

Injunction Against a State Law Singling Out One Municipality for a Change in Local Control

City of Greensboro v. Guilford County Board of Elections
(*Catherine C. Eagles, M.D.N.C. 1:15-cv-559*)

On July 2, 2015, a state legislature restructured a city council from five members representing districts and three members elected at large to eight members representing districts, and the legislature removed control over the structure of city government from this city alone. On July 13, two weeks before the beginning of a candidate filing period, a federal complaint challenged the act, and the district judge determined that the act probably violated equal protection by treating the city differently from all other cities in the state, so the election proceeded according to the original council structure. Following a bench trial in 2017, the judge additionally determined that the new district lines unconstitutionally favored one political party. Because no party defended the constitutionality of the legislation, the judge declined the plaintiffs an award of attorney fees.

Subject: District lines. *Topics:* Equal protection; intervention; malapportionment; attorney fees.

On July 13, 2015, two weeks before the beginning of a candidate filing period for mayor and city council in Greensboro, North Carolina, the city and six of its citizens filed in the Middle District of North Carolina a federal complaint against the county board of elections challenging a state law enacted on July 2 that, among other things, changed Greensboro’s city council from five members elected from districts and three members elected at large for two-year terms to eight members elected from districts for four-year terms and removed from the city future power to amend its form of government in manners other municipalities in North Carolina retained.¹ The same act converted the city council for Trinity from two members each elected from four districts for four-year terms to one member elected from each district plus one member elected at large, all for two-year terms, but the change in Trinity was not at issue in this case.² With their complaint, the plaintiffs filed a motion for a temporary restraining order³ and a motion for a preliminary injunction.⁴

1. Complaint, *City of Greensboro v. Guilford Cty. Bd. of Elections*, No. 1:15-cv-559 (M.D.N.C. July 13, 2015), D.E. 1; *City of Greensboro v. Guilford Cty. Bd. of Elections*, 251 F. Supp. 3d 935, 938 (M.D.N.C. 2017); *City of Greensboro v. Guilford Cty. Bd. of Elections*, 120 F. Supp. 3d 479, 482–85 (M.D.N.C. 2015); see N.C. Sess. Law 2015-138, www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2015-2016/SL2015-138.pdf; see also Second Amended Complaint, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. Dec. 8, 2016), D.E. 109 (adding an additional citizen as a plaintiff); Amended Complaint, *id.* (Feb. 13, 2016), D.E. 65 (adding an additional citizen as a plaintiff).

2. N.C. Sess. Law 2015-138: *City of Greensboro*, 120 F. Supp. 3d at 483 n.2.

3. Temporary Restraining Order Motion, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. July 13, 2015), D.E. 3.

4. Preliminary Injunction Motion, *id.* (July 13, 2015), D.E. 7.

Following a telephonic conference on July 14, Judge Catherine C. Eagles provisionally set the case for hearing on July 23, ordered briefing completed by July 21, and invited briefing from the state's attorney general.⁵

At the end of the July 23 hearing, Judge Eagles asked the parties if they would prefer to return later that day for an oral ruling or could they wait for a written opinion the following day?⁶ The parties said that they would be fine with a prompt written ruling clearly stating what the election officials' obligations would be.⁷

In fact, Judge Eagles issued a 21-page opinion on the day of the hearing, determining that the plaintiffs were likely to prevail on their equal protection claim arising from the statute's singling out Greensboro for deprivation of local control.⁸ The attorney general had declined to participate, and the record showed no rational basis for the unequal treatment.⁹ Judge Eagles ordered municipal elections to proceed as if the act had not been enacted.¹⁰

Nine Greensboro voters moved to intervene in defense of the statute on August 25.¹¹ Noting that "[t]he Court and the process will likely benefit from the inclusion of litigants who will defend the legislation," Judge Eagles granted intervention on October 30.¹²

On March 23, 2016, Judge Eagles denied a motion by the intervenors to require joinder of one or more state parties.¹³ "Neither the plaintiffs, the defendant Guilford County Board of Elections, nor the defendant-intervenors

5. Order, *id.* (July 14, 2015), D.E. 23 *see* Order, *id.* (July 20, 2015), D.E. 28; *see also* Joe Killian, *First Hearing in Greensboro Council Lawsuit Set for Next Week*, Greensboro News & Rec., July 15, 2015.

