolidated. The action challenged the General Assembly's failure to adhere to provisions of the North Carolina Constitution in adopting a new state legislative apportionment plan. The plaintiffs contended that the state constitution prohibited the General Assembly from splitting counties in apportioning Senate and House districts and sought declaration that the 1982 plan, which split several counties, violated state law.

The court found, however, that the legal provisions relied upon by the plaintiffs had been refused Section 5 preclearance by the attorney general and were, therefore, not binding. In 1981, the North Carolina Board of Elections applied for preclearance of the 1968 whole county amendments to the state constitution. The Attorney General objected insofar as the provisions affected the forty counties in North Carolina covered by Section 5 of the Voting Rights Act. Accordingly, the General Assembly revised the reapportionment plans during a special session in 1982 and, after modifications, they were given preclearance. The 1968 whole county provision still was not precleared.

In the present suit, the question before the court was whether the effect of the Attorney General's objection was to suspend the force of the 1968 amendments for the entire state or only for counties encompassed by the

[4] 577 F. Supp. 176 (E.D.N.C. 1983).

Section 5 preclearance requirement. The court found that under North Carolina law, when one portion of a statute is declared unconstitutional or otherwise stricken, the surviving portion will be given effect only if it is severable. Applying this rule, the court found that once the Attorney General refused to preclear the amendments, they had no force or effect statewide. The plaintiffs also advanced an argument that the 1968 amendments did not present a change in voting as defined in the Voting Rights Act, so the Attorney General's objection had no effect. However, because such claims must be heard by the U.S. District Court for the District of Columbia, the court lacked jurisdiction.

Cleveland County Association for Government by the People v. Cleveland County Board of Commissioners[5]

The lawsuit that gave rise to this dispute was initially filed in the Western District of North Carolina as *Campbell v. Cleveland County Board of Commissioners*,[6] by black voters and the NAACP, contending that the method of electing county commissioners violated Section 2 of the Voting Rights Act.

In *Campbell*, black voters and the NAACP objected to the method of electing county commissioners. Under the old system, the board consisted of five members selected at-large every two years for staggered, four-year terms. Between 1988 and 1994, no black candidate was elected to the board, although blacks constituted 20.9% of the county's population. From 1988 to 1994, five black candidates, all Democrats, attempted to win seats, but none survived the primary elections. The NAACP approached the board with its concern that at-large voting prevented black representation. A board committee studied the problem and recommended a new system of electing five commissioners from single-member districts and two commissioners from the county at-large. The committee also recommended consideration of redistricting. The board voted to accept the recommendations and asked the Cleveland County members of the General Assembly to introduce legislation authorizing the changes, which was done in 1993. The authorization expired in 1994, however, when the board could not agree to a redistricting plan, and no change was implemented. The NAACP and individual plaintiffs then filed suit.

The *Campbell* case was transferred to the U.S. District Court for the District of Columbia in 1994. After mediation, the parties adopted a con-

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[5] 142 F.3d 468 (D.C. Cir. 1998).

[6] No. 4:49-cv-00011 (W.D.N.C. 1994).

sent decree with the court's approval, which expanded the board from five to seven members and adopted limited voting. For the 1994 and 1996 elections, the old method of voting would remain in place with two exceptions: (1) the members of the Board of Commissioners elected in 1996 would serve only two years and (2) after the 1994 election, two additional Commissioners who were "representatives of the black community of Cleveland County" would be appointed to the board for four-year terms. Starting with the 1998 election, all seven seats would be elected at the same time, with the newly-elected commissioners to serve at-large. In both the primary and general election, each voter could cast up to four votes for different candidates, with the top seven candidates winning seats. The agreement also stated that after the 1998 election, the district court could, on the NAACP's petition, reduce from four to three the number of votes that could be cast by each voter if the new system had not provided equal opportunity for black citizens to elect candidates of their choice. The Attorney General precleared the plan in 1994 and, thereafter, the Board of Commissioners appointed the two new commissioners.

In 1996, the plaintiffs in the immediate suit, the Cleveland County Association for Government by the People, filed in the Western District of North Carolina. The plaintiffs were an unincorporated association of voters in the county and six individual plaintiffs, all of whom were white. They brought suit against the board and the NAACP, challenging the adoption of the consent decree plan. They objected to the election plan because the two new members were to be appointed on the basis of race and subsequent elections could be conducted in a race-based manner.

The suit was again transferred to the D.C. District Court, which granted summary judgment for the board and the NAACP. On appeal, however, the D.C. Circuit vacated that holding and found for the plaintiffs. The court did not find that plaintiffs could prevail on constitutional grounds, but, rather, that they were entitled to summary judgment on state law claims. The board did not follow the statutorily mandated scheme when it altered the electoral system, and state law did not permit the board to alter its structure and manner of election unilaterally. The court found that it was allowable for plaintiffs to bring the second suit because they were not properly represented in the *Campbell* suit, as they had diverging interests to the plaintiffs and the board.

Daniels v. Martin County Board of Commissioners[7]

Plaintiffs filed suit under Section 2 of the Voting Rights Act, challenging the method of electing the Martin County Board of Commissioners and the town boards of Jamesville, Robersonville and Williamston. Plaintiffs alleged that the methods of election diluting the voting strength of black citizens. The parties entered consent decrees once it was determined that the plaintiffs were able to present a prima facie case that the methods violated Section 2.

At the time of the suit, nearly 45% of the population of Martin County was black. In 1990, 279 of the 612 residents of Jamesville were black. Nearly 55% of the population of Robersonville and approximately 51% of the population of Williamston were black.

Under the new method of election, the county Board of Commissioners consists of five members, elected at-large under a system of limited voting. The county is divided into two districts. Two of the five members reside in the western district, and three reside in the eastern district. Voters in the western district can cast one vote in the primary and one vote in the general election for the two seats, while voters in the eastern district cast two votes in the primary and two votes in the general election for the three seats. Candidates with the most votes are elected with no run-off elections. Members serve four-year terms.

The method of voting for the town of Jamesville was also changed. In the previous system, five members of the town board and a mayor were elected at-large for two-year terms. Under the new system, the town board consists of five members elected with at-large, limited voting. All candidates are listed on a single ballot, but each voter can only vote for two candidates. The mayor is elected separately.

The town of Robersonville also agreed to abandon its system, by which five members of the town Board of Commissioners were elected at-large for two-year terms. Robersonville adopted a method that elects give members, two from each of two districts and one at-large. Only candidates residing in a district are eligible to run for one of the two seats from that district. The districts were drawn to provide for one majority-minority district. The mayor is elected separately.

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[7] No. 4:89-cv-00137 (E.D.N.C. 1992).

Ellis v. Vance County[8]

Black citizens from Vance County brought suit under Section 2 of the Voting Rights Act opposing the method of electing the county Board of Commissioners. Five board members were elected to four-year staggered terms in at-large partisan elections. Candidates were required to live in residency districts.

The parties entered a consent decree that changed the method of election. Under the changed system, seven commissioners are elected, one from each of seven districts. Elections are staggered. The change in voting has resulted in greater minority candidate success; there currently are three black commissioners, and the current representative of District One is the first female—and the first black female—ever to serve on the Vance County Board of Commissioners.

Fayetteville, Cumberland County Black Democratic Caucus v. Cumberland County[9]

The Cumberland County Black Democratic Caucus and individual black voters filed suit, alleging that the five-member, at-large election of county commissioners for Cumberland County violated Section 2 of the Voting Rights Act. The plaintiffs favored a seven-member, single-member district system. While the action was pending, the county voluntarily adopted a remedial mixed single-member/at-large districting plan that was precleared by the DOJ. Under this plan, the board would consist of seven members: two elected from District One, three elected from District Two and two elected at-large. District One would be predominantly black. Each member would serve a four-year term, and terms would be staggered.

The plaintiffs, still seeking development of a single-member district plan, attempted to get a preliminary injunction to stop implementation of this plan, but the court denied their request, and elections were held under the new plan. Once the DOJ cleared the county's plan, the district court granted the plaintiffs leave to amend their original complaint to address the lawfulness of the new precleared plan. The plaintiffs failed to amend their complaint and made other filing errors, resulting in the district court granting judgment in favor of the defendants. When the suit was terminated, the mixed single-member/at-large system remained in place. The Fourth Circuit affirmed this holding.

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[8] No. 87-28-CIV-5 (E.D.N.C. 1987).

[9] No. 90-2029, 1991 WL 23590 (4th Cir. Feb. 28, 1991).

Under the new system, black voters have had a greater opportunity to elect candidates of their choice. However, racially polarized voting persists. Currently, both commissioners elected from District One are black, but, as the plaintiffs anticipated, the three District Two and two at-large seats continue to be occupied only by white members.

Fussell v. Town of Mount Olive[10]

Nine individual plaintiffs and the Mount Olive Area of the Wayne County Minority Political Action Committee brought suit, alleging discriminatory practices in the method of electing the Board of Commissioners for the town of Mount Olive, and sought relief addressing this issue, including the institution of a new election format for the town.

According to the 1990 Census, almost 52.5% of the population of Mount Olive was black. Despite numerous black candidacies, there had never been more than one black candidate elected to the Board of Commissioners at any one time. The at-large method prevented black residents from electing representatives of their choice.

During the course of the suit, the proceedings were stayed to give the parties the opportunity to reach a compromise on a voting system for the town. The town and plaintiffs agreed to a plan with four single-member districts and one at-large seat. Following public hearings on the change in voting, the town learned of white opposition to the plan and selected a new plan, which it submitted for preclearance. Under the new plan, the commission would be expanded from five members to six—four elected from single-member districts, and two elected at-large.

The plaintiffs opposed the new plan, which would retain a greater number of at-large seats and packed 97% of black voters into one district. In November 1993, black voters rallied in the at-large election to elect one black candidate, who was a plaintiff in the Section 2 suit, to the Town Commission. The board petitioned the Section 2 court to prohibit her from participating in board discussions or voting on the method of elections, but the court denied the request.

When the Department of Justice reviewed the 4-2 plan, it concluded that the board had failed to provide an adequate justification for shifting from the method agreed upon during the lawsuit; there was no convincing nonracial explanation and no substantive changes between the July 1993 agreement with the plaintiffs and September 1993 could justify shift. Ac-

[10] No. 5:93-cv-00303 (E.D.N.C. 1995).

cordingly, the Attorney General refused Section 5 preclearance. The town has since adopted a districting plan with four districts and one at-large seat. There is currently one black member of the Commission.

