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Campaign Legal Center Voting Rights Litigation Summary
June 2015

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1. U.S. SUPREME COURT

a. Pending cases

***Arizona State Legislature v. Arizona Independent Redistricting Commission*, No. CV-12-01211-PHX-PGR-MMS-GMS (D. Ariz.), No. 13-1314 (U.S.)**

Case Description: In 2000, Arizona voters passed a referendum that took the power to draw congressional districts away from the partisan state legislature and gave it to a five-member independent redistricting commission. In this lawsuit, the state legislature is arguing that because the independent redistricting commission was created by public referendum rather than legislative action, it is not part of the "legislature" of a state and therefore, under the Elections Clause of the Constitution, cannot exercise redistricting authority. A three-judge district court rejected this argument, holding that under Supreme Court precedent the word "legislature" includes public referenda.

Case Status: The Supreme Court heard oral argument on March 2, 2015. A decision is expected by the end of June 2015.

CLC Position/Involvement: On January 23, 2015, the CLC joined with the League of Women Voters of the United States, the American Civil Liberties Union, Common Cause and Democracy 21 to file an *amici* brief defending Arizona's independent commission law.

***Evenwell v. Abbott*, No. A-14-CV-335-LY-CH-MHS (W.D. Tex.), No. 14-940 (U.S.)**

Case Description: In this lawsuit, the plaintiffs argue that Texas's senate districts violate the Constitution's one-person, one-vote requirement because the state used total population rather than citizen voting-age population (CVAP) as the equalized population base. A three-judge district court dismissed the complaint, reasoning that under settled Supreme Court precedent states are free to choose any reasonable, non-discriminatory population base, including total population. If the plaintiffs prevail, jurisdictions will generally have to reduce the number of districts with high minority populations (and thus lower CVAPs) and increase the number of districts with high white populations (and thus higher CVAPs).

Case Status: The Supreme Court noted probable jurisdiction on May 26, 2015 and will hear the case at some point during the October 2015 term.

CLC Position/Involvement: The CLC plans to file an *amicus* brief supporting the state's position.

b. Past cases/orders

Alabama Legislative Black Caucus v. Alabama, No. 2:12-CV-691 (M.D. Ala.), No. 13-895 (U.S.), and *Alabama Democratic Conference v. Alabama*, No. 2:12-CV-1081 (M.D. Ala.), No. 13-1138 (U.S.)

Case Description: These consolidated cases involve challenges to Alabama's 2011 state legislative redistricting. The plaintiffs allege that the Alabama legislature engaged in impermissible racial gerrymandering by packing black voters into minority-majority districts. A three-judge district court found in favor of the state on several alternative grounds, with one judge dissenting. First, the district court held that the Alabama Democratic Conference lacked standing to sue. Second, the district court explained that the plaintiffs had failed to make the necessary showing that Alabama's legislative map as a whole—as opposed to the design of certain districts— was the product of racial gerrymandering. Third, the district court found that race was not a predominant factor motivating the state legislature during redistricting. Fourth, the district court reasoned that Alabama's map would survive strict scrutiny in any event because the map was narrowly tailored to serve the state's compelling interest in complying with the requirements of Section 5 of the Voting Rights Act of 1965.

Case Status: The Supreme Court issued a 5-4 decision on March 25, 2015 reversing the district court. The Court held that all plaintiffs presumptively have standing to sue, that the district court had improperly refused to consider whether race predominated in the drawing of individual districts and that the state had misunderstood the requirements of Section 5 of the Voting Rights Act. The Court therefore remanded the case to the district court, which has ordered additional briefing on liability.

CLC Position/Involvement: The CLC assisted the plaintiffs by reviewing their draft Supreme Court brief and offering comments. CLC continues to track this case.

Dickson v. Rucho, No. 201PA12-2 (N.C.), No. 14-839 (U.S.)

Case Description: This case involves a racial gerrymandering challenge to North Carolina's 2011 redistricting. According to the plaintiffs, North Carolina followed an impermissible policy of keeping the African American voting-age population in each black-majority district the same in the new map as it had been in the old map. North Carolina did not consider whether the African American community could have elected candidates of its choice in certain districts at a lower population percentage. The North Carolina Supreme Court rejected the challenge, holding that the state's policy was intended to ensure compliance with Section 2 of the Voting Rights Act of 1965 and that the maps thus survived strict scrutiny even assuming race was a predominant motive in their design.

Case Status: On April 20, 2015, the Supreme Court granted certiorari, vacated the North Carolina Supreme Court's decision, and remanded the case in light of its March 25 decision in *Alabama Legislative Black Caucus v. Alabama* and *Alabama Democratic Conference v. Alabama*. The North Carolina Supreme Court has set argument on remand for August 31, 2015.

CLC Position/Involvement: J. Gerald Hebert, Executive Director at the CLC, joined with other election law professors to file an *amici* brief at the Supreme Court supporting the plaintiffs.