Judge Eagles denied a pro se motion to file an amicus brief. Order, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. July 21, 2015), D.E. 29; *see* Amicus Motion, *id.* (July 14, 2015), D.E. 21.

6. Transcript at 58, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. July 23, 2015, filed Aug. 29, 2017), D.E. 157.

7. *Id.* at 59.

8. *City of Greensboro*, 120 F. Supp. 3d at 483, 489–91 (opinion filed at M.D.N.C. No. 1:15-cv-559, D.E. 35); Docket Sheet, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. July 13, 2015); *see* Joe Killian, *Judge Puts Stop to Redistricting*, Greensboro News & Rec., July 24, 2015.

9. *City of Greensboro*, 120 F. Supp. 3d at 486, 488–89; *see* *City of Greensboro v. Guilford Cty. Bd. of Elections*, 248 F. Supp. 3d 692, 695, 697–98 (M.D.N.C. 2017); *see also* Joe Gamm, *N.C. Attorney General Asked to Defend Law Revamping Council*, Greensboro News & Rec., Sept. 2, 2015 (reporting that the attorney general declined to defend the act and the legislature declined to hire counsel to do so as well).

10. *City of Greensboro*, 120 F. Supp. 3d at 492; Preliminary Injunction, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. July 23, 2015), D.E. 36; *City of Greensboro v. Guilford Cty. Bd. of Elections*, 251 F. Supp. 3d 935, 938 (M.D.N.C. 2017).

11. Intervention Motion, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. Aug. 25, 2015), D.E. 37; *see* Amended Intervention Motion, *id.* (Sept. 2, 2015), D.E. 41.

12. Order, *id.* (Oct. 30, 2015), D.E. 53, 2015 WL 12752936; *see* *City of Greensboro*, 248 F. Supp. 3d at 698.

13. Order, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. Mar. 23, 2016), D.E. 72 [hereinafter Mar. 23, 2016, Order]; *see also* Joe Killian, *Federal Judge: Greensboro Residents Can Defend Redistricting Lawsuit*, Greensboro News & Rec., Oct. 30, 2015; Joe Killian, *Group to*

have advised the Court of any problems or lack of power or authority experienced by the County Board in complying with this court's preliminary injunction issued last year which applied to elections held last fall."¹⁴ On December 7, 2016, Judge Eagles granted a motion by the intervenors to withdraw from the case.¹⁵ Their November 23 motion to withdraw said that further defense of the challenged statute would be futile.¹⁶

On October 1, 2015, North Carolina's governor signed legislation restoring Greensboro's control over its form of government following the 2020 census.¹⁷

Judge Eagles granted the plaintiffs summary judgment on their equal protection claim on February 3, 2017,¹⁸ and held a bench trial on February 6 and 7.¹⁹

The sole defendant here, the Board, has indicated that it has only a "ministerial" role in elections and that taking a position on the constitutional issues raised would be inconsistent with its duty to administer elections in an impartial and nonpartisan manner. . . .

. . . The Attorney General decided not to participate in the litigation Legislative leaders within the General Assembly appear to have standing to intervene, but have not asked to do so.

. . . .
. . . The crux of the [equal protection question] is whether there is evidence of a legitimate governmental purpose behind [the] different treatment and whether there is a rational relationship between the Act and any such purpose. The Court places the burden on the plaintiffs to prove the absence of these things.

