Realizing the Right to Vote:
The Story of *Thornburg v. Gingles*

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Abstract

Justice William Brennan’s opinion in *Thornburg v. Gingles* is among the most consequential and enduring in the election law canon. *Gingles* established a three-part test that plaintiffs must satisfy to prevail on a racial vote dilution claim under Section 2 of the Voting Rights Act. The *Gingles* doctrine led to the transformation of representation at every level of government, compelling the creation of districts from which racial minorities could elect – and usually have elected – their preferred candidates.

This chapter in the forthcoming *Election Law Stories* volume tells the story of *Gingles*. It begins by travelling back through history, to the patently unconstitutional disfranchisement of black North Carolinians engineered by Charles Brantley Aycock, elected Governor in 1900. It then recounts the history of the Voting Rights Act of 1965 and its 1982 amendments, before delving into the backstory of the *Gingles* litigation, including the heretofore untold drafting history of the Supreme Court opinion. The chapter concludes with a discussion of the consequences of *Gingles* and lingering disagreements over the right to vote that are still raging today, in North Carolina and across the country.

The story of *Gingles* teaches us that articulation of a legal right is one thing, realization of that right quite another. *Gingles* translated Section 2’s amorphous “results” language into workable doctrine, increasing minority representation across the country and thus making the right to vote real. Some of the players in the *Gingles* drama would become renowned for their subsequent accomplishments as lawyers, judges, and scholars. Yet the most surprising aspect of the case history is how little discussion there was of the law as it was being litigated. In the district court, through oral argument in Supreme Court and even the first draft of the opinion, the focus was almost entirely on the facts. The now-canonical *Gingles* standard did not emerge until the second draft of the opinion. It would not have become law but for the brilliant efforts of Justice Brennan to keep a majority for its core, which included switching his vote on one of the challenged districts to hold on to the all-important fifth vote on the Court. *Gingles* remains a cornerstone of our voting rights law and a centerpiece of Justice Brennan’s legacy.