Gause v. Brunswick County[11]

Plaintiffs brought suit under Section 2 of the Voting Rights Act challenging the modified at-large election system of Brunswick County. The Eastern District of North Carolina granted summary judgment to the defendant, and the Court of Appeals affirmed because the plaintiffs could not show adequate injury.

The population of Brunswick County changed dramatically between 1960 and 1990. Due in part to a large influx of white retirees, the percentage of residents in the county fell from 35% to 18%. By 1990, 83% of the county's voting-age population was white. In the county's twenty-two election precincts, blacks constituted a majority in only one.

The county used a modified at-large system to elect members to the Board of Commissioners. There were five residency districts within the county, and the candidate that won the most votes in each residency district compared to other candidates in the same residency district was elected. Voters were permitted, however, to vote for any candidate, regardless of where they lived. Black candidates ran for board seats in nine elections since 1972 and were elected three times, but, since 1982, no black candidate had been elected to the board. Black voters brought suit, alleging the method of election diluted minority voting in violation of the Voting Rights Act.

The district court granted summary judgment to the county, holding that voters failed to establish a dilution claim because they could not show the minority population was sufficiently large and geographically compact to constitute a majority in a single-member district. Because minority voters were unable to show the potential to elect representatives in the absence of the existing voting structure, they could not show injury resulting from the election system. The court could not approve the plaintiffs' alternative proposals for voting districts because they would create districts that deviated in size by more than 10%, which would be unacceptable absent a showing of dilution.

There currently are no blacks on the county's five-member Board of Commissioners.

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[11] No. 95-3028, 1996 U.S. App. LEXIS 20237 (4th Cir. Aug. 13, 1996).

Haith v. Martin[12]

In this action, a black registered voter of Guilford County successfully demonstrated the need for an injunction to stop state officials of North Carolina from implementing changes to the procedure for electing superior court judges because the changes, including staggered voting, which might dilute black voter strength, had not been precleared pursuant to Section 5 of the Voting Rights Act.

In 1964, North Carolina had thirty judicial districts, twenty-eight of which were served by one judge each, with the remaining two served by two judges. All judges were elected simultaneously for eight-year terms. Candidates for the office of superior court judge in judicial districts with more than one judge were not required to announce for which vacancy they were filing, and neither district had staggered terms for the judges.

In 1965, the North Carolina Assembly passed an act that established a system of numbered seat elections for the position of superior court judge in districts with two or more vacancies. Then, in 1967, the General Assembly enacted legislation which provided for an additional resident judge in the 12th, 18th, 19th and 28th districts to serve eight-year staggered terms from the positions already in existence in those districts. In 1977, the General Assembly passed legislation providing for an additional resident judge in the 3rd, 10th, 12th, 14th, 19th and 20th judicial districts to serve eight-year terms staggered from the positions already in existence in those districts. In 1977, the General Assembly also created judicial districts 15A and 15B out of former district 15, judicial districts 19A and 19B out of former district 19 and judicial districts 27A and 27B out of former district 27. In 1983, the General Assembly enacted a law that provided for additional judges in judicial districts 1, 9, 18 and 30.

Plaintiffs objected that in North Carolina, forty of the one hundred counties were subject to Section 5 of the Voting Rights Act, meaning changes to voting procedures in those counties should have required preclearance by the Attorney General. Defendants admitted that the 1977 laws and 1983 laws were not precleared, but contended that the 1965 and 1967 laws were precleared because they were included in later enactments of the General Assembly that were submitted to the Attorney General. Defendants also argued that Section 5 was not intended to apply to judicial elections.

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[12] 618 F. Supp. 410 (E.D.N.C. 1985).

The court granted the plaintiffs injunctive relief. The court found that the Voting Rights Act governed changes to the election of judges because its plain language stated that it applied to all voting, without limitation to the object of the vote. The court then found that the sections of law that the defendants claimed to have submitted were not precleared. The changed sections could not be put into effect without approval of the Attorney General.

The decision was affirmed by the U.S. Supreme Court in *Martin v. Haith.*[13]

Hall v. Kennedy[14]

Black voters brought suit under Section 2 of the Voting Rights Act opposing the at-large method of electing the Clinton City Council and Clinton City Board of Education, arguing the system denied them the opportunity to elect candidates of their choice.

Under the existing system, the city council consisted of a mayor and four council members. The mayor was elected at-large for a two-year term. City Council members also were elected at-large, but for four-year terms and the elections were staggered. At the time of the suit, 38% of the population of Clinton was black. Since 1973, black candidates had run at least eight times for city council, but had been elected only twice. The same individual had been elected both times, and he had since been defeated in his bid for reelection. The court found that if the case were tried, it would find from the evidence that the method of election had the effect of denying black voters an equal opportunity to elect candidates of their choice. However, to avoid the costs of litigation, plaintiffs and the Clinton City Council agreed to a consent decree. Under the new system, the council is composed of a mayor and five council members. The mayor is elected at-large every two years. The council members are elected from five districts, and only voters residing in the district may vote for a council member from that district. The council members serve staggered four-year terms. Two members of the current Clinton City Council are black.

A consent decree also was entered to resolve the suit against the Board of Education. At the time of the suit, the Board of Education consisted of five members, three elected at-large for four-year staggered terms and the other two appointed by the three elected members for four-year terms. Black citizens constituted 36% of the school administrative unit. Since the

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[13] 477 U.S. 901 (1986).

[14] No. 3:88-cv-00117 (E.D.N.C. 1989).

system of election was instituted in 1976, black candidates had run for election at least five times in the seven elections, but were elected only twice.

The court again found that if the case were tried, it would find from the evidence that the at-large method of election had the effect of denying black voters an equal opportunity to elect candidates of their choice. The parties entered a consent decree imposing a new system of elections. Under the new system, the school board consists of six members elected for four-year terms. The elections are staggered so that three members are elected every two years. In each election, all three members are listed on a single ballot and each voter can only vote for one candidate. Two members of the current Board of Education are black.

Harry v. Bladen County[15]

Black citizens of Bladen County filed suit pursuant to Section 2 of the Voting Rights Act challenging the method of electing members to the Bladen County Board of Commissioners. The plaintiffs initially urged members of the county government to change the at-large system of election because it diluted minority voting strength. When they were unsuccessful in garnering change, they contacted legal services attorneys who agreed to represent them. In 1986, the Bladen County Board of Commissioners voted to appoint a committee to study the plaintiffs' concerns, determine if a change was needed and, if so, recommend specific changes. A black citizens' group determined that a five-district plan with two black majority districts could be drawn. They presented the plan to the committee, and the committee reached a compromise agreement in 1987. It recommended a plan with five single-member districts (two majority-minority) and one at-large seat to the board. The board then retained counsel to review alternative plans, interviewed other citizens, collected further data and held hearings. In April 1987, the board decided against the committee recommendation and adopted a plan composed of three two-member districts (one majority-minority) and one at-large seat.

Black citizens opposed this plan because two white incumbents lived in the black district and only one of the seats in that district would be available in the 1988 election. Still, the board decided to proceed with the plan. The county could not unilaterally change the election method without a referendum, and so the commissioners attempted to have the General Assembly enact the proposal. When this failed, the county succeeded in obtaining authorization from the General Assembly to make the change by itself.

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[15] No. 87-72-CIV-7, 1989 WL 253428 (E.D.N.C. Dec. 11, 1989).

The commissioners adopted the plan and applied for Section 5 preclearance. The defendants also sought to dismiss this pending Section 2 action, and the court stayed action on this motion, pending the Section 5 preclearance determination.

The Attorney General did not approve the board plan because it appeared "the Board had taken extraordinary measures to minimize minority voting strength." County officials then brought suit in the District of Columbia seeking Section 5 approval and moved to stay discovery in the Section 2 action. The plaintiffs did not want to dismiss the Section 2 suit, objecting to the still-existing at-large system because if they did so, the 1988 election could proceed under that system. The D.C. District Court set a hearing date for plaintiffs' motion for interim relief. On the morning of the set hearing, the parties reached a settlement changing the election system. Under the new system, voters would elect two members from each of three districts and three members at-large. The at-large seats would be elected by a plurality win method, in which voter could vote for only one candidate. The majority black district was modified so that one white incumbent would not run and the other agreed to run for an at-large seat, making both seats available. Under the new plan, black citizens would have a realistic opportunity to elect three of nine seats.

Once the consent order was entered, the court was still charged with determining whether to award attorneys' fees, costs and expenses. Defendants argued that because the old system was never officially declared unlawful, plaintiffs were not a prevailing party. The court found, however, that plaintiffs succeeded in achieving a system that would give black citizens fair representation in the 1988 elections and without filing this action, that result could not have been achieved. Plaintiffs were, therefore, the prevailing party and entitled to reasonable attorneys' fees and costs.

Haskins v. County of Wilson[16]

The federal court held under Section 2 that the at-large method of electing the Wilson County Board of Commissioners denied black citizens an opportunity to participate in the political process and elect candidates of their choice. In response, Wilson applied for preclearance of an election system with two multi-member districts. The Department of Justice agreed that the proposed plan was better than the at-large system, but could not agree that it was adopted without a discriminatory purpose. Of the two districts created, one would elect five representatives and was 76% white.

[16] No. 82-19-CIV-9 (E.D.N.C. 1985).

The other would elect two representatives and was 67% black. Nearly half of the county's black population was placed in the larger white-majority district. The Attorney General refused preclearance.

The county has since adopted a system with seven districts that each elect one commissioner. There currently are three black members of the board.

Hines v. Ahoskie[17]

Edna Hines and several other black plaintiffs challenged the at-large election system in Ahoskie, a small town in Hertford County. At the time of suit, the town was 50.5% black and the town's voting age population was 45.6% black. Plaintiffs challenged the existing election system. under which the town elected its mayor and five town council members through at-large elections. Ahoskie had a history of racially polarized voting; an average of 93% of blacks voted for black candidates and 93.4% of whites voted for white candidates. Throughout the history of Ahoskie, seven black candidates had run for town council, but only two were elected.

