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ADC

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chosen to maintain at-large elections.

Dillard vs. Crenshaw County is now before the 11th U.S. Circuit Court of Appeals in Atlanta.

The Calhoun County Commission appealed the portion of Thompson's court order that abolished the at-large election of a chairman and rotated the position among the five district commissioners. It maintains the at-large election does not violate the Voting Rights Act.

BERT JONES, the county's attorney handling the appeal, said the office of chairman is distinct from a regular commissioner; it is primarily executive as opposed to legislative, and it is a single-person office. As a single-person office, the chairman is analagous to a mayor or sheriff. As such, an at-large election should be allowed, because a one-person job cannot be districted, Jones said.

The county also maintains that the addition of a sixth commissioner to the five-member commission would not dilute the black vote. Under the county's new five-district plan, blacks already are assured of one seat. Even with six commissioners, the percentage of blacks on the commission would be roughly equal to the percentage of county residents and voters who are black, Jones said.

On Feb. 24, the Justice Department filed a friend-of-the-court brief with the 11th Circuit in favor of the county's position. Deborah Hurstion-Wade, a department spokeswoman, said the brief was filed because the 11th Circuit's decision would affect the Justice Department's responsibilities under the Voting Rights Act.

Menefee said the positions of the Justice Department and the county ignores one half of the Voting Rights Act.

"The Voting Rights Act says minorities should be allowed to equally participate in the political process and elect representatives of their choice," Menefee said.

"The Justice Department has ignored the entire portion of the act that guarantees minorities access to political participation. There are countless examples of when blacks get into political office the system is redesigned so that the practical political structure is shifted away from them."

TRADITIONALLY, COUNTY commissions have had both administrative and legislative duties, Menefee said. The at-large chairman proposed by the Calhoun County Commission, however, would have all the county's executive duties, and the district commission would perform only legislative duties.

Since the at-large chairman invariably would be white, he would dilute black political power, Menefee said.

The 11th Circuit's decision on Calhoun County's appeal could have a dramatic impact across the South, because a district commission with an at-large chairman is a common form of government, Jones said.

"If the 11th Circuit puts its imprimator on Thompson's order, then throughout the South . . . this form of government will become illegal," Jones said.

"The Voting Rights Act says minorities should be allowed to equally participate in the political process and elect representatives of their choice. The Justice Department has ignored the entire portion of the act that guarantees minorities access to political participation. There are countless examples of when blacks get into political office the system is redesigned so that the practical political structure is shifted away from them."

— Larry Menefee, ADC attorney

The Anniston City Council, which has four members elected by district and a mayor elected at large, is similar to the county's proposed plan and possibly could be affected by an adverse ruling.

According to Laughlin McDonald, the director of the Southern Regional Office of the American Civil Liberties Union, the appeal could alter the elections of such single-person officers as mayors, sheriffs and clerks of court across the country.

"Everyone has assumed that you can't split that office up," McDonald said, "but is it fair to have these offices if a black can't be elected to them?"

HOWEVER, LANI GWINIERE, the assistant counsel for the New York City-based Legal Defense Fund of the National Association for the Advancement of Colored People, said the appeal will only answer whether a mixture of at-large and district elections can remedy a Voting Rights violation.

The NAACP's Legal Defense Fund is involved in the case. Mrs. Gwiniere said she did not think counties or cities should be allowed to replace illegal at-large elections with some mixture of both at-large and district elections.

Gray agreed. He said the ADC is not challenging the at-large election of executive officers.

"We're not opposed to a mayor being elected at-large," Gray said. "We have no gripe with that. But those council members who are more or less legislative should be elected from districts. And whoever presides in meetings should be selected from among those members."

Voting Rights Act power restored

By MURPHY EVANS
Star Staff Writer

The Dillard vs. Crenshaw case is the most recent in a flood of suits aimed at changing elections across the South, made possible by changes in the Voting Rights Act that made it easier to prove that specific voting schemes are unconstitutional.

The amendments, passed by Congress in 1982, came in response to a U.S. Supreme Court ruling that plaintiffs must show a discriminatory intent behind the creation or perpetuation of a voting plan before it could be found in violation of the Voting Rights Act.

The 1980 decision came in City of Mobile vs. Bolden. It essentially required plaintiffs to find a "smoking gun" in every at-large voting scheme, said Drew Days, a law professor at Yale University and the head of the Civil Rights Division of the Justice Department during the Carter administration.

Mobile vs. Bolden established such a difficult burden of proof that virtually all ongoing Voting Rights litigation was brought to a halt.

The 1982 amendments did away with the requirement that discriminatory intent be proved. Instead, Congress voted that plaintiffs only had to prove an at-large plan or any voting scheme resulted in the dilution of black power. If plaintiffs could prove the results were discriminatory, the courts could rule the plan unconstitutional under the Voting Rights Act, Days said.

LANI GWINIERE, assistant counsel for the Legal Defense Fund in New York City, said the amendments expanded the federal courts' power to remedy voting rights violations. By reducing the plaintiff's burden of proof, the amendments allowed the courts to become a stronger tool for voting rights, she said.

In part, those changes only reinstated powers that had been stripped from the Voting Rights Act as a result of the Mobile decision, she said. At the same time, however, the amendments strengthened the Voting Rights Act by demonstrating a desire for decisive judicial action.

"The legislative history (of the amendments) demonstrated in the courts a desire to enforce the Voting Rights vigorously," Mrs. Gwiniere said. "The message is that at-large elections have a very strong tendency to discriminate against (minorities)."

The amendments have led to an avalanche of lawsuits against at-large elections in the South. In Georgia alone, "there's just been scores of cases," McDonald said. He estimated that "80, 90, or 100," elected bodies in the state either have voluntarily or have been forced to change from at-large to district elections since 1982.

The first major test of the amendments came in June 1986, with the Supreme Court's decision in Thornburg vs. Gingles. In that case, the court rejected arguments by the Justice Department and local officials in North Carolina that an at-large voting scheme complied with the Voting Rights Act because black officials had been elected under the plan.

THE COURT FOUND a history of discrimination through at-large voting schemes in North Carolina and threw out the at-large elections. It upheld the amendments' results test.

Justice William Brennan wrote the court's majority opinion. It established three requirements for proving a voting scheme resulted in discrimination and was unconstitutional.

The first test is whether minorities live close enough together to create a majority black district.

The second is whether minorities are a politically cohesive group. Only if there is a political consensus can the black political strength be diluted.

Finally, does the white vote usually defeat candidates supported by blacks? This final test does not require proof that whites intentionally vote against black-supported candidates. It only requires proof that the white vote results in the inability of blacks to elect representatives of their choice.

Brennan did not answer whether a suitable district could be created in places where the black population is too dispersed or too small to create a majority black district. Also, the federal courts have not settled on any percentage threshold above which a single-member district is feasible, McDonald said.

Both questions could be answered in Dillard vs. Crenshaw County.

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