2. OTHER CASES CHALLENGING VOTING RESTRICTIONS

***Veasey v. Perry*, No. 13-CV-00193 (S.D. Tex.), Nos. 14-41126 & 14-41127 (5th Cir), No. 14A393 (U.S.)**

Case Description: In this lawsuit, various Texas citizens, civil-rights groups, and the United States all challenge Texas's voter photo ID law, Senate Bill 14 (S.B. 14), under the Constitution and Section 2 of the Voting Rights Act of 1965. S.B. 14 requires voters to show one of several limited forms of state-issued photo ID in order to vote and forces those lacking such ID to jump through many hoops to regain the franchise. Plaintiffs and plaintiff-intervenors make four claims, though not all plaintiffs and plaintiff-intervenors raise all claims. They argue that S.B. 14, the most restrictive voter ID law in the nation, (1) was passed with a racially discriminatory purpose, (2) has impermissible racially discriminatory effects, (3) violates the constitutional right to vote and (4) constitutes a poll tax. The district court found in favor of the plaintiffs on all four claims and issued an injunction blocking enforcement of the photo ID law. The Fifth Circuit stayed that injunction pending appeal and the Supreme Court refused to vacate that stay.

Case Status: The Fifth Circuit heard argument on Texas's merits appeal on April 28, 2015. Subsequent to oral argument, Texas passed a bill that purports to reduce S.B. 14's burdens by eliminating fees for election IDs, though the bill actually does little to reduce burdens for most affected voters. A decision is expected soon.

CLC Position/Involvement: Attorneys at the CLC serve as co-counsel to the lead plaintiffs, including Congressman Marc Veasey and the League of United Latin American Citizens (LULAC).

***Baca v. Berry*, No. 1:13-CV-00076-WJ-WPL (D.N.M.), Nos. 14-2174 & No. 14-2181 (10th Cir.)**

Case Description: In this lawsuit, citizens of Albuquerque challenged 2011 city council redistricting, arguing that the new map violated the one-person, one-vote principle and diluted Hispanic votes in violation of Section 2 of the Voting Rights Act of 1965. After a change in Albuquerque election law prompted plaintiffs to seek dismissal their claims without prejudice, the district court dismissed their claims with prejudice and sanctioned their attorneys for needlessly prolonging a frivolous case. The district court refused, however, to sanction or award attorneys' fees against the individual plaintiffs. The attorneys appealed this sanctions order to the Tenth Circuit, arguing that the case was far from frivolous and actually had significant merit. The city then cross-appealed the district court's refusal to award attorneys' fees against the individual plaintiffs.

Case Status: The Tenth Circuit heard argument on May 6, 2015. At oral argument, the city abandoned its cross-appeal. The individual plaintiffs have filed a motion seeking sanctions against the city for filing a frivolous cross-appeal in bad faith. A decision on the attorneys' appeal and the plaintiffs' motion for sanctions is expected soon.

CLC Position/Involvement: Attorneys at the CLC represent the plaintiffs in the cross-appeal. Attorneys at the CLC plan to file an *amicus* brief in the Tenth Circuit in a non-voting rights case, *Han-Noggle v. Albuquerque*, No. 1:13:cv:00894-CG-GBW (D.N.M.), No. 15-2051 (5th Cir.), which also involves an attempt by the city of Albuquerque to force civil rights plaintiffs to pay its attorneys' fees.

***Perez v. Texas*, No. 11-CA-360-OLG-JES-XR (W.D. Tex.), Nos. 11–713, 11–714 & 11–715 (U.S.)**

Case Description: Various groups of plaintiffs challenged Texas's 2011 redistricting for the Texas

House and Congress. (In a related case, *Davis v. Perry*, several plaintiffs challenged the Texas Senate map, but those plaintiffs received all the relief they sought and that case is no longer pending,). The plaintiffs alleged the maps were intentionally racially discriminatory in violation of the Constitution and the Voting Rights Act, were unconstitutional racial gerrymanders, and diluted minority voting strength in violation of Section 2 of the Voting Rights Act. Simultaneously, in D.C. district court, Texas sought to preclear its maps under Section 5 of the Voting Rights Act. After it became clear that Texas's maps were unlikely to receive preclearance, the Supreme Court ordered Texas to implement interim maps for the 2012 election.

Subsequently, the Supreme Court declared the coverage formula for Section 5 unconstitutional, relieving Texas of the need to receive preclearance. The Texas legislature also in 2013 replaced its 2011 maps with new maps, which were very similar to the interim maps used in the 2012 election. But because the plaintiffs amended their complaints to seek relief under Section 3(c) of the Voting Rights Act, which empowers the district court to require Texas again to comply with Section 5's preclearance requirements, the district court determined that the case against the 2011 maps was not moot. Various plaintiffs also filed claims against the 2013 maps, alleging that those maps also violated the Constitution and Section 2 of the Voting Rights Act.

