Overview of Current Racial Discrimination in Voting in North Carolina

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I. Introduction

I have seventeen years’ experience in the field of voting rights. I began representing plaintiffs in Section 2 Voting Rights cases in North Carolina in 1988. From April 1998 to August 2000 I was a Deputy Assistant Attorney General in the Civil Rights Division of the United States Department of Justice where I had oversight responsibility for the Voting Section, among others. For three years I was the Voting Rights Project Director for the Lawyers’ Committee for Civil Rights Under Law. Today I work on a variety of voting rights issues in North Carolina.

In this testimony I will report on current discrimination in voting in North Carolina, from 1995 to the present. I then will review some of the discriminatory practices and incidents in this state from 1982 to 1994. The third part of this statement will explain the unique circumstances in North Carolina that create serious implications for the future of majority-minority districts should Section 5 of the Voting Rights Act not be reauthorized. Finally, I will briefly address the importance of Section 5 and Section 203 to the work of the Justice Department in protecting minority voting rights.


A. Section 5 Objections. Only 40 of North Carolina’s 100 counties are covered by Section 5 of the Voting Rights Act. Since 1997 the Department of Justice has issued two objections to proposed changes affecting voting but this vastly underestimates the impact of the Section 5 review process on the ability of black voters to have an opportunity to participate in elections. These two objections are relevant to illustrate that polarized voting is still prevalent in the state and that left to their own devices, local jurisdictions are likely to dilute minority voting strength.

The most recent objection was issued in July of 2002 when Harnett County submitted a redistricting plan for the county school board and board of county commissioners with no majority-black districts. The county’s population is 22.6% black and the voting age population is 20.7% black. In 1989 the county was required to implement single-member districts with one majority-black district as a result of a consent decree entered in Porter v. Steward, No. 89-950...
The earlier objection was issued in February 1997 finding that an at-large method of election with staggered terms for an Advisory Council for the Camp Butner Reservation, a newly created local governing entity. Thirty-three percent of the Reservation’s 2,063 registered voters in 1996 were black, and the Department looked to other elections in the same county to determine that no black candidate had ever been elected to the at-large Granville County Commission or School Board, even though blacks were 43 percent of the county’s total population and numerous black candidates had run for those offices. Both the county commission and the school board had been sued previously under Section 2 of the Voting Rights Act. The Department had evidence that voting in the county was racially polarized. Thus, they concluded that the proposed at-large election system for the Camp Butner Reservation violated Section 2 and Section 5 of the Voting Rights Act and that the jurisdiction failed to meet its burden to demonstrate that the proposed change had neither a discriminatory purpose nor a discriminatory effect. See Letter to Susan K. Nichols, Esq. from Isabelle Katz Pinzler, Acting Assistant Attorney General dated February 3, 1997 (Copy attached, available at: http://www.usdoj.gov/crt/voting/sec_5/ltr/l_020397.pdf.)

While these objections are instructive, it is important to note that Section 5 review has a significant deterrent effect that is less obvious but very important. For example, in the mid-1990’s a traditionally African-American community in North Carolina called “Battleboro” was eager to be a part of the economic growth occurring around the city of Rocky Mount. Predominantly white neighborhoods to the west of Battleboro were being annexed by the City, but the City’s leaders refused to annex Battleboro. Annexation would bring municipal services to the residents of Battleboro as well as give them a vote in local elections. Knowing that their taxes would also increase, the residents were still convinced that their future as a community depended on being a part of the City. They did not want to be left behind while areas around them experienced economic growth and the benefits of being part of the municipality.

At the time, Rocky Mount was a majority-white city, although the differential rates of population growth were apparent. City planners projected that by the 2000 Census, Rocky Mount would be a majority-black city. Annexing Battleboro would only increase this trend. But the city was also annexing white residential areas at the time. Rocky Mount straddles Edgecombe and Nash Counties, both of which are covered jurisdictions under Section 5 of the Voting Rights Act, hence, any changes affecting voting in the City of Rocky Mount must be submitted for preclearance.

Residents of Battleboro organized and lobbied the Mayor and City Council members to annex them. One of the key factors that led the city to agree to annex this community was the fact that
community members were prepared to vigorously protest any future annexations of white neighborhoods in the Section 5 preclearance process. The City would face fierce opposition to other development plans if they refused to incorporate the black community. Sustained community pressure, with legal representation, ultimately led the City to back down and agree to annex Battleboro. Today the residents enjoy municipal services, the right to vote in city elections, rising property values and a higher standard of living because of their incorporation into the City of Rocky Mount. As of the 2000 Census, Rocky Mount’s population was 56% African-American.