Hines originally filed suit in November of 1989, challenging the at-large system for impermissibly diluting black voting strength. Hines was successful in her claim in that in response, the town stipulated that the existing system impermissibly diluted black voting strength in violation of Section 2. Accordingly, the town devised a new election plan that would divide the town into two districts, one majority black and one majority white. Two town council members would be elected from each district by plurality vote within the district. The plan also provided for a fifth member to be elected at-large. In 1991, the district court determined that the plan required preclearance and submitted it to the Attorney General, who granted preclearance. The town then requested that the district court approve its plan by granting summary judgment.

Plaintiffs opposed the town's motion for summary judgment, arguing that the town plan still diluted minority voting due to the at-large seat. Plaintiffs presented two alternative election plans, one that involved division of Ahoskie into three districts, and a second that proposed five single-member districts. The district court held hearings and, after reviewing the evidence, found the at-large election of the fifth town council member, which Ahoskie originally proposed, to be "problematic" and not a complete remedy as required by the Voting Rights Act. The district court decided it

[17] 998 F.2d 1266 (4th Cir. 1993).

would be best to retain the two districts created under the town plan, but eliminate the fifth council position.

On appeal, the Fourth Circuit overturned the lower court decision not to implement the town's 2-2-1 plan. The court found that the district court should have deferred to Ahoskie's chosen size for the town council because there was no evidence that the solution was chosen in order to diffuse black voting strength and the plan was adequate to provide black voters with the maximum opportunity to elect representatives of their choice. Though evidence from hearings indicated the best solution might be to have a fifth district composed of a "swing vote," the small population of Ahoskie made the creation of such a district impossible. Because that solution was not possible, the court was required to accept Ahoskie's proposal, which was the next best alternative to guarantee both racial groups could elect representatives of their choice. The court recognized that the new system could still prevent blacks from sometimes electing the candidate of their choice, but found that it was a complete remedy under the Act. The court found that the alternative plans provided by Hines would provide minority voters with overproportional representation, and since the only justification for such a plan would be racial concerns, it would potentially violate the equal protection rights of white voters. Though plaintiffs did not win implementation of their preferred plan, they were successful in proving dilution and changing the at-large system.

Holmes v. Lenoir County Board of Education[18]

Plaintiffs filed suit under Section 2 of the Voting Rights Act, alleging that the method of electing the Lenoir County Board of Education denied minority citizens an equal opportunity to elect candidates of their choice. Under the existing system, the board consisted of five members elected at-large in partisan elections for staggered, four-year terms. At the time of the suit, over 39% of the population of Lenoir County was black.

The parties entered into a consent decree that changed the method of election. Under the new system, the board is composed of seven members elected in partisan, at-large elections. The increased size of the board was designed to give minority voters a greater opportunity to elect candidates of their choice. The consent decree required that the two new seats should be filled by representatives of the minority community until new elections could be held.

[18] No. 86-120-CIV-4 (E.D.N.C. 1988).

Johnson v. Halifax County[19]

The United States and nineteen registered black voters successfully obtained a preliminary injunction preventing elections for the Halifax County Board of Commissioners under a discriminatory method of election. Both the United States and individual plaintiffs alleged that the at-large method of election violated Section 2 of the Voting Rights Act and the Constitution, and the United States alleged that Halifax County failed to obtain preclearance of two components of its election method in violation of Section 5 of the Voting Rights Act.

Halifax is a predominantly rural county in northeastern North Carolina, with a 48.3% black population. In 1980, 44.1% of the voting age population of the county was black, and 34.6% of registered voters were black. The black voter registration rate was 50.8%, while the white voter registration rate was 77.3%. The county contained twelve townships, the largest of which was Roanoke Rapids. Roanoke Rapids also was the only township with a white population majority (79.4%). In 1980, 60% of whites in Halifax County lived in Roanoke Rapids, while 85% of the county's black residents lived in the other eleven townships.

The voters of Halifax County had not elected a black candidate to the Board of Commissioners during the twentieth century. Factual findings in previous suits had determined that Halifax County election officials had a history of engaging in "a course of conduct which discriminatorily deprives Negroes of Halifax County, North Carolina, of an opportunity to register to vote."[20]. As late as 1980, there were only ten blacks (8.9%) of the 112 election officials in Halifax County. This court, and previous courts, found evidence of racial segregation and a general lack of opportunity for black residents of Halifax County in areas such as education and employment.

Members of the Board of Commissioners were nominated and elected on an at-large basis for two-year, concurrent terms from 1898 through 1944. In 1944, the county was divided into five districts based on township lines. Each district nominated a commissioner, and general elections were still held on an at-large basis. During this period, nomination by the Democratic Party virtually assured election. After 1960, the county reverted to at-large nomination and election.[21] Since 1960, the county had nomi-

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[19] 594 F. Supp. 161 (E.D.N.C. 1984).

[20] Alston v. Butts, C.A. No. 875 (E.D.N.C. May 8, 1964) (Temporary Restraining Order).

[21] Voters chose this system in 1960, but were not given the option of retaining the district nomination system that had been in effect since 1944; voters could only choose between an at-large system with or without residence districts.

nated and elected commissioners on an at-large basis, with at least one commissioner from each of the five residency districts. In 1968, terms of county commissioners were staggered and increased from two to four years. Preclearance for this change was not obtained until May 16, 1984, but it was implemented in 1968.

In 1971, the General Assembly readopted and expanded the at-large election system by adding a sixth commissioner who would reside in Roanoke Rapids Township, but be nominated and elected on an at-large basis. This change was implemented in 1972, but did not receive preclearance before this suit was filed. On May 16, 1984, the Attorney General interposed a timely objection to the 1971 law, stating that even though the law was intended to remedy malaportionment, it was not clear why this alternative was selected over other options which would have enhanced black voting strength. In addition, the law was not submitted for a referendum, as was done in the past.

The court granted plaintiffs a preliminary injunction to stop elections under the existing system, finding they would suffer irreparable harm if the injunction was not granted and that they would likely succeed on the merits. The court found that the totality of the circumstances "demonstrate[s] that defendants' at-large county commissioner election system with residence districts deprives Halifax County's black citizens of an equal opportunity to participate in the political process and elect county commissioners of their choice." The court further noted that "[t]here is evidence which supports the view that racial bloc voting in the eight contests between black and white candidates between 1968 and 1982 is persistent and severe." Halifax County's at-large election system with residence districts was also found to have several "enhancing" features that made it more difficult for blacks to elect county commissioners of their choice. The county was geographically large; the use of residency districts, which operated like numbered-post requirements, precluded single-shot voting; and a majority-vote requirement applied in primary elections. The totality of the circumstances showed the election system diluted voting strength, hindering effective minority participation.

Johnson v. Town of Benson[22]

An individual black voter brought suit on behalf of himself and similarly situated voters, contending that the method of electing the Benson Board of Commissioners denied black voters equal opportunity to elect

[22] No. 88-240-CIV-5 (E.D.N.C. 1988).

representatives of their choice. Prior to the suit, the board consisted of four members elected at-large for staggered, four-year terms. Despite the fact that black citizens constituted 32.1% of the town's population according to the 1980 Census, no black person had ever been elected to the Benson Board of Commissioners.

The parties entered into a consent decree that changed the method of election. Under the new method, the board consists of six members; three members are chosen at-large and one member is chosen from each of three districts. The elections are staggered so that the three at-large members are all elected in the same year and the three district members are elected two years later. Terms are four years. Since the change in voting, black candidates have had regular success in being elected to the board.

Kindley v. Bartlett[23]

The chairman of the Guilford County Republican Party filed suit requesting that the district court issue an injunction to stop the State Board of Elections from implementing a law enacted by the General Assembly that would permit the counting of out-of-precinct provisional ballots prior to receiving Section 5 preclearance. The plaintiff also brought other due process claims related to the 2004 elections.

A national law provided that voters who wanted to vote, but whose name did not appear on precinct lists, could cast provisional ballots that would later be counted for federal candidates if it turned out that the voter was in fact registered in that jurisdiction. The remaining question was whether such ballots would count in state elections. North Carolina decided to adopt such a provision, but did not apply for preclearance. A procedure for counting such ballots was implemented in the 2004 election.

The court determined that all disputed legislation was, at the time of suit, before the DOJ and pending preclearance. The court further found that it was unlikely the plaintiff could succeed in his voting rights claim because there was no evidence the law would have the effect of denying the right to vote based on race or color. The court declined to enter an injunction.

[23] No. 5:05-cv-00177 (E.D.N.C. 2005).

Lake v. North Carolina State Board of Elections[24]

Plaintiffs, an election candidate for the Republican Party and two voters, brought suit pursuant to Section 5 of the Voting Rights Act and also alleged due process, equal protection and state law violations. During the November 6, 1990 election, voting machines in certain precincts in Durham and Guilford Counties were not working, causing representatives of the Democratic Party to move to superior court judges to extend the voting hours. The plaintiffs complained that the granting of those motions and other errors should caused the court to declare the election results void. Specifically, the plaintiffs argued that the superior court judge orders were changes under Section 5 and were not properly precleared. Plaintiffs sought to enjoin defendants from certifying election results for an Associate Justice of the North Carolina Supreme Court.

The court granted summary judgment for the defendants; Durham County was not covered by the Voting Rights Act. In Guilford County, extension of the hours did not require preclearance because it mirrored a previously precleared state statute that provided for extended hours. The court also accepted the defendants' argument that this change fit into an exception to Section 5 review for exigent circumstances. Further, because extending the hours was a neutral decision, it did not have potential for discrimination on the basis of race or color.

Lewis v. Alamance[25]

Black voters challenged the at-large method of electing Alamance County Commissioners. The five members of the Alamance County Board of Commissioners were elected at-large in partisan elections for four-year, staggered terms. Voters could cast votes for as many candidates as there were vacant seats, but could not vote more than once for a single candidate. Since 1965, black candidates had run for seats in eight of the fourteen elections, but only one black candidate was elected.[26] White candidates supported by a majority of black voters had also repeatedly won seats. After the plaintiffs presented evidence to the district court, the court found that they had failed to show that black-preferred candidates were usually defeated. Plaintiffs appealed.

On appeal, plaintiffs made several arguments, including: (1) white candidates who received support from black voters in general elections

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[24] 798 F. Supp. 1199 (M.D.N.C. 1992).

[25] 99 F.3d 600 (4th Cir. 1996).

