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From: Ness, Claire J.
Sent: Tuesday, September 28, 2021 10:20 PM
To: -Grp-NDLA Interim Redistricting
Cc: Bjornson, John D.; Richter, Vonette J.; Kramer, Samantha E.; Thompson, Emily L.
Subject: Voting Rights Act cases

Redistricting Committee members,

This email responds to Representative Lefor's request for more information about Voting Rights Act litigation. There appear to be hundreds of cases in which parties litigated the application of Section 2 of the Voting Rights Act. Not all the cases involve state legislative redistricting. Some involve redistricting of Congressional seats, and other involve the methods for electing political subdivisions' officials. The following are just a few examples of these cases.

Thornburg v. Gingles, 478 U.S. 30 (1986).

Gingles is one of the most cited cases involving Section 2 of the Voting Rights Act. In this case, the United States Supreme Court decided a North Carolina legislative redistricting plan including five multimember districts violated Section 2 of the Voting Rights Act "by impairing the opportunity of black voters 'to participate in the political process and to elect representatives of their choice.'" In a very lengthy opinion citing detailed statistical analyses, the court discussed the way multimember districts may operate to dilute minority votes. The court also articulated the three Gingles preconditions for establishing that a multimember district "operate[s] to impair minority voters' ability to elect representatives of their choice..." and analyzed several of the Senate factors discussed in presentations to the Redistricting Committee. The court also noted the success of some minority candidates in previous elections may be relevant to an analysis of vote dilution, depending on why the candidates were successful. The court stated:

[M]ultimember districts may impair the ability of blacks to elect representatives of their choice where blacks vote sufficiently as a bloc as to be able to elect their preferred candidates in a black majority, single-member district and where a white majority votes sufficiently as a bloc usually to defeat the candidates chosen by blacks. It is the *difference* between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives.

League of United Latin American Citizens v. Perry, 548 U.S. 399 (2006).

League of United Latin American Citizens, like most cases involving Section 2 of the Voting Rights Act, has a complicated background. After years of litigation, the United States Supreme Court decided Texas's mid-decade redistricting plan diluted the Latino vote by reconfiguring one of the state's Congressional districts. The district had been a "Latino opportunity district" but was redrawn in 2003 to protect an incumbent who had become increasingly unpopular with Latino voters. Texas argued the dilution of the Latino vote in that district was offset by the creation of a new majority-minority district. The Supreme Court disagreed. The court applied the three Gingles preconditions, decided the preconditions were met, examined the totality of the circumstances, and said the dilution of the Latino vote in the new redistricting plan was unlawful. The majority opinion of the court stated, in part:

The State chose to break apart a Latino opportunity district to protect the incumbent congressman from the growing dissatisfaction of the cohesive and politically active Latino community in the district. The State then purported to compensate for this harm by creating an entirely new district that combined two groups of Latinos, hundreds of miles apart, that represent different communities of interest. Under § 2, the State must be held accountable for the effect of these choices in denying equal opportunity to Latino voters.

The court also addressed other issues in the case. For example, the court decided the African American population in one district was too small to satisfy the first Gingles precondition.

Bone Shirt v. Hazeltine, 461 F.3d 1011 (8th Cir. 2006).

Bone Shirt has a very complicated procedural history. In 2002, Alfred Bone Shirt sued the South Dakota Secretary of State and multiple legislators asserting the state's legislative redistricting plan diluted the Native American vote by packing too many Native Americans into one district and by preventing them from being a majority voting block in multiple districts. The district court agreed, but the state refused to redraw the plan. The court then adopted a plan for the state reducing the Native American voting-age population in one district from 86 percent to 65.56 percent and creating subdistricts in another district so Native Americans comprised a majority (74.36 percent) of a subdistrict. Ultimately, the federal appellate court applied the Gingles preconditions and Senate factors, found the district court respected traditional redistricting principles and geographic boundaries in its plan, and upheld the district court's decisions.

Department of Justice cases

In addition to private plaintiffs, the federal government may bring vote dilution cases. The Voting Section of the Civil Rights Division of the United States Department of Justice lists the following cases the department has litigated under Section 2 of the Voting Rights Act on its website.

CASES RAISING CLAIMS UNDER SECTION 2 OF THE VOTING RIGHTS ACT

- United States v. City of West Monroe, LA (W.D. La. 2021)
- United States v. Chamberlain School District (D.S.D. 2020)
- United States v. City of Eastpointe, MI (E.D. Mich. 2017)
- United States v. State of North Carolina (M.D.N.C. 2013)
- United States v. State of Texas (W.D. Tex. 2013)
- United States v. State of Texas (S.D. Tex. 2013)
- United States v. Town of Lake Park, FL (S.D. Fla. 2009)
- United States v. Euclid City School District Board of Education, OH (N.D. Ohio 2008)
- United States v. Salem County and the Borough of Penns Grove, NJ (D.N.J. 2008)
- United States v. The School Board of Osceola County, FL (M.D. Fla. 2008)
- United States v. Georgetown County School District, et al. SC (D.S.C. 2008)
- United States v. City of Philadelphia, PA (E.D. Pa. 2007)
- United States v. Village of Port Chester, NY (S.D.N.Y. 2006)
- United States v. City of Euclid, et al. OH (N.D. Ohio 2006)
- United States v. Long County, GA (S.D. Ga. 2006)
- United States v. City of Boston, MA (D. Mass. 2005)
- United States v. Osceola County, FL (M.D. Fla. 2005)
- United States v. Ike Brown and Noxubee County, MS (S.D. Miss. 2005)
- United States v. Berks County, PA (E.D. Pa. 2003)
- United States v. Osceola County, FL (M.D. Fla. 2002)
- United States v. Alamosa County, CO (D. Colo. 2001)
- United States v. Crockett County, TN (W.D. Tenn. 2001)
- United States v. Charleston County, SC (D.S.C. 2001)
- United States v. City of Hamtramck, MI (E.D. Mich. 2000)
- United States v. Upper San Gabriel Valley Municipal Water District, CA (C.D. Cal. 2000)
- United States v. Morgan City, LA (W.D. La. 2000)
- Grieg v. City of St. Martinville, LA (W.D. La. 2000)
- United States v. City of Santa Paula, CA (C.D. Cal. 2000)
- United States v. State of South Dakota (D.S.C. 2000)
- United States v. Roosevelt County, MT (D. Mont. 2000)
- United States v. Town of Cicero, IL (N.D. Ill. 2000)
- United States v. Benson County, ND (D.N.D. 2000)
- United States v. City of Passaic, NJ (D.N.J. 1999)
- United States v. Blaine County, MT (D. Mont. 1999)
- United States v. Marion County, GA (M.D. Ga. 1999)
- United States v. Passaic City and Passaic County, NJ (D.N.J. 1999) Complaint Consent Decree
- United States v. Day County and Enemy Swim Sanitary District, SD (D.S.D. 1999)
- United States v. City of Lawrence, MA (D. Mass. 1998)
- United States v. Cibola County, NM (D. N.M. 1993)
- United States v. Sandoval County, NM (D. N.M. 1988)

Kind regards,
Claire

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