Knowing that any changes affecting voting will receive Justice Department scrutiny, state lawmakers and to a lesser extent, local decision-makers in the covered counties are generally more careful to avoid the most blatant forms of discrimination. More importantly, the retrogression standard and preclearance requirement can be a bargaining chip that minority voters can use to assert their right to equal treatment.

B. Efforts to Dismantle Majority-Black Districts. There is a disturbing and mostly quiet counter-revolution underway among local jurisdictions in North Carolina to dismantle majority-black districts and return to at-large election methods, or alternative districting schemes that do not include majority-black districts. Recently a number of counties and one city who were previously sued under Section 2 of the Voting Rights Act to require them to abandon at-large systems have filed motions seeking to dissolve the consent decrees or court orders that currently bind them. In the case of Montgomery County Branch of the NAACP v. Montgomery County, No. C-90-27-R, (E.D.N.C.), the plaintiffs were able to oppose the motion sufficiently that the County backed down and negotiated a settlement with them. The Court’s Supplemental Order, issued July 2, 2003, provides a new method of election that moves from an 4-1 system, with one commissioner elected at-large, to a 3-2 system that retains one majority black district, but has two at-large seats. The Order also provides that the case will be dismissed after five years, thereby dissolving any court order that there must be a majority black district for the board of county commissioners. Montgomery County is not covered by Section 5 of the Voting Rights Act.

A similar motion has now been filed to terminate the Consent Order in NAACP v. City of Thomasville, No. 4:86CV291 (M.D. N.C.). In two other counties efforts are underway to dismantle court orders requiring majority-black districts but no motions have been filed in court. Both of those counties, Beaufort County and Columbus County, are covered by Section 5 of the Voting Rights Act.

This is a disturbing development. Under Section 5, the Department of Justice has the power to prevent retrogression even where Federal Judges are ready to throw out voting rights remedies. Without Section 5, there would be no other limit on jurisdictions that seek to eliminate majority black districts.

C. Out of Precinct Provisional Ballots in the 2004 Election. In February the State Supreme Court ruled that around 12,000 ballots cast on Election Day by voters outside their home precincts would not be counted. James v. Bartlett, No. 602P04-2, (N.C. February 4, 2005). The ballots under question were cast disproportionately by black voters. Statewide, the estimates
are that 36% of the ballots cast out of precinct on election day were cast by black voters although they were just 18% of the electorate. In some counties the disparity was even greater. For example, 41% of Wake County’s provisional ballots were cast by black voters. Many of these voters were never notified where to vote by the state, due to a backlog of new registrants. In addition, many voters were advised by local election officials that provisional ballots votes cast outside their home precincts would count. As Bob Hall from Democracy North Carolina notes, out-of-precinct voting “especially helps working class, young and minority voters. Our research shows that black voters cast more than one third of the state’s out-of-precinct ballots, while less than one fifth of all votes in November’s elections came from African-Americans.” Black voters disproportionately live in low income neighborhoods without access to transportation or flexible work schedules that might allow them to get to their home precincts.¹

The case is still pending before the Wake County Superior Court, and the General Assembly passed a law attempting to nullify the effect of the Supreme Court’s February 4th opinion. However, Section 5 of the Voting Rights Act should be a bar to any change in voting rules that rejects a disproportionate number of ballots cast by black voters.

D. Election Protection Efforts in 2004. Attached to this statement is a preliminary draft report detailing the types of problems that occurred in North Carolina during the November, 2004 election. Election administration in this state continues to need improvements, particularly because polling place officials turn voters away without justification. Election protection workers were able to intervene in numerous cases to rectify the situation, but many other incidents were not satisfactorily resolved on election day. Miscellaneous “dirty tricks”, such as altering polling place registers to make it appear that black voters had already voted when they had not, and posting signs saying that voting would take place on Wednesday, November 5th, occurred in predominantly black precincts in various parts of the state.