[26] This candidate was, however, elected three times.

should not have been considered black-preferred candidates because they won support only because they were Democrats; (2) the court erred in not discounting the repeated success of one minority-preferred candidate because of the effects of incumbency; (3) the court improperly aggregated primary and general election results; (4) the court improperly viewed success in the primary election as electoral success; and (5) the court erred in failing to conduct an individualized determination into whether some candidates should be treated as black-preferred candidates.

The Fourth Circuit affirmed the district court's grant of summary judgment to the county because plaintiffs were unable to prove that black-preferred candidates were usually defeated. However, the court agreed that the district court erred in aggregating the primary and general election results; in failing to conduct individualized determinations into whether some candidates should be treated as black-preferred candidates; and by basing its decision exclusively on data from elections in which a black candidate was on the ballot. With regard to the last error, the court found that the district court failed to analyze a sufficient number of elections to determine whether white bloc voting usually operated to defeat minority-preferred candidates. This was the only election data proffered by the plaintiffs, so the court did not have before it sufficient evidence to determine if black-preferred candidates were usually defeated. The court stated that by "failing to consider evidence of elections in which no minority candidate appeared on the ballot, the district court, insofar as can be discerned, could have understated (or overstated) the extent to which minority-preferred candidates were usually defeated in Alamance County." Despite these errors, the court did not reverse because plaintiffs, who carried the burden of proof, did not show sufficient evidence of violations under the Voting Rights Act.

Circuit Judge M. Blane Michael dissented, finding that since the passage of the Voting Rights Act, only one minority candidate had ever been elected to the board and that candidate was initially appointed, not elected. Judge Michael could not conclude with the majority that black voters had the same opportunity as white voters to elect their preferred candidates. Judge Michael found that plaintiffs presented adequate statistical evidence of general and primary election results since 1972 to withstand a motion for summary judgment and give rise to a dispute over whether minority voting had been diluted.

Lewis v. Wayne County Board[27]

Plaintiffs brought suit against the Wayne County Board of Elections and school board, alleging that the method of voting for school board members impermissibly diluted black voting strength. In 1990, Wayne County had 33,793 black residents, comprising 32.2% of the population, but minority voters had been unable to elect representatives of their choice under the at-large method of election.

Black voters brought suit to change the method of election and took a dismissal when they were successful in winning a change. Under the new system, the board consists of seven members elected from districts to serve four-year terms. The superintendent is selected by the board and serves as the chief executive officer of the school system. With the new district system in place, there are currently two black representatives on the board.

McGhee v. Granville County[28]

This action was brought in 1987 by black registered voters of Granville County against Granville County, the Granville County Board of Commissioners, Board of Elections and County Supervisor of Elections. Plaintiffs complained that the at-large method of electing the Granville County Board of Commissioners resulted in diluting minority voting strength and denied black community members the opportunity to elect board members of their choice.

At the time of the suit, the Board consisted of five members that were elected at-large, but required to reside in particular residence districts. Each member was elected for a four-year term and the terms were staggered. Black citizens constituted 43.9% of the County's total population, 40.8% of the voting population and 39.5% of the registered voters. No black candidate had ever been elected to the Board, despite having run for election.

The district court ordered minority voters and County officials to agree on a remedial plan, but when they failed to agree on a remedy, the County submitted a proposed remedial plan. The proposed plan was a single-member district plan containing seven districts with members serving staggered terms. Plaintiffs opposed the plan because it would not provide black citizens a chance to elect a number of commissioners commensurate with their portion of the population and their voting strength. Plaintiffs fa-

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[27] No. 5:91-cv-00165 (E.D.N.C. 1992).

[28] 860 F.2d 110 (4th Cir. 1988).

vored a limited voting plan, which would provide for concurrent county-wide elections with voters allowed to select up to three candidates. The district court rejected the County plan because it did not remedy the dilution of black voting strength and, instead, ordered a modified plan based upon "limited voting" in at-large elections. After the district court's plan was implemented, a primary election was held and black candidates won nomination for three seats.

On appeal, the Fourth Circuit reversed the district court holding and remanded for implementation of the County's proposed remedial plan. The court did not reject the lower court's findings of fact with regard to the existing voter dilution or the difficulties faced by black voters in electing a candidate of their choice; rather, the court found that the district court erred in not accepting the County's plan as a complete remedy because the plan was legally adequate. The district court was given the option of either canceling the primary results, enjoining the general election and keeping the board members elected under the district court's plan until a special primary and general election could take place, or permitting the general election and allowing members elected under the district court's plan to serve until successors were elected in a new primary and general election under the county plan.

Montgomery County Branch of the N.A.A.C.P. v. Montgomery County Board of Elections[29]

The NAACP and individual black voters filed suit in 1990, arguing that the at-large method of electing the Montgomery County Board of Commissioners violated Section 2 of the Voting Rights Act. The Board consisted of five members elected at-large. Candidates for four of the five seats were required to live in residency districts and the candidate for the fifth seat could live anywhere in the county. Black citizens constituted 24.6% of the county's population. Black candidates ran for seats eight times since 1976, but none had ever been nominated or elected, and no black candidate was known to have been elected before 1976.

The parties entered into a consent decree, which modified the method of electing the Montgomery County Board of Commissioners by providing for four members to be elected from three districts (one district would elect two commissioners from different subdistrict residency areas) and a fifth member to be elected at-large. Under the new system, plaintiffs agreed that

[29] No. 3:90-cv-00027 (M.D.N.C. 1990).

black voters would finally have an opportunity to elect representatives of their choice.

In 2001, the case was reopened when the Board of Commissioners applied to the court for relief from the consent decree. Over the plaintiffs' objections, the court agreed in 2003 to modify the 1990 consent decree. Under the modified plan, the Board consists of four members who each serve terms of four years, except for one transitional term for District 3. Since 2004, two commissioners have been elected at-large and one commissioner has been elected from each of three districts. To be an eligible candidate from a district, the candidate must live in the district, but at-large members can reside anywhere in the county. Elections are staggered, with district representatives elected simultaneously and at-large members elected simultaneously.

The case was then placed on inactive status where it will remain for five years and be dismissed if, at that point, no party has sought to reopen it or alter the method of election.

Moore v. Beaufort County[30]

Black voters filed suit under Section 2 of the Voting Rights Act against Beaufort County and the Board of Commissioners, claiming that the County's system of at-large elections denied black voters the opportunity to elect candidates of their choice. Plaintiffs provided evidence that although approximately 30% of the residents of Beaufort County were black, no black candidate had been elected to the Board of Commissioners for at least thirty years. Plaintiffs blamed the at-large election system. The parties entered a settlement, but the Board refused to honor the agreement. The U.S. District Court for Eastern North Carolina granted the black voters' motion to enforce the settlement. An appeal followed.

In 1989, the County and plaintiffs entered settlement negotiations based on a limited voting plan. Under such a plan, voters would be limited in the number of votes they could cast. For example, if several seats were up for election, each voter might only be able to vote for a single candidate, allowing minorities to rally around a candidate of choice. In April 1989, the Board agreed to settle the suit by accepting limited voting and instructed their attorney (Crowell) to negotiate the details with the plaintiffs. Crowell informed the plaintiffs' attorney that the Board was willing to adopt a new election plan that would enable black voters to better elect a

[30] 936 F.2d 159 (4th Cir. 1991).

candidate of their choice and commence a new election method in 1990. Plaintiffs accepted the offer to settle.

After this negotiation, however, when the completed agreement documents were presented to the Board at a regularly-scheduled meeting, the Board was dissatisfied with the wording of the documents and was particularly concerned that the documents would expose them to liability for attorney's fees. While the Board was attempting to have the documents reworded, it learned of public opposition to limited voting and, during a meeting, voted to reject the settlement. The Board then refused to honor the settlement it had reached with plaintiffs.

The Fourth Circuit upheld the district court's ruling that the settlement must be honored. The court found that the parties intended to settle the litigation and that there was an offer to settle that was accepted by the plaintiffs. Further, Crowell was acting within his authority from the Board to settle the case and was empowered to bind the Board to the settlement. The court found that the settlement should be enforced and remanded to the district court for submission to the Department of Justice for preclearance in accordance with Section 5 of the Voting Rights Act.

N.A.A.C.P. of Stanley County v. City of Albemarle[31]

Individual voters and the Stanley County branch of the NAACP brought suit to challenge the at-large method of electing city council members. The black community in Albemarle constituted over 17% of the population and had strong voter turnout. Despite this, the at-large method of voting prevented black voters from electing a candidate of their choice. When black voters appealed to the city council for relief, some members were supportive, but there was not a sufficient number to force change.

Voters filed suit to challenge the system. The plaintiffs attempted to convince the court to issue a preliminary injunction to halt the upcoming election, but were unsuccessful. Despite this failure, the election worked to the plaintiffs' advantage when the remaining city council members who opposed changing the system lost their seats. The newly elected members joined the previous members who had agreed to change voting procedure, and the North Carolina General Assembly passed legislation implementing change. Plaintiffs then agreed to dismiss the suit.

Under the new system, there are seven members of the city council. Three are elected at-large and four are elected by district. With election by

[31] No. 4:87-cv-00468-RCE (M.D.N.C. 1988).

district, black voters, who live in fairly compact communities, were able to elect a black member to the city council and have continued to have regular success in electing a candidate of their choice. The Albemarle City Council currently has one black member.

N.A.A.C.P. v. Anson County Board of Education[32]

Individual black voters and the NAACP challenged the method and form of election to the county Board of Education under Section 2 of the Voting Rights Act and the Constitution. The plaintiffs alleged that the method of electing members to the Board for staggered terms diluted minority voting strength, had the purpose and effect of discriminating against black citizens and deprived black citizens of their constitutional rights. Plaintiffs argued for an at-large election without staggered terms. From 1984 to the time of suit, the Board of Education consisted of seven white members and two black members.

During the suit, the North Carolina House passed House Bill 670. On November 15, 1989, the court entered a consent order that enjoined and restrained defendants from using its previous method of electing members to the Board of Education and ordered them to use the method in Bill 670, unless it did not obtain preclearance. Under the new system, nine members would be elected to the Board of Education for terms of four years. Seven members of the Board would be elected by voters from their specific voting district, and two members would be elected at-large. Elections would be staggered and a candidate for an at-large seat needed a 40% plurality to win. The plaintiffs claimed the staggered terms of the new voting procedure would unlawfully dilute minority voting rights. They presented evidence to show socioeconomic differences between whites and blacks, cohesive voting among blacks, an ingrained culture of segregation in Anson County and that the County showed a pattern of polarized voting.

