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# Voting Law and Overcoming Barriers to Entry Presentation Documents

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# 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 40 of the state's 100 counties are covered by Section 5 of the Act,[2] 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 of the Act, Section 5 has arguably 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. Indeed, North Carolina's two largest cities, Charlotte and Raleigh, are not in covered counties. Durham and Winston-Salem are also not covered. Thus, it is remarkable that even though 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.[3] Of those 45 objection 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.

There are ten instances of North Carolina Section 5 submissions being withdrawn from consideration since 1982 - five of them since 2000.[4] This is a strong indication of the beneficial effect of Section 5 review short of the Department of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 of the Voting Rights Act. 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

[2] 28 C.F.R. pt. 51, appendix. For convenience, the North Carolina counties covered by Section 5 and their dates of coverage are listed in Appendix 1 to this report.

[3] A list of objections since 1982 is contained in Appendix 2; Appendix 3 contains a detailed summary of each objection. One objection letter may relate to several changes that were contained in a single submission.

[4] See Appendix 4 for a list of submissions from North Carolina that have been withdrawn and the date they were withdrawn.

candidates of their choice and, thereby, preserved the gains obtained through earlier litigation, without the need for the original plaintiffs to return to court.[5]

It is also 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.[6] 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,[7] local election officials in the covered counties are now generally in favor of keeping the process in place.[8]

There has been extensive voting rights litigation since 1982.[9] 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.[10] North Carolina has the dubious distinction of being the state that produced both the *Thornburg v. Gingles*[11] 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*[12] 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 [13]

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[5] *See* Moore v. Beaufort County, 936 F.2d 159 (4th Cir. 1991) and Appendix 4, submission No. 2001-4063.

[6] Testimony of Bobbi Taylor of Yanceyville, North Carolina, at a Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, North Carolina A&T University, Greensboro, North Carolina, November 14, 2005; transcript on file with the UNC School of Law Center for Civil Rights, at pages 41-42.

[7] *See* William Keech and Michael Sistrom, *North Carolina, in* Quiet Revolution in the South 162 (Chandler Davidson and Bernard Grofman eds. 1994) [hereinafter "Keech & Sistrom"].

[8] *See The Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 109th Cong. (2005) (Supplemental Statement of Anita Earls), attached hereto as Appendix 5.

[9] See Appendix 6 for a list of all federal court voting rights litigation in North Carolina since 1982 and Appendix 7 for detailed summaries of each case.

[10] *See, e.g., Stephenson v. Bartlett,* 582 S.E. 2d 247 (N.C. 2003); *Pender County v. Bartlett,* No. 04-696 (Wake Co. Sup. Ct. Dec. 2, 2005).

[11] 478 U.S. 30 (1986).

[12] 509 U.S. 630 (1993).

[13] Appendix 5 contains a more extensive review of pre- and post-1982 problems and incidents of discrimination in North Carolina.

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