In the Leadership Conference of Civil Right’s February 2004 memo to the Department of Justice, Wake County and Scotland County in North Carolina were both mentioned as potential violators of voting rights standards. LCCR reported possible voter intimidation at Latino polling places and a concern that the Wake County Board of Elections would not inform Latino voters in the area of incomplete registration applications before the November elections. The Scotland County Board of Elections was in disputes with black activists because black voters were not being allowed to choose who could assist them at the polls on Election Day – another issue of potential voter intimidation.²

E. Discrimination in the North Carolina State Legislature. Attached to this statement is an expert witness report prepared by Kerry L. Haynie, PhD earlier this year for submission in a redistricting challenge currently pending in state court. His deposition in the case is also attached. He reports on the findings of research he did of the North Carolina state legislature with two significant findings. First, a majority of African-American legislators

introduced legislation concerning black interests in the three years he studied, and that at least twice as many African-American legislators did so than non-black legislators. This has important implications demonstrating that descriptive representation does translate into substantive representation for black voters. Second, he found that controlling for all other possible explanations, the perceptions by other legislators and by lobbyists of black legislators effectiveness was determined by race. In other words, black legislators were consistently rated as less effective than their white counterparts by their colleagues and by lobbyists.


A. Discriminative Affecting Ability of Blacks to Participate in Voting and Electoral Politics. The pervasive and persistent refusal of white voters in North Carolina to vote for black candidates has consistently operated to deny black voters an equal opportunity to elect candidates of their choice. Richard Engstrom’s 1995 study of 50 recent elections in North Carolina in which voters have been presented with a choice between African-American and white candidates, including elections for the U.S. House of Representatives, statewide elections to high profile and low profile offices, and state legislative elections in both single-member and multi-member districts, found that 49 of them were characterized by racially polarized voting.

Black candidates ran for Congress in North Carolina in four elections during the 1980's. None was able to obtain enough white votes to win a primary. In 1982, Mickey Michaux ran in the Second Congressional District and received 88.55% of the black vote in the primary and 91.48% of the black vote in the run-off. In contrast, his support among white voters actually dropped slightly in the runoff, from 13.88% in the primary to 13.12% in the runoff. Ken Spaulding and Howard Lee, who ran in the Second and Fourth Congressional Districts in 1984 also were the clear choice of black voters. They received slightly higher percentages of the white vote than Michaux had, but not enough to win the Democratic Party nomination.

Every statewide election since 1988 where voters were presented with a biracial field of candidates has been marked by racially polarized voting. In all except two low-profile contests, racially polarized voting was sufficient to defeat the candidate chosen by black voters. Of every biracial state legislative district election since 1988, only one was not marked by racially polarized voting. The one exception was a 1992 multi-seat election in which Mickey Michaux received more white votes than two white challengers from the Libertarian Party. The polarized voting found in Thornburg v. Gingles is not a phenomenon of the past; it remains prevalent in the state today. Racial bloc voting still persists throughout the state with sufficient force normally to prevent the candidate of choice of black voters from being elected in both local and statewide elections. The choices of black voters and the hopes of black candidates continue to be frustrated by persistent racially polarized voting.

Elections since Gingles have involved campaign tactics deliberately and demonstrably designed to keep African-Americans from voting. Most significantly, in 1990, just days before the general election in which Harvey Gantt, an African-American, was running against Jessie Helms for U.S. Senate, post cards headed "Voter Registration Bulletin" were mailed to 125,000 African-American voters throughout the state. The bulletin suggested, incorrectly, that they could not
vote if they had moved within 30 days of the election, and threatened criminal prosecution. Consent Order in *U.S. v. North Carolina Republican Party*, No. 91-161-CIV-5F (E.D.N.C.) (February 27, 1992), Tt. 1011. The postcards were sent to black people who had lived at the same address for years. As a result of the postcard campaign, black voters were confused about whether or not they could vote and some went to their local board of election office to try to vote there. Considerable resources were devoted to trying to clear up the confusion.

The most notorious examples of racial appeals in campaigns also come from the Gantt-Helms contest in 1990. Television ads which distorted Harvey Gantt's picture and voice, and others which were specifically designed to encourage racial stereotypes and fears had a dramatic impact on the 5% to 6% of the electorate which the polls indicated had been 'undecided'. After the ads ran, polls showed that virtually all of the undecided voters voted for Jessie Helms.

The impact of racial appeals in North Carolina must be assessed in light of the local context. Specific polls conducted in the 1990 election report substantial white North Carolinians who said they would simply not vote for a black candidate. The state has a large population of limited education which is more likely to utilize cues in their voting choices. There is a substantial mistrust across racial lines in North Carolina. A focus group study of the ads in the Gantt-Helms campaign showed how this series of ads effectively primed voters to react with negative racial characterizations. Moreover, the impact of these ads was explicitly given as a reason for supporting the decision to draw two majority black congressional districts in the State Senate debate prior to passage of the plan.