The court concluded that the plaintiffs had not adequately shown that election by staggered terms would dilute minority voting. However, because the DOJ did not preclear the plan and left the county without a method of electing members to the Board of Education, the court told defendants they must either submit a modified plan to the DOJ or seek declaratory judgment from the U.S. District Court for the District of Columbia that the plan was, in fact, acceptable.

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[32] No. C-C-89-203-P, 1990 WL 123822 (W.D.N.C. Aug. 7, 1990).

N.A.A.C.P. v. Caswell County Board of Commissioners[33]

Individual black voters and the NAACP brought suit, alleging that the method of electing the Caswell County Board of Commissioners and the school board denied minority voters the equal opportunity to elect representatives of their choice. At the time of the suit, roughly 40.8% of the population of Caswell County was black. The black population had a high rate of voter turnout, but the at-large method of election prevented voters from being able to elect minority-preferred candidates.

The suit was terminated when the parties were able to agree to a new method of election from districts. Since the suit, black candidates have had more regular success in being elected to both boards.

N.A.A.C.P. v. City of Statesville[34]

Plaintiffs brought a Section 2 challenge to the form and method of electing members of the Statesville City Council. To remedy the problematic voting system, the parties reached a settlement, creating a new City Council composed of members representing a combination of single districts (wards) and the city at-large. Two of the wards were designed to contain a black majority voting age population. Candidates for ward seats were elected in staggered elections. The issue for the court to decide was the "least dilutive or discriminatory method and term for electing the two at-large members to the City Council."

The court held an evidentiary hearing to evaluate whether staggered terms or election as a group for the at-large seats would be the least dilutive or discriminatory. The city advocated for staggered terms, while plaintiffs favored a system where more than one candidate was elected at a time so that black voters would have a greater chance of having a candidate of their choice elected. The plaintiffs argued that with staggered terms, where only one person was elected at a time, the white majority electorate could always out-vote the black electorate. Plaintiffs also favored longer terms so that candidates with fewer resources would not be required to stand for re-election so often. The court found that while it could not guarantee the success of either plan, the group method of election advocated by the NAACP was the least dilutive and discriminatory and that elections every four years would be less demanding of resources scarce in the black community.

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[33] No. 2:86-cv-00708 (M.D.N.C. 1989).

[34] 606 F. Supp. 569 (W.D.N.C. 1985).

N.A.A.C.P. v. City of Thomasville[35]

Two black voters and the NAACP brought suit challenging the method of election of the City Council of Thomasville. The City Council consisted of five members and a mayor, all of whom were elected at-large. Four of the five council members were required to live in wards, but they were elected by the city at-large. Under the at-large system, despite having run for office several times, black candidates had never been elected to the City Council. Plaintiffs successfully showed that the system operated to dilute minority voting strength in violation of Section 2 of the Voting Rights Act.

With the consent of the parties, the court ordered that the City Council be expanded to eight members (a mayor and seven council members). Two council members would be elected at-large every two years, and the remaining five members would be elected by wards every four years for staggered terms. One of the wards would have a majority-minority population. With the new system in place, minority voters were able to consistently elect a representative of their choice in the minority ward.

The case was reopened in 2003 when voters of Thomasville voted to change the method of voting to reinstate the at-large method of electing all members. In response, black voters filed a motion for a preliminary injunction asking the court to halt implementation of the new method of voting. The court granted the preliminary injunction. An election was then held using the combination ward/at-large method adopted in the 1987 consent decree. In 2004, the town filed a motion for relief from the consent decree.

After hearing evidence and over the objections of black voters, the court vacated the 1987 consent decree. The plaintiffs showed evidence that the ward system had consistently given black voters the opportunity to elect a candidate of their choice in Ward 3. Despite this important improvement, the court determined that because the at-large seats had also been won by individuals who appeared to be minority-preferred candidates, the judgment was no longer necessary. The court also concluded that the new at-large system would not be as problematic as the one existing prior to 1987 because it did not impose residency requirements or staggered terms.

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[35] No. 4:86-cv-00291 (M.D.N.C. 1987).

N.A.A.C.P. v. Duplin County[36]

Black voters and the NAACP brought suit under Section 2 of the Voting Rights Act to oppose the method of electing the Duplin County Board of Commissioners and the Board of Education. Under the existing election system, both boards consisted of five members nominated in primaries held in districts and elected at-large countywide. The members of both boards served four-year staggered terms. Recognizing that the system had the effect of denying black voters the opportunity to elect candidates of their choice, the parties entered a consent decree. At the time of suit, roughly 33% of the county population was black.

Under the new system, both boards consist of six members elected from six districts and only voters who reside in a district may vote in the party primaries and general election for that district. Since the change to the election system, black candidates have had greater success; black commissioners currently represent Districts Five and Six on the board.

N.A.A.C.P. v. Elizabeth City[37]

The NAACP brought suit under Section 2 opposing the at-large method of election, which prevented black voters from electing candidates of their choice. During the course of the suit, the parties agreed to a consent decree that would involve the creation of districts for voting. Despite this agreement, the city proceeded to select a method of election with four single-member districts and four at-large seats with residency requirements.

When Elizabeth City applied for preclearance pursuant to Section 5, the Attorney General interposed an objection, finding that by maintaining the four at-large seats, the system chosen would unnecessarily limit the potential for black voters to elect representatives. The proposed system still contained the discriminatory features of the pure at-large system. The city was unable to show that the 4-4 system was adopted without the purpose of denying or abridging the right to vote because of race.

The city has since adopted a ward system. The city is divided into four wards that each elect two representatives. Four of the members of the current city council are black.

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[36] No. 88-5-CIV-7 (E.D.N.C. 1988).
[37] No. 83-39-CIV-2 (E.D.N.C. 1984).

N.A.A.C.P. v. Forsyth County[38]

Black voters filed suit against the Forsyth County Board of Commissioners and the school board to change the method of election from an at-large system that diluted minority voting strength. The population of Forsyth County was almost 25% black, but the system of election prevented minority voters from electing representatives of their choice. During the course of the suit, the parties agreed to a settlement that changed the method of voting from at-large to election by district.

Under the new system, the Board of Commissioners is composed of seven members elected in partisan elections. Six of the commissioners are elected from two multimember districts and one is elected at-large. Board members serve four-year staggered terms. Minority candidates have had consistent success under this system, and two members of the current Board are black.

N.A.A.C.P. v. Reidsville[39]

The NAACP and individual plaintiffs filed suit to change the at-large method of electing city council and county board members. The population of Reidsville was nearly 40% black, but only one black member had previously been elected to the seven-member council. While the suit was progressing, the city was in the process of an annexation. Outlying areas to be annexed also opposed the at-large method of electing members because it favored entrenched council members who were potentially less responsive to the newly annexed communities.

Black voters and voters to be annexed formed an alliance favoring election by district that would allow them to elect city council members and county board members who represented their compact communities. In response to this united front, Reidsville agreed to a new voting system. The current city council is composed of seven members serving four-year terms. There are two districts that each elect two members, two members elected at-large and a mayor elected at-large. Since the change in the voting system, black candidates have had consistent success, and there are currently two black members on the city council.

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[38] No. 6:86-cv-00803-EAG-RAE (M.D.N.C. 1988).
[39] No. 2:91-cv-00281-WLO-PTS (M.D.N.C. 1992).

N.A.A.C.P. v. Richmond County[40]

Plaintiffs brought suit opposing the method of electing the Richmond County Board of Education. The Board of Education consisted of five members elected at-large in nonpartisan elections subject to majority-vote and run-off requirements. Candidates for four of the five seats were required to reside in districts, but candidates for the fifth seat could reside anywhere in the county. Candidates served four-year terms and were elected in staggered elections, with two elected in a given year and three elected two years later.

Black citizens constituted 26.7% of the Richmond County population according to the 1980 Census, but no black person had been elected to the Board of Education under the existing method of election. Under a previous method of election, which did not use residency districts and allowed for more seats to be elected in each election, black candidates were elected to the board in 1972, 1980 and 1982.

A consent decree was adopted, changing the method of election in order to allow black voters of Richmond County the equal opportunity to elect candidates of their choice. Following the 1990 election, the Board of Education would consist of seven members elected at-large. In each election, all candidates would be listed together on a ballot and each voter could vote for as many candidates as there were seats being filled in that election. The candidates with the highest number of votes would be elected with no run-off elections. The elections would be staggered so that four members would be elected in a given year and three members elected two years later. Candidates would serve four-year terms. There is currently one black member on the Board of Education.

N.A.A.C.P. v. Roanoke Rapids[41]

Individual black voters and the NAACP filed suit under Section 2 of the Voting Rights Act against the city of Roanoke Rapids and the Halifax County Board of Elections, challenging the method of election of the City Council of Roanoke Rapids. At the time of the suit, the Roanoke Rapids City Council consisted of four members elected at-large for four-year terms. Elections were staggered, with two council members elected every two years. The mayor was elected in a separate at-large election. Approximately 17% of the population of Roanoke Rapids was black.

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[40] No. 3:87-cv-00484 (M.D.N.C. 1988).
[41] No. 2:91-cv-00036-BO (E.D.N.C. 1992).

During the course of the suit, the parties entered into a consent decree that changed the method of election. Under the new system, five council members are elected from three districts; Districts 1 and 2 each elect two members and District 3 elects one. The mayor is still elected in a separate at-large election. Under the new system, black candidates have had more regular success, and there is currently one black member on the council.

N.A.A.C.P. v. Rowan Board of Education[42]

Plaintiffs filed suit to change the method of electing members to the Rowan County Board of Education. Previously, members were elected at-large, and black voters had been unsuccessful in electing members to the Board. Black residents of Rowan County constituted 16% of the population and lived in highly compact communities, primarily in Salisbury.

The school district was divided into attendance zones. The plaintiffs wanted election districts that would match the attendance zones so that black voters would have the opportunity to elect members to the Board of Education that were representative of the attendance zones. Because the black population of Rowan County was highly concentrated, election by districts matching the attendance zones would provide black voters with a realistic opportunity to elect at least one representative of their choice.