. . . .
The plaintiffs have produced all available evidence of the Act's legislative history and have directed the Court's attention to the laws enacted over the past several decades in which the legislature has addressed referendum and

Speak Up for New Districts, Greensboro News & Rec., Aug. 26, 2015; Margaret Moffett, *Greensboro Lawsuit on Redistricting to Proceed*, Greensboro News & Rec., Mar. 25, 2016.

14. Mar. 23, 2016, Order, *supra* note 13, at 2.

15. Docket Sheet, *supra* note 8 (D.E. 107); *City of Greensboro*, 248 F. Supp. 3d at 698.

16. Withdrawal Brief at 2, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. Nov. 23, 2016), D.E. 103; *City of Greensboro*, 251 F. Supp. 3d at 939; see Transcript at 24, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. Dec. 13, 2016, filed Jan. 20, 2017), D.E. 124; Margaret Moffett, *Redistricting Case Takes a Twist*, Greensboro News & Rec., Nov. 26, 2016, at 1A.

17. N.C. Sess. Law 2015-264, §85.5, www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2015-2016/SL2015-264.pdf; see *City of Greensboro*, 248 F. Supp. 3d at 696-97; *City of Greensboro*, 251 F. Supp. 3d at 938.

18. *City of Greensboro*, 248 F. Supp. 3d at 697.

19. Transcripts, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. Feb. 6 and 7, 2017, filed Mar. 14, 2017), D.E. 189, 190; Docket Sheet, *supra* note 8; Minutes, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. Feb. 7, 2017), D.E. 131 (exhibit and witness list); see Danielle Battaglia, *Federal Trial on Districts Begins*, Greensboro News & Rec., Feb. 7, 2017, at 1A.

initiative rights. No legitimate state purpose for treating citizens of Greensboro differently has been offered or appears on the record.²⁰

Following the bench trial, Judge Eagles concluded on April 3 that the legislature’s redistricting of Greensboro was unconstitutional, because “the evidence here establishes that the North Carolina General Assembly drew Greensboro City Council districts with materially unequal populations in an attempt to maximize success for Republican candidates.”²¹

The question of attorney fees and costs presented Judge Eagles with a dilemma: “assessing attorney’s fees against a litigant who neither enacted nor defended the unconstitutional Act, or denying a fee award to the individual plaintiffs and their lawyers who prevailed on the merits of two equal protection claims, vindicating important constitutional rights.”²²

... The County Board reasonably took the position that it had a duty to fairly and impartially administer whatever elections laws validly apply and that it had no duty to determine whether a law is constitutional. . . .

Despite receiving notice of the litigation as required by state law, the North Carolina Attorney General did not make an appearance to defend the Act. Legislative leaders possessing the statutory right to intervene were also aware of the litigation and took no steps to defend the Act in court. The primary legislative sponsor of the Act invoked legislative privilege and refused to be deposed.

...

The entity responsible for violating the plaintiffs’ constitutional rights is not before the Court²³

Noting in addition that a fee award “would perversely encourage future plaintiffs to avoid suing responsible entities, in favor of defendants unlikely to contest relief,” Judge Eagles denied the plaintiffs fees and costs.²⁴ An appeal is pending.²⁵

20. *City of Greensboro*, 248 F. Supp. 3d at 697–98, 702, 705 (footnotes omitted); *see also City of Greensboro*, 251 F. Supp. 3d at 939 (“The primary legislative sponsor of the Act invoked legislative privilege and refused to testify.”).

21. *City of Greensboro*, 251 F. Supp. 3d 935; *see* Danielle Battaglia, *Federal Judge Rules Against City Redistricting*, Greensboro News & Rec., Apr. 4, 2017, at 1A.

22. Opinion at 2–3, *City of Greensboro*, No. 1:15-cv-559 (M.D.N.C. Jan. 3, 2018), D.E. 169, 2018 WL 276688.

23. *Id.* at 3–4, 13 (citations omitted).

24. *Id.* at 14.

25. Docket Sheet, *Brandon v. Guilford Cty. Bd. of Elections*, No. 18-1123 (4th Cir. Jan. 31, 2018).