

OP-91-0087



Shelby County Government

William N. Morris, Jr., Mayor

Brian L. Kuhn, County Attorney

MEMORANDUM

TO: Brian Kuhn
County Attorney

FROM: Donnie E. Wilson
Assistant County Attorney

DATE: November 4, 1991

RE: County Guidelines for Redistricting in Light of the
Supreme Court's Decision in Thornburg v. Gingles

Preliminarily, this analysis will attempt to serve only as a general guide and a point of reference in selecting a redistricting plan that meets the basic threshold requirements enunciated in Thornburg v. Gingles. The factors which must be taken into consideration to determine whether a specific characteristic of a particular plan meets the test enunciated in Thornburg v. Gingles are myriad. Suffice it to say, that those factors transcend a mere showing alone that the drawing of a prospective electoral district evidences a suspicious racial or geographical characteristic.

The essence of a claim under Section 2 of the Voting Rights Act of 1965 (42 U.S.C.S. 1973) as amended in 1982, is that a certain electoral practice or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by Black and White voters to elect their preferred representative. In evaluating a claim based on this Act, the Courts look at the "totality or the circumstances." In 1982, Congress amended Section 2 of the Voting Rights Act. This amendment was largely in response to the Court's opinion in Mobile v. Bolden, 446 U.S. 55 (1980), which held that in order to establish a violation either of Section 2 of the voting rights Act or the Fourteenth Amendment, minority voters must prove that a certain electoral mechanism was intentionally adopted or maintained by state officials for a discriminatory purpose. Congress substantially revised Section 2 to make clear that a violation could be provided by showing discriminatory effect alone. Thornburg v. Gingles, supra, was the first Supreme Court case to apply the new standard pursuant to the 1982 amendment.

Brian Kuhn
November 4, 1991
Page 2

The Supreme Court in reaching a decision in Thornburg, considered the legislative history of the 1982 amendment. Specifically, the Senate Judiciary Committee Majority Report which elaborated on the circumstances that might be indicative of a Section 2 violation, noting the following typical factors:

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register to vote, or otherwise to participate in the democratic process;
2. The extent to which voting in the elections of the state or political subdivision is racially polarized;
3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority groups;
4. If there is a candidate slating process, whether the members of the minority groups have been denied access to the process;
5. The extent to which the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. Whether political campaigns have been characterized by subtle racial appeals.
7. The extent to which members of the minority group have been elected to public office in the jurisdiction.

In addition to the factors enumerated above, the Court in Thornburg stated that additional factors that in some cases have probative value as part of a plaintiff's claim include lack of responsiveness on the part of elected officials to the particular needs of the minority group, and whether the political subdivision has a tenuous policy governing voting.

Brian Kuhn
November 4, 1991
Page 3

The Court in Thornburg made a exhaustive review of the North Carolina electoral process based on the foregoing standard. In fact, the Court reviewed the history of the state's voting practices going back to 1900.

Thus, in order to determine whether any of the alternate plans under consideration for redistricting in Shelby County violate Section 2 of the Voting Rights as amended and as enunciated in Thornburg v. Gingles, an exhaustive review of the totality of circumstances would have to be made, with no less scrutiny than that utilized by the Court in the Thornburg case.

There are, however, plans which receive more scrutiny than others. For example, at-large or multimember districts should not be formed with the view toward preventing a minority group within from electing an official if that group's population is equal to or exceeds in population ~~the~~ single member districts. Care should also be taken when drawing districts lines not to "fracture" minority populations. Packing results when a minority group is concentrated into one or more districts so that the group constitutes an overwhelming majority in those districts. Fracturing or dilution occurs when small percentages of a block of minority voters are taken off the minority block and added to a large majority district. It should be noted, however, that multimember districts and at-large elections schemes are not per se violative of minority rights. The Court in Thornburg stated that minority members who contend that multimember form of districting violate Section 2, must also show that the white majority votes sufficiently as a block to enable it - in the absence of special circumstances, such as the minority candidate running unopposed, to defeat the minority candidate. Moreover, any prospective districting plan should be as uniform as possible and not incongruent for the sake of diluting or packing the minority vote.

In summary, while certain redistricting schemes are more suspect than others, in the final analysis, no one characteristic of a prospective redistricting plan is dispositive of the issue of whether such plan is consistent with the Supreme Court's holding in Thornburg.

Accordingly, the review of any plan encompasses the consideration of the "totality of circumstances".

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