There are other examples of explicit racial appeals in political messages of the early 1990's at the state and local levels. An anonymous leaflet warned Columbus County voters in 1990 that blacks in the county have too much political power and "more Negroes will vote in this election than ever before". The overall effect of such racial appeals has been to diminish seriously the opportunities of black citizens for an equal exercise of their political rights. Racially polarized voting, campaign tactics designed to keep black voters from going to the polls, and racial appeals designed to encourage voting on the basis of racial stereotypes are all current features of political life in North Carolina.

**B. Present Effects of Past Discrimination Affecting the Ability of Black Voters to Participate Effectively in the Political Process.** Current forms of racial discrimination in matters affecting voting are all the more effective because of the long history of official and purposeful discrimination which ended in some cases less than twenty years ago. The "White Supremacy Campaign" of 1898 which swept North Carolina Congressman George W. White from office, the last southern black congressman before the passage of the Voting Rights Act, also resulted in the passage of a state constitutional amendment imposing a literacy test and poll tax requirement for the right to vote, with a "grandfather clause" allowing illiterate white men to vote. The explicit purpose of the amendment was to disenfranchise black citizens in defiance of the Fourteenth and Fifteenth Amendments to the United States Constitution. These measures, along with violence and threats of violence, effectively decimated the ranks of black voters in the state. Only 15% of the state's blacks were registered to vote in 1948, and only 36% in 1962.

3, Proponents of the amendment promised that of the 120,000 negro voters in the state, it would disenfranchise 110,000 of them.
After passage of the Voting Rights Act, the percentage of eligible blacks registered to vote passed 50% for the first time since 1900. However, use of the literacy test continued until the early 1970's. In 1970 only 52.2% of the black voting age population was registered to vote. In 1980, only 51.3% of age-qualified blacks were registered, whereas that same year 70.1% of the age-qualified whites were registered. By 1993, the gap between white and black registration rates statewide had closed to slightly over ten percent, with 61.3% of the black voting age population registered, and 72.5% of the white voting age population registered.

As black voter registration increased, other official forms of discrimination were enacted, including numbered seat requirements, anti-single shot provisions, and at-large and multi-member districts. See Gingles v. Edmisten, 590 F. Supp. 345, 359-64 (E.D.N.C. 1984); Keech & Sistrom, North Carolina, in Quiet Revolution in the South 162 (C. Davidson & B. Grofman eds., 1994). The purpose and effect of these provisions was to prevent black voters from being able to elect their candidates to state and local offices. While Tennessee elected its first black of the century to the General Assembly in 1964 and abolished multi-member districts in urban counties in 1965 because they discriminated against black voters, North Carolina did not elect a black state legislator until 1968, and it refused at that time to abolish multimember districts for the state legislature. In 1967 the North Carolina General Assembly passed a numbered seat system, subsequently declared unconstitutional because it denied equal protection to black voters. See, Dunston v. Scott, 336 F. Supp. 206 (E.D.N.C. 1972). Multimember state legislative seats in areas where they diluted the votes of black voters were not eliminated until this Court's decision in Thornburg v. Gingles, 478 U.S. 30 (1986).

The direct effect of these racially discriminatory provisions was that at the time the North Carolina General Assembly was considering the plan at issue here, African-Americans were still not being elected to political office in the state in numbers even remotely approaching their representation in the general population, despite the fact that capable and experienced African-American candidates were running for election. As of January 1989, African-Americans were 21% of the state's voting age population but only 8.1% of the elected officials.

In the state House of Representatives, which has 120 members, the number of African-American legislators grew from three in 1981 to fourteen at the time of redistricting in 1991. After the 1992 redistricting, eighteen blacks served in the House, seventeen of whom were elected from single-member majority black districts. One was elected from a multi-member majority white district which allows for single-shot voting. On the Senate side, with fifty members, one African-American was serving at the time of the 1981 redistricting, and five were serving in 1991. After the 1992 redistricting plans were enacted, seven blacks were elected to the Senate.

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4 Although literacy tests were finally discontinued in the early 1970's, the purpose for, and experience of, being required to write a sentence from the Constitution is remembered by many older black voters. Special voter registrars from Charlotte to Gatesville continue to encounter African-Americans who are reluctant to register for a variety of reasons. Over the past seven years, a special registrar in Charlotte has met potential voters who still express the belief that they could not register if they were unable to read or write.

