TERMINATION OF VOTING RIGHTS ORDERS

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A. Background on Voting Rights Act cases in North Carolina


2. Minority citizens began to use Section 2 in the 1970s to challenge at-large methods of election which prevented them from electing candidates of their choice when white voters voted as a bloc for white candidates.


3. In 1980, however, the United States Supreme Court decided in Mobile v. Bolden, 446 US 55 (1980), that a Section 2 violation required proof that the election method had been adopted with the intent to keep minority voters from electing candidates. The decision made it significantly more difficult to prove a Section 2 violation.

4. Congress negated the Mobile v. Bolden decision in 1982 by amending Section 2 to say that a violation can be shown if the election method has the effect of discriminating against minority voters, regardless of the intent.

5. In Thornburg v. Gingles, 478 US 30 (1986), the Supreme Court established the three essential elements of a Section 2 violation when challenging an at-large method of election: (1) the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member districts; (2) the minority group must be able to show that it is politically cohesive; and (3) the minority group must be able to show that the white majority votes as a bloc to usually prevent the minority from electing its preferred candidates.

6. Following Gingles, in the late 1980s and early 1990s Section 2 lawsuits were brought or threatened against a number of city councils, boards of county commissioners and school boards which used at-large elections.

7. A few early Section 2 lawsuits, such as those brought in Halifax and Bladen counties, were contested, resulting in court judgments in favor of the plaintiffs plus orders that the local governments pay substantial amounts in plaintiffs' attorneys' fees.
8. Subsequently, most local boards settled Section 2 lawsuits, agreeing to alter their at-large elections, usually to provide for at least some members to be elected from districts.

9. City councils changed as a result of voting rights lawsuits or threats of lawsuits include: Ahoskie, Albemarle, Asheboro, Benson, Clinton, Dunn, Elizabeth City, Enfield, Fayetteville, Goldsboro, Greensboro, Greenville, High Point, Jacksonville, Jamesville, Laurinburg, Lexington, Mount Olive, Reidsville, Roanoke Rapids, Robersonville, Rocky Mount, Sanford, Siler City, Smithfield, Statesville, Thomasville, Williamston and Wilson.


11. School boards changed as a result of voting rights lawsuits or threats of lawsuits include: Anson, Beaufort, Bladen, Camden, Caswell, Chowan, Clinton, Cumberland, Duplin, Forsyth, Granville, Harnett, Iredell, Lenoir, Martin, Nash, Onslow, Pamlico, Perquimans, Person, Pitt, Robeson, Rowan-Salisbury, Sampson, Tyrrell, Vance, Wayne and Wilson.

12. Generally the judgment or consent decrees entered in Section 2 cases did not provide for any expiration date.

B. The Thomasville consent judgment

1. Before 1987 Thomasville had a mayor and a five-member city council, all of whom were elected from the city at large. Four of the five council members were required to reside in designated “wards,” but all were elected citywide.

2. Although African Americans constituted approximately 32 percent of the city’s population and 28 percent of the registered voters, no African American ever had been elected to the city council.

3. The city was sued by the NAACP in 1986 in federal district court for the Middle District of North Carolina, National Association for the Advancement of Colored People, et al., v. City of Thomasville, North Carolina, et al., No. 4:86CV00291, US Dist. Ct., MDNC.

4. The city and NAACP entered a consent judgment, approved by the court, in March 1987.

5. The consent judgment expanded the city council from five members to seven, with five to be elected from wards, by the voters of the ward only, and two to be elected from the city at large. The council members from wards were to be elected for
staggered, four-year terms. The two at-large members were to be elected every two years.

6. One of the five wards was drawn to have a majority of African Americans.

7. The 2000 census for Thomasville showed a total population of 19,788, of whom 13,799 (68.5 percent) were white and 4,731 (23.9 percent) were black.

C. The voter-initiated referendum

1. In early 2003 voters petitioned under GS 160A-104 to have a referendum on changing the method of electing the Thomasville city council.

2. The petition proposed to change to having all seven members of the council elected at large every two years.

3. Voters approved the change at the referendum held on April 15, 2003.

4. Following the referendum the city began to implement the change without court approval. (Because Thomasville is not in a county covered by Section 5 of the Voting Rights Act, the change in election method was not subject to preclearance by the United States Justice Department.)

5. In October 2003 the United States District Court enjoined the use of the new election method because it conflicted with the 1987 consent judgment.

6. The 2003 city election was delayed, then held in February 2004, using the five-ward/two-at large method as ordered in the 1987 consent judgment.

D. Approval of the change to at-large elections

1. In December 2004 Thomasville filed a motion under Rule 60(b) to terminate the 1987 consent judgment and allow the city to use the at-large election method approved in the April 2003 referendum, on the ground that it was no longer equitable that the judgment should have prospective application.

2. The NAACP opposed the motion, saying that the return to at-large elections would be a return to an election method which had been found discriminatory in 1987.

3. The court held several hearings, with evidence being presented by affidavit and deposition, including evidence on Thomasville voting patterns from an expert employed by the NAACP.

4. In November 2005 the court decided to terminate the 1987 consent judgment and allow the city to use the at-large election method approved in the April 2003 referendum, starting with the 2007 election.

5. This is the first decision in the country in which a Section 2 judgment has been later vacated by a federal court.
6. The basics of the court's decision were:

a. The consent judgment was treated as an “institutional reform” consent decree under *Rufo v. Inmates of the Suffolk County Jail*, 502 US 367 (1992). Under *Rufo* the moving party must show that a significant change in law or facts warrants relief from the consent decree and that the proposed change is suitably tailored to the circumstances. *Rufo* recognizes that a flexible approach is “often essential to achieving the goals of reform litigation.”

b. The consent judgment was considered remedial in nature, and the court decided it should not remain in effect longer than necessary to serve its remedial purpose. In the analogous situation of school desegregation cases, the courts have recognized that federal court orders are not intended to be permanent but are only temporary measures to remedy past discrimination. *Board of Educ. v. Dowell*, 498 US 237 (1991). “Returning schools to the control of local authorities at the earliest possible date is essential to restore their true accountability in our governmental system . . .” *Freeman v. Pitts*, 503 US 467, 490 (1992).

c. Election results since 1987 for the two at-large seats on the city council showed that racially polarized voting by white voters no longer was a barrier to black voters electing candidates of their choice. The history of voting for the at-large seats since 1987 no longer supported that element of a Section 2 violation under *Gingles*.

d. Critical to the court's decision was evidence (primarily from cross-examination of the NAACP’s expert) that candidates favored by African American voters had been successful in eight of 13 elections for at-large seats since 1987, including three of eight times when the favored candidate was black.

e. The election method approved in April 2003 is significantly different from the method used before 1987 in the number of seats being elected at the same time and in the absence of residency districts.

E. Lessons of the Thomasville decision for other local governments subject to Section 2 judgments

1. Court orders concerning methods of election are not intended to be permanent.

2. The court will consider a motion to vacate a judgment when circumstances have changed and the order has served its remedial purpose.

3. Key to a determination whether to vacate a Section 2 order is the voting history since the judgment was entered and what that history shows about the current likelihood of black voters being able to elect candidates of their choice.