The case ended when the court entered a consent decree that changed the method of election. Consistent with Chapter 890 of the 1987 Session Laws of the General Assembly, candidates would be elected by districts matching attendance zones. Under the changed system, black voters were able to successful elect representatives to the Board. Some problems arose during 2004, when the county sought to redraw attendance zones, but the issues were resolved without changing election districts.

N.A.A.C.P. v. Winston-Salem/Forsyth County Board of Education[43]

Four black registered voters of Forsyth County and the Winston-Salem branch of the NAACP filed suit, alleging that the voting system—electing at-large members to the nine-member Winston-Salem/Forsyth County Board of Education with staggered terms—deprived black citizens of representation. Beginning in January 1990, the NAACP branch and other citizens requested that the Board of Education adopt a district system of electing members, but the Board consistently tabled the motions. A research committee was then appointed by the Board to study the problem

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[42] No. 4:91-cv-00293-FWB-RAE (M.D.N.C. 1994).

[43] No. 91-1222, 1992 U.S. App. LEXIS 6221 (4th Cir. Apr. 3, 1992).

and agreed that the Board should abandon the at-large method of electing members. The plaintiffs filed suit in 1991, and while the suit was pending, the North Carolina General Assembly passed a compromise bill to address the plaintiffs' concerns about the negative impact of staggered elections. The General Assembly's bill changed the election system to provide simultaneous election of board members by district.

On appeal, the question was whether the district court had properly dismissed the plaintiffs' suit without naming the plaintiffs as the prevailing party after the legislative changes. Plaintiffs sought to be named the prevailing party so that they would be able to obtain attorneys' fees. The court affirmed the district court's holding that the plaintiffs could not be declared the prevailing party because the defendants had not acted to end the suit and give plaintiffs relief, and the defendants continued to argue for affirmative defenses.

Pitt County Concerned Citizens for Justice v. Pitt County[44]

Plaintiffs filed suit under Section 2 of the Voting Rights Act, objecting to the method of electing the Pitt County Board of Commissioners. Under the existing method, the Board of Commissioners consisted of six members elected at-large, but who were required to live in residency districts. The members served four-year staggered terms.

In 1987, at the request of the Board, the state General Assembly enacted a new method of electing the Board. The new bill provided for a nine-member Board. Six members would be elected from districts and three would be elected at-large. The change was submitted for preclearance, but no response had been received at the time of filing. After filing, the Attorney General objected to the change, preventing its implementation.

The parties entered a consent decree to change the method of election because it did not provide equal opportunity for black voters to elect representatives of their choice. At the time of suit, the population of Pitt County was roughly 33%. Under the new system, the Board consists of nine members. One member is elected from each of six districts, and only voters residing in a district may vote for that seat. One member is then elected from three consolidated districts. Districts 1 and 2 are combined to form Consolidated District A, Districts 3 and 6 are combined to form Consolidated District B and Districts 4 and 5 are combined to form Consolidated District

[44] No. 87-129-CIV-4 (E.D.N.C. 1988).

C. Terms are four years. Black representatives currently hold seats on the Board for District 1 and Consolidated District A.

Porter v. Steward[45]

In 1988, the plaintiffs instituted this suit to challenge the at-large method of electing members to the Harnett County Board of Commissioners and Board of Education. Plaintiffs argued that the at-large method of election prevented black voters from electing representatives of their choice. Black candidates had run for election to both boards, but no black candidate had ever been elected to either board.

After negotiation, the parties reached an agreement in 1989 to change the method of election. The county was divided into five single-member districts that would each elect one member, and only voters residing in the particular district could cast votes in that district. The districts were drawn based on 1980 Census data. Under the new plan, District 1 was established with a black majority. In the 1990 election immediately following the suit, District 1 successfully elected a black candidate to the Board of Commissioners and to the Board of Education.

After the release of 1990 Census data, the defendants filed an action to modify the previous consent order plan so that districts could be changed slightly due to population shifts. The plaintiffs did not oppose.

When the Census was released in 2000, the Board again sought to change the districts. The Census showed that 22.5% of the population of Harnett County was black. It also showed that the five districts that had been drawn deviated greatly. The population deviation between District 2 and District 5, for example, was over 57%. The Board of Commissioners hired a consultant, who designed four plans for redistricting. The Board initially selected Option 4, which was submitted to the Department of Justice, but not approved because it would not preserve minority voting strength. The Board then considered several other plans.

In 2002, the Harnett County Board of Commissioners approved a new set of modifications to the five-member district plan, and in 2003, the Attorney General approved the plan. The new plan, which would not reduce black voters' opportunity to elect a candidate of their choice, was designed to equalize the voting districts, while still providing one majority-minority district. The court approved the plan in August 2003. The continued participation of the district court in Harnett County voting procedures has al-

[45] No. 5:88-cv-00950 (E.D.N.C. 2003).

lowed black voters to preserve the gains they made in the initial suit and to continue to elect a representative of their choice.

Republican Party of North Carolina v. Martin[46]

The Republican Party and others challenged state officials, alleging that the state election system of superior court judges on a statewide partisan ballot effectively disenfranchised minority party voters by diluting their strength and that minority judges would have been elected in some districts if the elections were district-wide rather than statewide.

"Since 1868, the Constitution of North Carolina ha[d] allowed the General Assembly to choose between statewide or districtwide popular elections" to select superior court judges. In 1877, the General Assembly created the statewide election scheme, and in 1915 that system was modified to include a requirement that candidates for the office be nominated through primaries. The primaries were held by local district, resulting in a system where voters nominated candidates for judgeships in local party primaries in each district and the successful primary candidates ran against each other in a general, statewide election. Judges were required to reside in the district in which they were elected, but the state constitution granted them statewide jurisdiction and permitted rotation from district to district within a judicial division, of which there were four.

During the mid-1980s, "the North Carolina Association of Black Lawyers and others brought suit against Governor Martin alleging that features of the system of electing superior court judges had the purpose and effect of abridging nonwhite voting strength in violation of the Voting Rights Act and the [Constitution]." The litigation resulted in a consent decree and adoption in 1987 of Chapter 509 of the North Carolina Session Laws, after which the number of judicial districts increased from thirty-four to approximately seventy. Unlike their predecessors, the new district lines frequently split counties and some of the new districts were composed of pieces of multiple counties.

Chapter 509 also required "that all individuals seeking nomination for the position of superior court judge must, at the time of filing a notice of candidacy, reside in the district for which they seek election."

The Republican Party contended that judges did not, in fact, serve statewide because they rarely served outside the judicial division to which they were assigned, and that judges held unique statutory powers within

[46] 980 F.2d 943 (4th Cir. 1992).

their own districts, such as appointing the local defender. They also questioned the validity of some of the new districts created under Chapter 509, alleging that sixteen of the new districts did not have a courthouse, a clerk of court or any other official associated with the district except for the local superior court judge.

The Republican Party argued that, from 1900 to 1987, only one Republican had been elected to a superior court judgeship[47] and that if elections had been conducted district-wide rather than statewide, four of ten Republican candidates for judgeships since 1968 would have won. The party claimed that Republicans cast a large number of votes, but the election system structurally diluted their votes and prevented election of candidates of their choice.

The defendants essentially argued that because superior court judges were not representative government officials, the issues presented to the court did not raise questions of fair representation on the part of the elected officials and did not, therefore, necessarily involve a justiciable political question. The district court dismissed the case. On appeal, the Fourth Circuit disagreed, finding there was a prima facie claim of voter dilution resulting from a defective election scheme and that manageable standards did exist for resolving the case. The court found that election of judges implicated the goal of equal protection and issues of fair effective representation. It remanded for consideration of this claim, while dismissing other First Amendment claims.

Rowsom v. Tyrrell County Commissioners[48]

Black citizens of Tyrrell County brought suit under the Voting Rights Act and the First, Thirteenth, Fourteenth and Fifteenth Amendments, contending that the method of electing the Tyrrell County Board of Commissioners and Board of Education denied black citizens an equal opportunity to elect candidates of their choice. Under the existing system, the Board of Commissioners consisted of five members elected at-large in staggered elections for four-year terms. The elections were partisan and preceded by primaries. The Board of Education also consisted of five members elected at-large for staggered four-year terms, but those elections were nonpartisan and there were no primaries.

According to the 1990 Census, black citizens constituted 40% of the county's population and 37% of the voting age population. Since 1984,

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[47] That position was later eliminated during redistricting.

[48] No. 2:93-cv-00033 (E.D.N.C. 1994).

however, black candidates ran for seats on the Board of Commissioners at least seven times and were elected only once. Since 1982, black candidates had run for positions on the Board of Education at least nine times and were elected twice.

The court stated that if the case were tried, the plaintiffs could present evidence that would establish a plausible claim that the method of election had the effect of denying black citizens the equal opportunity to elect candidates of their choice. The parties entered into a consent decree that changed the method of election. The parties agreed that while single-member district elections are generally favored to remedy voting rights cases, it would not be possible to do so in Tyrrell County because, among other concerns, the population was so sparse and districts would potentially divide communities with similar interests.

The system was changed subject to preclearance. Under the new system, the Board of Commissioners consists of five members elected in partisan elections for staggered four-year terms. In the primary election, all candidates are listed on a single ballot, but voters may only vote for one candidate, and the candidate with the most votes is the general election candidate, with no run-off held. In the general election, all candidates nominated by parties or otherwise qualified are listed on a single ballot, and voters can vote for a single candidate. The two candidates receiving the most votes are elected, and in the following election held two years later, the three candidates receiving the most votes are elected.

The method of electing members to the Board of Education was also changed. Now, five members are elected for staggered four-year terms in nonpartisan elections. All candidates are listed on a single ballot, but voters may only vote for one candidate. The candidates with the most votes are elected without run-offs.

Sample v. Jenkins[49]

A black registered voter of Cumberland County brought suit, alleging that the voting changes resulting from the North Carolina Supreme Court holding in *Stephenson v. Bartlett*[50] were being implemented prior to preclearance. In *Stephenson*, Republican voters and state representatives alleged that the Democrats overseeing reapportionment of state voting were creating a reapportionment scheme that unfairly favored Democratic candidates. Much of their complaint was based on the argument that the poten-

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49 5:02-cv-00383 (E.D.N.C. 2002).