5 The same legislature that adopted the multimember districts and numbered seat system also refused to add Durham County to the Second Congressional District because it would allow too great a black voter influence in that district.
five of whom won in majority-black single-member districts, and two of whom won in multi-
member majority-white districts. Three majority-black single-member districts elected white 
representatives, two in the Senate and one in the House. **No single-member majority-white 
district elected a black candidate to the state legislature.**

At the local level, in 1989, of 529 county commissioners throughout the state, 36 were black. 
Most of the African-Americans holding local offices were elected as a result of lawsuits or 
negotiated settlements changing the method of election from an at-large system to single member 
districts. Keech & Sistrom, *supra*, at 171-72 & 178-79. At the time the challenged plan was 
passed by the General Assembly, no candidate who was the choice of the black community had 
ever won election to a statewide non-judicial office since 1900. No African-American had been 
elected to Congress from North Carolina during the same period. Although candidates of choice 
of the state's African-American voters were elected to public office from single-member districts 
where black voters were in the majority, the relative percentages of black elected officials in 
North Carolina in the early 1990's had actually not increased over those present in 1984 when the 
district court in *Gingles* considered this factor as relevant to the totality of circumstances inquiry 
in a vote dilution claim. **Compare Gingles v. Edmisten**, 590 F. Supp. at 365 (Blacks hold 9% of 
city council seats, 7.3% of county commission seats; 4% of sheriff's offices, 9.2% of the state 
House; 4% of the state Senate) *with* D. I. Stips. 76-80 (in 1989 Blacks held 8.1% of all elected 
ofices; 8.8% of the state legislative seats; 6.9% of county commission seats; 4% of sheriff’s 
ofices). **See also**, 42 U.S.C. § 1973(b) ("The extent to which members of a protected class have 
been elected to office in the State or political subdivision is one circumstance which may be 
considered.")

The political participation of African-American voters in North Carolina is further impeded by 
the fact that they continue to suffer from a disproportionately low position on virtually every 
measure of socio-economic status. There is a significant history of official discrimination in 
education, housing, employment and health services in North Carolina which has resulted in 
blacks as a group having less access to transportation and health care and being less well-
educated, less-well housed, lower-paid, and more likely to be in poverty than their white 
counterparts.⁶

These disparities make it more difficult for black citizens to register, vote, and elect candidates 
of their choice. For example, black citizens who are illiterate or semi-literate have been 
imintimidated by the voting process because of their limited abilities. Many low-wage and hourly 
workers have limited access to transportation and cannot afford, or are not given, the time off to 
vote. Black citizens are hindered in their ability to field candidates and to participate effectively 
in the political process by their lower financial status, lower educational attainment, lack of 
employment security and lack of physical resources.

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⁶For example, in 1989, 27.1% of African-Americans in North Carolina had incomes below the poverty level, while 8.6% of 
whites did. The average per capita income for whites was nearly twice that of blacks. Roughly three-quarters of the state's 
whites were high school graduates, while slightly over half the state's blacks had a high school education. Nearly a quarter of 
black households had no car available, while only six percent of white households were careless. Fifteen percent of black 
households had no phone, while only four percent of white households were without a telephone. Lacking financial 
resources, transportation and easy communication makes supporting an effective political campaign much more difficult.
As noted by the *Gingles* court, lower socio-economic status both hinders blacks' ability to participate effectively in the political process and gives rise to special group interests. *Thornburg v. Gingles*, 478 U.S. 30, 39 (1986). Evidence at the trial of this case established that black residents of North Carolina have distinctive group interests and face unique problems that are addressed at the federal policy level and require effective representation in Congress. These include housing, access to credit, education of economically disadvantaged youth, unemployment, community economic development, neighborhood redevelopment, the unique concerns of historically black colleges and universities, discrimination in housing and employment, and civil rights.

Prior to the election of an African-American to Congress from North Carolina in 1992, North Carolina's congressmen demonstrated a lack of responsiveness to the particularized needs of their black constituents. In Guilford County, African American organizations regularly contacted their previous, white Congressman concerning civil rights measures and famine aid to Africa, with little success. Robert Albright, a past President of Johnson C. Smith University, an historically black institution in Charlotte, found little support for educational and community development efforts from his previous white congressman, even though the congressman served on the University's Board of Visitors. Black residents in many parts of the state found their pre-Chapter 7 Congressmen unresponsive to the particularized needs of their black constituents.