Case Status: A three-judge district court held a trial on the claims against the 2011 maps in August 2014 and requested additional briefing on the racial gerrymandering claims in March 2015. Meanwhile, in a post-trial filing, Texas renewed its argument that all claims against the 2011 maps are moot. A decision on claims against the 2011 map is expected soon. The same court will then hold a separate trial on claims against the 2013 maps.

CLC Position/Involvement: In his private practice, J. Gerald Hebert, Executive Director at the CLC, represents one group of plaintiffs in this case.

***North Carolina State Conference of the NAACP v. McCrory*, Nos. 1:13-cv-658, 1:13-CV-660 & 1:13-CV-861 (M.D.N.C.), No. 14-1845 (4th Cir.), No. 14A358 (U.S.)**

Case Description: Various groups of plaintiffs challenge a voting law passed in North Carolina in 2013—immediately after *Shelby County* removed Section 5 preclearance requirements—that severely restricts early voting, eliminates same-day voter registration, empowers poll monitors to challenge the validity of ballots, enacts new voter registration restrictions, blocks jurisdictions from counting ballots cast in the wrong precinct and imposes a new voter ID requirement that will go into effect in 2016. According to plaintiffs, North Carolina's bill is intentionally racially discriminatory, violates the constitutional right to vote, reduces the ability of minority voters to participate in the political process in violation of Section 2 of the Voting Rights Act and discriminates against young voters in violation of the Twenty-Sixth Amendment.

Plaintiffs sought a preliminary injunction, which the district court denied. The Fourth Circuit reversed in part, ordering the district court to block implementation of the same-day registration and wrong-precinct provisions. The Supreme Court subsequently stayed the appeals court's decision, so North Carolina was able to enforce all voting restrictions for the 2014 elections.

Case Status: The Supreme Court denied North Carolina's petition for certiorari on April 7, 2015, so the partial preliminary injunction ordered by the Fourth Circuit is now in effect. The district court will hold a trial on the merits of all claims this summer. Plaintiffs will likely bring new claims against the photo voter ID requirement once that requirement goes into effect.

CLC Position/Involvement: The CLC is tracking this case.

One Wisconsin Institute, Inc. v. Nichol, No. 15-cv-324 (W.D. Wisc.)

Case Description: Plaintiffs challenge a series of voting changes implemented in Wisconsin since the 2010 election. These include reducing early-voting time, eliminating straight party-ticket voting, imposing new barriers to accessing absentee ballots, and implementing new voting registration restrictions, new residency requirements for voting and a new voter photo ID requirement. Plaintiffs allege that this package of voting changes dilutes the ability of minorities to elect candidates of choice in violation of Section 2 of the Voting Rights Act, undermines the right to vote in violation of the First and Fourteenth Amendments, impermissibly discriminates against voters based on their partisan preferences in violation of the Fourteenth Amendment, intentionally discriminates against minority voters, and discriminates against young voters in violation of the Twenty-Sixth Amendment.

Case Status: Plaintiffs filed their complaint on May 29, 2015. In a separate case, the Seventh Circuit upheld Wisconsin's photo voter ID law against a challenge brought under Section 2 of the Voting Rights Act and the constitutional right to vote. *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014), *cert. denied*, 135 S.Ct. 1551 (2015).

CLC Position/Involvement: The CLC is tracking this case.

The Ohio Organizing Collaborative v. Husted, No. 2:15-cv-1802 (S.D. Ohio)

Case Description: Plaintiffs challenge a series of Ohio voting restrictions, many implemented since the 2010 election. These include reducing early-voting time, limiting early voting locations to one per county, requiring periodic voter registration purges, decreasing the number of electronic voting machines per-voter each county using electronic voting must have on hand, making it more difficult to obtain, cast and count absentee and provisional ballots, and implementing wrong-precinct-voter rules that have the effect of treating voters in different counties differently.

Plaintiffs allege that this package of voting changes is intentionally racially discriminatory, dilutes the ability of minorities to elect candidates of choice in violation of Section 2 of the Voting Rights Act, undermines the right to vote in violation of the First and Fourteenth Amendments and impermissibly discriminates against voters based on their partisan preferences in violation of the Fourteenth Amendment. The plaintiffs also allege that the restrictions on obtaining, casting and counting absentee and provisional ballots violate procedural due process requirements and that the disparate treatment of wrong-precinct voters violates the Fourteenth Amendment's Equal Protection Clause under the Supreme Court's decision in *Bush v. Gore*.

Case Status: Plaintiffs filed their complaint on May 8, 2015. In a separate case, *NAACP v. Husted*, various plaintiffs recently settled Voting Rights Act and constitutional challenges to Ohio's early voting cutbacks. Under the settlement, Ohio agreed to increase early voting hours statewide, though even these increased hours still fall short of what Ohio used to provide (the settlement also does not affect Ohio's decision to no longer allow individual jurisdictions to set their own early voting hours).

CLC Position/Involvement: The CLC is tracking this case.