50 595 S.E.2d 112 (N.C. 2004).

tial plan would violate the whole county provision of the state constitution, a provision providing that no county could be divided in the formation of a Senate or House district. That case resulted in the postponement of primary elections because, according to the North Carolina Supreme Court, certain aspects of the reapportionment were unacceptable under the state constitution. The plaintiffs in the immediate suit contended that the changes resulting from *Stephenson* were the most sweeping since the Voting Rights Act was enacted and required preclearance.

The NAACP intervened in the suit. The NAACP had several concerns, among them that the cancellation of a runoff primary could have negative effects on black candidates by forcing candidates to run against each other in the general election, dividing the black vote; and that the elimination of the primary election was not precleared. The plaintiffs argued the court order should not have been able to serve as a remedial plan absent preclearance. They sought an injunction to halt the court and state officials from implementation of these changes until preclearance was obtained. Defendants moved to dismiss the suit when preclearance was obtained.

Sellars v. Lee County Board of Commissioners[51]

Black voters filed suit to change the at-large method of electing members to both the Lee County Board of Commissioners and the Sanford City Council. In 1989, the Lee County Board of Commissioners had already undergone a change in the system of election to increase black voters' opportunity to elect representatives of their choice. The 1989 resolution removed the previous method of electing five members at-large to staggered four-year terms, and in its place implemented a system that elects seven members, four from single-member districts and three at-large.

In the immediate suit, however, the plaintiffs were successful in having a change implemented to the system of electing the Sanford City Council. In 1990, the black population of Lee County was 22.7% of the total population. More than half of the black population of Lee County lived in the city of Sanford. Almost 35% of the city of Sanford was black. However, black voters had been unable to elect representatives of their choice due to voter dilution.

As a result of the suit, the plaintiffs were able to garner a change in the method of election. The city of Sanford is now represented by a seven-member council. Five of the members are elected from wards and two are

[51] 1:89-cv-00294 (M.D.N.C. 1992).

elected at-large. Members serve four-year terms. As a result of the change to a ward system of voting, two of the current members of the city council are black.

Sewell v. Town of Smithfield[52]

Plaintiffs filed suit to change the method of election in the town of Smithfield, arguing that the at-large method of election impermissibly diluted black voter strength. In 1990, Smithfield was 35% black, but, due to the method of election, black voters had been unable to elect representatives of their choice. The case was closed when plaintiffs were able to successfully obtain a change in the method of election.

As a result of the suit, Smithfield changed its method of election to a system that mixes at-large election and election by ward. Under the new system, seven members are elected to the council, four by district and three at-large, for four-year staggered terms. A mayor is elected at-large to serve every two years.

There is currently one black member of the City Council in Smithfield, which in 2000 had a population that was 31% black.

Speller v. Laurinburg[53]

Black voters brought suit to oppose the at-large method of electing members to the Laurinburg City Council. In 1990, the population of Laurinburg was 45% black and other minority populations composed almost an additional 5% of the population. The method of election, however, served to dilute minority voting, leaving nearly half the population of the town unable to elect representatives of their choice.

The case resulted in a change of the method of electing City Council members. The new City Council is composed of five members and a mayor. Two districts each elect two representatives and the fifth member is elected at-large. The new system has enabled black voters to successfully elect representatives of their choice. Three of the current council members are black.

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[52] No. 5:89-cv-00360 (E.D.N.C. 1990).
[53] No. 3:93-cv-00365 (M.D.N.C. 1994).

Thornburg v. Gingles[54]

Thornburg v. Gingles was the first major test of the 1982 amendments to the Voting Rights Act. The plaintiffs, individually and as representatives of a class of black citizens in North Carolina, filed suit on September 16, 1981, claiming that the state's redistricting plan diluted the vote of black citizens. Specifically, the plaintiffs were concerned about seven districts, one single-member and six multimember, which they believed would impair black voters' ability to elect representatives of their choice. The plaintiffs raised several arguments against the new plan, including: that the population disparities between the legislative districts violated the "one-person, one-vote" requirement; that multimember districts would dilute minority voting strength; and that the "whole county" provision of the state constitution prohibiting division of counties in drawing districts had not been precleared pursuant to Section 5.

After the plaintiffs filed suit, the State submitted the 1968 "whole county" provision to the DOJ for preclearance. The DOJ interposed an objection on November 30. The DOJ followed this objection with letters objecting to the entire state reapportionment plan. In response, the State Senate and House developed new plans, but the DOJ again denied preclearance in April 1982. When the General Assembly reconvened to adopt yet another new plan, it selected one that provided for black majority districts in some of the Section 5 covered counties. This plan was precleared. The State also modified its reapportionment plan to better conform to the "one-person, one-vote" standard. The focus of the trial became seven specific districts where plaintiffs complained black voter strength was not adequately protected.

After the suit was filed, Congress enacted the 1982 amendments to the Voting Rights Act, which changed Section 2 to remove the requirement that plaintiffs show intent to discriminate as a necessary component of a voter dilution claim. Prior to these amendments, plaintiffs were required to show not only a discriminatory dilutive effect traceable to some aspect of the election system, but also a specific intent on the part of officials to create that effect. *Gingles* became the first major test of the amendments.

The district court made extensive factual findings about racial discrimination in the challenged districts and the ability of state legislators to develop plans that would have protected minority voting power. "[T]he court found that black citizens constituted a distinct population and regis-

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[54] 478 U.S. 30 (1986) (consolidated with Pugh v. Hunt, No. 81-1066-CIV-5).

tered-voter minority in each challenged district." In each of the multimember districts, "there were concentrations of black citizens within the boundaries . . . that were sufficiently large and contiguous to constitute effective voting majorities in single-member districts lying wholly within the boundaries of the multimember districts." The court found that the challenged single-member district contained "a concentration of black citizens within its boundaries and within those of [an adjoining district] sufficient in numbers and continuity to constitute an effective voting majority in a single-member district." Generally, the court found that in each of the challenged districts, there were sufficient minority populations so that black majority, single-member districts could have been drawn.

The court also made findings regarding the history of voter discrimination in the challenged areas, including: (1) there was a clear history of voter discrimination in North Carolina; (2) there existed a history of segregation in North Carolina and the state's black population occupied a lower socioeconomic status; (3) voting procedures operated to diminish the opportunity of black voters to elect candidates of their choice; (4) white voters generally did not vote for black candidates; (5) black candidates had low rates of election; and (6) there was a persistence of severely racially polarized voting. Based on these factors and the problems with the new districting plans, the district court found for the plaintiffs.

The case was appealed to the Supreme Court, where the district court's findings were affirmed. In the majority opinion, Justice Brennan reviewed the Senate Judiciary Committee majority report that accompanied the Amendments to the Voting Rights Act. That report provided typical factors that might be probative of a Section 2 violation. Justice Brennan then laid out certain factors that were necessary for a showing of a Section 2 violation. These factors continue to guide Section 2 cases to this day. In the context of multimember election districts, those factors are: (1) the minority group must be able to show it is sufficiently large and compact to constitute a majority in a single-member district; (2) the minority group must be able to demonstrative political cohesiveness; and (3) the minority group must be able to demonstrate that the white majority votes in a bloc that would usually enable it to defeat the minority's preferred candidate. The guarantee of an equal opportunity was not the guarantee that minority candidates would be elected, but rather that minority voters would at least have the opportunity to elect candidates of their choice. Moreover, the fact that some minority candidates had been elected in the challenged area did not foreclose a Section 2 claim.

The Supreme Court outlined how courts should evaluate minority vote dilution claims, including analyzing the presence of racially polarized voting, the presence of systems that operate to dilute minority voter strength, the percentage of minority registered voters, the size of the district and whether vote dilution persisted over more than one election. The Supreme Court affirmed the strength of the new amendments by holding that intent is not a component of proving a Section 2 claim. With regard to the specific facts in *Gingles*, the court held that, with one exception, the redistricting plan violated Section 2 by impairing black voters' ability to participate in the political process and elect representatives of their choice.

The *Gingles* decision thus created a framework for courts to evaluate Section 2 claims.

United States v. Anson Board of Education[55]

The United States brought suit under Section 2 against the Anson County Board of Education. Although the population of Anson County was over 47% black, the method of election of school board members denied black voters the equal opportunity to elect representatives of their choice.

During the course of the suit, the parties entered into a consent decree that established a new method of election. In the new system, the Board consists of nine members. Seven are elected from single member districts and two are elected at-large. The at-large elections use limited voting, with each voter having one vote.

United States v. Granville County Board of Education[56]

The United States brought suit under Section 2, contending that the at-large method of electing members to the Granville County Board of Education denied black voters the equal opportunity to elect candidates of their choice. The parties entered into a consent decree.

Under the new method of election, the seven members of the Board of Education are elected from separate districts. Elections are staggered and terms are six years. The parties agreed that the district system would give black voters the equal opportunity to elect preferred candidates.

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[55] No. 3:93-cv-00210 (W.D.N.C. 1994).
[56] No. 5:87-cv-00353 (E.D.N.C. 1989).

United States v. Lenoir County[57]

The United States filed suit to enforce Section 2 of the Voting Rights Act, alleging that the at-large method of electing the Lenoir County Board of Commissioners denied black citizens equal opportunity to participate in the political process and elect candidates of their choice. According to the 1980 Census, 38.1% of the population of Lenoir County was black and 34.8% of the voting age population was black. Under the existing system, the Board was composed of five members elected at-large to four-year, staggered terms. Black candidates had run in every election since 1972, but due to racially polarized voting, only one black candidate had ever been elected using the at-large system.

In response to the suit, the county agreed to change the method of election and apply for preclearance of the newly selected system. The Board of Commissioners currently consists of seven members elected for staggered, four-year terms. Two commissioners are elected countywide and five commissioners are elected from districts. Commissioners elected by district must reside within the boundaries of their respective districts. As a result of the change, black candidates have had greater success, and there are currently two black board members, one of whom serves as chairman.

United States v. North Carolina Republican Party[58]

"In 1990, just days before the general election in which Harvey Gantt, an African-American was running against Jessie Helms for U.S. Senate, postcards titled 'Voter Registration Bulletin' were mailed to 125,000 African-American voters throughout the state."[59] The bulletin suggested, incorrectly, that they could not vote if they had moved within thirty days of the election and threatened criminal prosecution.[60] The postcards were sent to black voters who had lived at the same address for years.[61] "As a result, black voters were confused about whether they could vote and some went to their local board of election office to try to vote there. Considerable resources were devoted to trying to clear up the confusion."[62]

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[57] 87-105-CIV-84 (E.D.N.C. 1987).