This anecdotal evidence is supported by the findings of Dr. Kousser's study of congressional roll call behavior which shows that today there is a difference in the effectiveness of representation of African-American interests by those elected by African-American voters as compared with those elected from districts in which African American voters are not in the majority.

The data reported by Dr. Kousser indicate that before 1993, even in the most heavily African-American plurality districts, voting patterns of North Carolina congressmembers on conservative roll call voting indices demonstrate diminished responsiveness to African-American concerns. The numbers show, for example, that throughout the 1970's and 80's, congressmembers elected from heavily African-American districts 1 and 2 consistently scored between 60% and 80% on conservative voting indices. In contrast, Representatives Watt and Clayton score 11% on these indices.

A review of national and North Carolina public opinion surveys indicates that there is marked divergence in the beliefs and opinions of blacks and whites, particularly in their beliefs about the degree of discrimination in American society and their beliefs about the causes of inequality, perceptions that influence the political programs that people favor. In the absence of majority black districts, congressmembers lack the leeway to represent consistently and effectively the particular interests of their African-American constituents.

**C. Racial Discrimination in Prior Congressional Redistricting.** The history of discrimination against African-Americans in congressional redistricting in North Carolina goes back to 1872, when the state legislature intentionally packed black voters into the "Black Second". The Black Second effectively confined black voters' control, in a state that was approximately one-third African-American, to a maximum of one district in nine. The shape of the Black Second was described by Republican Governor Todd Caldwell as "extraordinary,

More recently, legislators took special pains in 1965-66 and 1981-82 to dilute black voting strength in order to diminish the political leverage of black voters and the political prospects of potential black candidates. In both instances, the issue was where to place the large and politically active black population in Durham County so that black voters would not have too much influence in the district. In 1965 the solution to the "problem" was to place Durham County in the Fifth District rather than create a district in the triangle (Raleigh-Durham-Chapel Hill) that might have elected a congressman responsive to black political interests. In 1981, the solution passed by the legislature was "Fountain's Fishhook", a strangely shaped district that curved around Durham to exclude it from L. H. Fountain's second district. The Justice Department denied that plan preclearance on the grounds that the plan had the purpose and effect of diluting minority voting strength.

Following the Justice Department's rejection, and in the face of a legal challenge on vote dilution grounds, the legislature redrew the plan to include Durham in the Second District, and simultaneously shift other black populations, notably Northampton County, one of the state's majority-black counties, out of the Second. The Justice Department precleared the second plan because it was approximately 40% black in total population.

As a result of this new Second district, great hope was generated that African-Americans finally had an opportunity to elect an candidate of their choice. There had been two earlier campaigns by African-American candidates for congress. In 1968, Eva Clayton was the first African-American to run for Congress since 1898. When she began her campaign, blacks constituted only 11% of the registered voters, though they comprised 40% of the Second District's population. The political climate was hostile and discouraging for black voters and candidates. Prior to 1968 several lawsuits had been brought in, in the Second district to protest overt barriers to black voter registration. Mrs. Clayton's candidacy was not taken seriously by the media or by political observers. Very few white voters were willing to be openly associated with her campaign. Although she was defeated, Eva Clayton's campaign resulted in increased levels of black voter registration in the district.

In 1972, after Orange County was added to the Second District, Howard Lee announced his bid for the Democratic party's nomination. Elected Mayor of the majority-white town of Chapel Hill in 1969, and re-elected in 1971, he was the first black mayor in the state during the twentieth century. He had been named vice-chairman of the state Democratic party in 1970. Lee worked to establish relationships with the white community, and also expected to increase the registration of black voters in the district. His defeat in the primary was generally believed to be a result of voting along racial lines.

Following the 1981 redistricting, serious campaigns were mounted by Mickey Michaux and Kenneth Spaulding in the Second Congressional District, in 1982 and 1984 respectively. Both the Michaux and Spaulding campaigns were serious, strong, well-financed efforts of experienced, well-known candidates with broad support across the district. Despite employing careful and well considered strategies to appeal to voters of both races, neither candidate was
able to obtain the Democratic party nomination because of racially polarized voting and the use of racial appeals in the campaigns. Subsequently, potential African-American candidates logically concluded that the expenditure of effort, time and money to run a congressional campaign was not feasible in the light of continued racially polarized voting and the strong perception that they could not win.

