

A Transitionally Unrepresented District Because of District Restructuring

*NAACP—Greensboro Branch v. Guilford County Board
of Elections (William L. Osteen, Jr., M.D.N.C. 1:12-cv-111)*

The state's restructuring of a county board of commissioners would result in a two-year transition period with one district unrepresented and another district with two representatives. The district judge declined to enjoin the beginning of the candidate filing period, but on further hearing provisionally enjoined the election. The court's ultimate remedy was to swap the election schedule for two districts so that an election would be held for the district that would otherwise be unrepresented instead of another district, an election for which would be held two years later. The state resolved the issue of double representation by appointing one of the duplicate representatives to an at-large seat.

Subject: District lines. *Topics:* Equal protection; enjoining elections.

The Greensboro branch of the NAACP and two voters filed a federal complaint in the Middle District of North Carolina on February 2, 2012, eleven days before the beginning of a filing period for candidates for Guilford County's board of commissioners, alleging that a state-mandated change in commission structure from eleven members, two at large, to nine members, one at large, would result in a two-year transition period in which districts could have no representative or multiple representatives.¹ According to the complaint, for example, no incumbent resided in the newly drawn district 6, but an election for district 6 was not scheduled until 2014.² On the other hand, two incumbents resided in district 3, which also was not scheduled for an election until 2014.³

Five days after filing their complaint, the plaintiffs filed separate motions for a temporary restraining order⁴ and a preliminary injunction.⁵ Judge William L. Osteen, Jr., held a status conference on February 9 and set the case for hearing on February 17.⁶ He ruled on February 13 that the plaintiffs did not

1. Complaint, *NAACP—Greensboro Branch v. Guilford Cty. Bd. of Elections*, No. 1:12-cv-111 (M.D.N.C. Feb. 2, 2012), D.E. 1; *NAACP—Greensboro Branch v. Guilford Cty. Bd. of Elections*, 858 F. Supp. 2d 516, 518 (M.D.N.C. 2012); see Taft Wireback, *Challenge to Redistricting Law Filed*, Greensboro News & Rec., Feb. 3, 2012, at A2.

2. Complaint, *supra* note 1, at 6–7.

3. *Id.*

4. Temporary-Restraining-Order Motion, *NAACP—Greensboro Branch*, No. 1:12-cv-111 (M.D.N.C. Feb. 7, 2012), D.E. 9; *NAACP—Greensboro Branch*, 858 F. Supp. 2d at 517–18.

5. Preliminary-Injunction Motion, *NAACP—Greensboro Branch*, No. 1:12-cv-111 (M.D.N.C. Feb. 7, 2012), D.E. 12; see Joe Killian, *Filing Period May Be Held Up*, Greensboro News & Rec., Feb. 8, 2012, at A1.

6. Docket Sheet, *NAACP—Greensboro Branch*, No. 1:12-cv-111 (M.D.N.C. Feb. 2, 2012); see Joe Killian, *Judge May Rule on Delay in Filing by Next Week*, Greensboro News & Rec.,

need immediate relief in advance of the February 17 hearing, because although the filing period had opened, it would not close until February 29.⁷ On February 17, he enjoined the election.⁸

Judge Osteen decided on February 23 that a 2012 election in district 6 should substitute for the 2012 election in district 7 to avoid a two-year vacancy for district 6.⁹ He explained his reasoning more fully in a published March 14 opinion.¹⁰ He acknowledged that he left unresolved the problem of two representatives for district 3:¹¹ “[This matter is] not appropriately addressed as part of preliminary injunctive relief as there is no threat of irreparable harm in the absence of injunctive relief.”¹²

Legislative action established one of the two district 3 representatives as the at-large representative until 2014.¹³ The parties stipulated on September 18 to a dismissal of the action.¹⁴

Feb. 10, 2012, at A1.

7. Order, *NAACP—Greensboro Branch*, No. 1:12-cv-111 (M.D.N.C. Feb. 13, 2012), D.E. 19; *NAACP—Greensboro Branch*, 858 F. Supp. 2d at 518; see Robert C. Lopez, *Judge Doesn't Halt Filing for County*, Greensboro News & Rec., Feb. 14, 2012, at A1.

8. Order, *NAACP—Greensboro Branch*, No. 1:12-cv-111 (M.D.N.C. Feb. 17, 2012), D.E. 26; *NAACP—Greensboro Branch*, 858 F. Supp. 2d at 517–18; see Joe Killian, *Judge Freezes Filings for Now*, Greensboro News & Rec., Feb. 18, 2012, at A1.

9. Amended Order, *NAACP—Greensboro Branch*, No. 1:12-cv-111 (M.D.N.C. Feb. 27, 2012), D.E. 37; Docket Sheet, *supra* note 6; *NAACP—Greensboro Branch*, 858 F. Supp. 2d at 517; see Joe Killian, *Judge OKs Commissioners Filing*, Greensboro News & Rec., Feb. 24, 2012, at A1.

10. *NAACP—Greensboro Branch*, 858 F. Supp. 2d 516.

11. *Id.* at 531.

12. *Id.*

13. See Morgan Josey Glover, *Bill Will Put Cashion in At-Large Seat*, Greensboro News & Rec., May 17, 2012, at A1; David Nivens, *GOP Takes Control of Guilford County Board of Commissioners*, High Point Enterprise, Dec. 3, 2012.

14. Stipulation, *NAACP—Greensboro Branch*, No. 1:12-cv-111 (M.D.N.C. Sept. 18, 2012), D.E. 44.