[58] 5:92-cv-00161 (E.D.N.C. 1992).

[59] North Carolina Democratic Party, North Carolina Democrats Announce Unprecedented Election Protection Program, http://www.ncdp.org/north_carolina_democrats_election_protection (last visited May 19, 2008).

[60] *Id.*

[61] *Id.*

[62] *Id.*

United States v. Onslow County[63]

In the mid-1980s, Onslow County's population was 20% black, but a black candidate had not been elected to either the county Board of Education or the county commissioners since the passage of the Voting Rights Act. In fact, just one year after the Act was passed, the method of electing candidates was changed from a single-member district system to an at-large system, pursuant to a consent decree entered in a then-pending lawsuit, *Mendelson v. Walton*. In 1969, the General Assembly passed legislation increasing the terms of board members to four years and imposing staggered terms. The changes were implemented in 1970 without being precleared under Section 5 of the Voting Rights Act. For nearly twenty years, the county operated in violation of the preclearance requirement. When the county sought preclearance of the 1969 legislation in 1987, the Attorney General objected to the county's use of staggered terms because staggered terms made it more difficult for black voters to have an equal opportunity to elect their candidates of choice, but approved the at-large nomination method and use of four-year terms.

The United States filed suit against the county to force it to hold elections for all five seats on the Board of Commissioners in 1988. The county wanted only to hold elections for two of the seats whose members' terms would normally expire under the illegal staggered term system. The court held that since proper preclearance pursuant to Section 5 had not been obtained, all five seats must now be declared vacant and a new election held in 1988. The court found that because the Attorney General had opposed the staggered terms on the grounds that they "deprived black voters of their best opportunity to elect a commissioner of their choice," it could not allow those elected under the unfair system to stay in office or "that evil would not be corrected." The court held that the voting procedure did not have proper clearance—and was, therefore, legally unenforceable—and enjoined defendants from further implementation of staggered terms.

Thus, it took the passage of eighteen years and the entry of a court order for Onslow County to finally hold elections for its Board of Commissioners that were in compliance with the Voting Rights Act. Today, the Board of Commissioners is still elected at-large. The county is 18% black according to the 2000 Census. No black commissioner currently serves on the five-member board.

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[63] 683 F. Supp. 1021 (E.D.N.C. 1988).

Ward v. Columbus County[64]

Eight registered black voters brought suit, challenging the method of electing members to the Board of County Commissioners in Columbus County as a violation of Section 2 of the Voting Rights Act. The Board consisted of five members elected from residency districts. Each candidate for the Board had to run for the seat assigned to the area in which he or she resided, but all of the voters of the county voted at-large for each representative. The commissioners served four-year, staggered terms and were nominated in partisan primaries. The plaintiffs contended that the method of election, combined with racially polarized voting, made it virtually impossible for black voters to elect a candidate of their choice.

At the time of the suit, the population of Columbus County was 30.6% black and 27.6% of the voting population was black. No black person had been elected to the Board or nominated in the Democratic primary for the Board in the twentieth century. The black community was also underrepresented on boards and committees appointed by the Board of Commissioners. Of the 229 people appointed by the board, only 13.9% were black and 2.2% were Native American.

The court found that voting among black voters in Columbus County was consistently cohesive since 1985 and irregularly cohesive prior to 1985. Since the mid-1980s, black voters had overwhelmingly voted for black or other minority candidates in elections. Prior to that time, when voting for black candidates seemed futile to black voters, it was often difficult to recruit black candidates. Those candidates who did run had difficulty mounting effective campaigns. Accordingly, black voters often sought to gain some political influence by supporting a white candidate who had a realistic chance of winning. White voters fairly consistently failed to vote for black candidates. White voters "had the opportunity to vote for a black candidate in a countywide or larger Democratic primary or runoff elections twelve times from 1980 through 1990," and in seven of those twelve elections, the black candidate received votes from less than 10% of white voters. The court found that racial bloc voting was "extreme and persistent" among white voters of Columbus County. The county also suffered a long history of intimidation and violence toward black voters and candidates, and through the modern era, racial appeals in elections where a minority candidate or a candidate thought to sympathize with minorities ran for office.

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[64] 782 F. Supp. 1097 (E.D.N.C. 1991).

The at-large method of election was problematic because Columbus County was one of the largest counties in North Carolina, making campaigning county-wide for the Board of Commissioners and Board of Education difficult for minority candidates who had less access to resources for traveling and advertising. Also, the residency requirement for elections prevented black voters from maximizing their voting strength by use of single shot voting.

The court found that the plaintiffs had sufficiently proven the at-large election method of selecting county Board of Commissioners violated Section 2 by denying black citizens an equal opportunity to participate in the political process and elect representatives of their choice. Further, there was no compelling governmental need for this system. The black community in certain parts of the county was "sufficiently large and geographically compact to allow the creation of a majority black single-member district." The county could, for example, be divided into five districts of equal population with at least one majority black voting-age population district. The plaintiffs presented two plans for such a division. The court ordered defendants to create a method of election for presentation to the court that would remedy these problems. Commissioners are currently elected from seven districts and there is one black member of the Board.

Webster v. Board of Education of Person County[65]

Black citizens of Person County brought suit against the Board of Education of Person County, arguing that the method of electing the Board of Education denied black citizens equal opportunity in voting. At the time of suit, the Board consisted of five members elected at-large in partisan elections for staggered four-year terms. The population of Person County was 30.2% black and 28.5% of the voting age population was black. Black candidates had run in nine of the eleven school board elections since 1974, each time in the Democratic primary, but only one black candidate was ever nominated or elected.

The parties entered into a consent decree to change the method of election to enhance the opportunity for black citizens to elect candidates of their choice. Under the new method of election, all five members of the Board of Education are elected for concurrent four-year terms in nonpartisan elections determined by plurality voting. The candidates are elected at-large with the top five candidates elected without run-offs. In addition to the voting change, the Person County Board of Commissioners, which was

[65] No. 1:91-cv-554 (M.D.N.C. 1991).

not party to the suit, agreed to establish a Task Force on Education to study and address concerns that the Board of Education was not responsive to interests of the black community.

White v. Franklin County[66]

Black and white voters of Franklin County brought suit under Section 2 of the Voting Rights Act to challenge the at-large election plan for the Franklin County Board of Commissioners. The at-large system had been in place for one hundred years and operated to dilute black voting strength. On April 21, 2003, the Board of Commissioners adopted a new voting plan, but minority voters complained that it was not submitted for Section 5 preclearance and would not operate to improve voting strength for black voters.

According to 2000 Census data, the population of Franklin County was 30% black and 4% other minorities, and 29% of the voting age population was black. From the formation of the existing method of election in the late 1800s to the filing of suit, only one black candidate was elected to the Board and no black person was currently serving on the Board. The Board was composed of five members elected at-large, but each seat was assigned to a residency district where the commissioner had to live. Board members served for four years and the elections were staggered.

The black population was largely concentrated in a few geographically compact parts of the county. White bloc voting operated to ensure defeat of black candidates to both the county board and Board of Education. Though 37% of school-aged children in the county were black, since 1993, black voters were generally only able to elect one out of seven (14%) members to the county Board of Education.

In March 2003, one of the plaintiffs presented the Board with three alternative election plans for the county commissioners. Each contained five single-member districts with at least one majority-minority district. The Board took no action on these suggested plans. In April 2003, the Board instead adopted a new plan that increased the number of commissioners from five to seven. Four of the commissioners would be elected from single-member districts and the remaining three would be elected at-large. In this plan, no district would contain a majority of black residents. The plan would instead further fracture black voters. The plan went so far in dividing black voters as to split contiguous black communities. When the Board discussed this plan in a closed executive session, only one and one-half

[66] 5:03-cv-00481 (E.D.N.C. 2004).

hours of discussion were held and members of the public were not allowed to provide input about alternative election plans.

Plaintiffs wanted the court to immediately halt the use of the new plan and the old system so that neither could be used in the 2004 election. The complaint was filed in June 2003. While the suit was pending, a referendum was held in November 2003 that changed the method of voting. The suit was stayed pending the outcome of the vote. The new method would provide for election of five commissioners from districts and two from the county at-large, pending preclearance. Once the method of election was changed, the parties took a dismissal with each party paying its own attorneys' fees, expenses and costs.

Wilkins v. Washington County Commissioners[67]

Black citizens of Washington County filed suit pursuant to Section 2 of the Voting Rights Act. The Washington County Board of Commissioners consisted of five members elected in staggered elections with partisan primaries for four-year terms. Four of the five commissioners were nominated in party primaries held within districts and then elected at-large. The fifth commissioner was both nominated and elected from the county at-large.

By consent order entered in 1994, the court determined that the four districts violated the requirement of "one-person, one-vote" and had to be redrawn. The court delayed further relief, however, to allow the parties the opportunity to resolve the claims under the Voting Rights Act.

According to the 1990 Census, 45.4% of the Washington County population was black and 41.6% of the voting age population was black. However, only two black candidates had been elected to the Board of Commissioners. As a result of the suit, the parties entered into a consent decree agreeing to a new method of election.

Under the new method, five members are elected for four-year staggered terms in partisan elections. One commissioner is elected from each of four districts, and the remaining commissioner is elected at-large. Black voters constitute a majority of the voting age population in two of the four districts.

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[67] No. 2:93-cv-00012 (E.D.N.C. 1996).

Willingham v. City of Jacksonville[68]

Plaintiffs filed suit pursuant to Section 2 of the Voting Rights Act, opposing the method of election of the Jacksonville City Council. In response to the suit, the City voluntarily changed the method of election in May of 1991. Under the new system, four council members are elected from wards and two are elected at-large. The mayor is elected in a separate at-large election.

The city had previously attempted in 1989 to change to a ward system, but the new system was not implemented until 1991 due to problems with preclearance. These problems were resolved when a significant portion of the Camp Lejeune Marine Corps Base was annexed into the city in 1990 and that territory was used to help create minority wards. The two minority wards that exist under the final plan actually have large majorities of white residents when the total population is considered, but are effectively minority districts because so much of the population consists of military personnel who do not vote in city elections. There are currently two black members of the City Council representing Districts One and Four.

[68] No. 4:89-cv-00046 (E.D.N.C. 1991).