**D. 1991 Congressional Redistricting Process.** With the 1990 reapportionment and the increase of North Carolina's congressional delegation from eleven to twelve members came the opportunity to redress past wrongs and correct the effects of current discrimination. Members of the 1991 North Carolina General Assembly had lived through, and been active participants in, the history of electoral politics discussed above. Well over half had been in the General Assembly in 1986 when they were required by the *Gingles* litigation to create eight majority-minority districts; and fifty-eight had been members of the 1981 General Assembly which elected to redraw the congressional redistricting plan following the Justice Departments' refusal to preclear the first plan. In legislative floor debates, and in subsequent testimony, legislators explained their familiarity with the history of discrimination.

Representative David Flaherty said: "When my father served in the legislature 20 years ago, there was only, I think, one black, maybe two and only a couple of Republicans."

Senator Ralph Hunt stated that he was a product of, and participant in, a separate-but-equal school system:

*We are talking about books handed down after the black schools placed their orders for new books. Those from the white schools were sent to the black schools, the used ones, and the new order were sent to the white schools. The desks were the same way. ... And of course, our educational system was administered as it was then simply because there were not black people in the process to have input and be aware and take care of the interests of black people at that time.*

Senator Kincaid stated:

*I don't think I've mentioned this on the floor of this Senate before, but back in 1967, when I was a high school teacher, I had the opportunity to teach the first integrated class in Caldwell County. And I saw firsthand how inferior the black schools were at that time.*

Senator Walker, after explaining the experience with racial appeals in the Gantt/Helms campaign, stated:

*So, I just want to say I support this bill because I think so far as the blacks are concerned that yes, they deserve two black districts. After going through a 1990 race, they can see we still need to make some improvements in how our relationships are between our people.*
IV. Implications of Redistricting Law Today in North Carolina.

Following enactment of the state legislative redistricting plan in 2001, a lawsuit was filed in state court seeking to enforce a provision of the State Constitution that previously had been found to be in conflict with the Voting Rights Act, namely the “whole county provision” which requires legislative districts to be made up, to the extent possibly, by whole counties. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002) (Stephenson I) and Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112 (2004), (Stephenson II). As a result, the only counties that can be divided in drawing legislative districts are those covered by the non-retrogression requirement of Section 5 of the Voting Rights Act, or where there is potentially a Section 2 violation. Dividing counties is generally necessary to draw majority-black districts.

Last year the Fourth Circuit, in Hall v. Virginia, 385 F.3d 421 (4th Cir. 2004), held that in order to show a potential violation of Section 2 of the Voting Rights Act, plaintiffs must demonstrate that they constitute 50% or more in a single-member district, foreclosing the possibility of influence or coalition district claims. A petition for certiorari is currently pending in the Supreme Court, No. 04-870, but if this ruling stands, and Section 5 is not reauthorized, application of the whole county provision will likely result in the loss of eleven of the state’s twenty-one districts that elect an African-American to the North Carolina General Assembly.

V. The Department of Justice’s Enforcement of Voting Rights

Section 5, Section 203 and the provisions regarding federal examiners and observers are crucial to the Justice Department’s ability to address racial discrimination in voting. The Department receives numerous requests for assistance with elections every year, often because minority voters expect to face a variety of difficulties, including harassment and intimidation, on election day. For example, in an August 1999 primary election in Mississippi, federal observers told DOJ that a white pollwatcher had a camera that she used only to take pictures of African-American voters who needed assistance in casting their ballots (because of physical needs or illiteracy). The observers reported this to the Voting Section attorneys who contacted the county election official and led to a cessation of the conduct.

Section 203 is a crucial tool for the Department’s enforcement of protections for limited-English proficient citizens. In a lawsuit against Passaic County and City, NJ, both of which have significant Spanish-speaking populations, the city and county agreed to a comprehensive consent decree, in which they agreed to translate all election materials into Spanish and hire Spanish-speaking election workers to assist Spanish-speaking voters in the election process. In addition, city officials solicited the Hispanic community’s input into these procedures (an unprecedented effort), and made a commitment to work with that community in developing and implementing an effective permanent bilingual election program for the future. Under the agreement approved by the court, federal observers were permitted to monitor election day procedures to ensure that Hispanic voters were allowed the equal access to the election process and fair treatment the Act requires.