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Nonpartisan case before U.S. Supreme Court

Justices hold conference Friday to review cases, announcement expected Monday

By: David Anderson - October 26, 2012

After two-and-a-half years of legal hurdles, the citizen lawsuit to have Section 5 of the 1965 Voting Rights Act declared unconstitutional has reached the highest court in the nation.

The case of Nix V. Holder came Friday before the justices of the U.S. Supreme Court, who held a scheduled conference to determine which cases they will hear.

An announcement is scheduled for Monday regarding the justices' decision, according to the Supreme Court's blog, SCOTUSblog, which is sponsored by Bloomberg Law.

John Nix and Anthony Cuomo of Kinston, plus the Kinston Citizens for Non-Partisan Voting (KCNV), petitioned the Supreme Court in July for a review of their case through their legal representatives, the Center for Individual Rights and the Jones Day law firm, both of Washington, D.C.

"We are cautiously optimistic," Terence Pell, president of the Center for Individual Rights, wrote in an email Friday.

Nix, a Kinston businessman who made an unsuccessful run for Kinston City Council in 2011 as an unaffiliated candidate, hoped the High Court would hear the case.

"This case has the most merit of any Section 5 case that's come before them . . . so we feel like this is going to be heard," Nix said. "It's a monumental case — it would be an historic case if it went forward, and we believe it will."

Nix and Cuomo, along with former Rep. Stephen LaRoque, Klay Northrup and the late Lee Raynor, filed suit against U.S. Attorney General Eric Holder in April 2010 to have Section 5 declared unconstitutional and pave the way for nonpartisan elections in Kinston.

The year before, under the authority of Section 5, the U.S. Justice Department had struck down efforts by LaRoque and other supporters to allow candidates for city offices to run without a partisan label.

Justice officials reasoned nonpartisan voting would disenfranchise black voters by hurting their ability to choose a straight-party ticket.

Nonpartisan elections had been approved by city voters during a 2008 referendum, however.

The DOJ reversed course early this year and approved nonpartisan voting for the city, and Justice has argued the Kinston citizens' case is now a moot point.

Defendant intervenors have filed a brief with the court on Holder's behalf. The defendant intervenors include Joe Tyson, W.J. Best Sr., A. Offord Carmichael Jr., George Graham, Julian Pridgen, William A. Cooke and the N.C. State Conference of the NAACP.

Their representation includes the American Civil Liberties Union, the Southern Coalition for Social Justice and Alexandria, Va. attorney J. Gerald Hebert.

"Petitioners have already won their case, albeit on more narrow grounds than they would have liked," their brief stated. "The fate of the Voting Rights Act should not be decided based on the arguments of plaintiffs who are not impacted by the law or a case that has become moot."

Lower federal courts in Washington have ruled against the Kinston citizens.

The nonpartisan Cato Institute filed an amicus curiae, or friend of the court, brief supporting the petitioners.

Cato's brief stated the Nix case — and a similar Section 5 case originating in Shelby County, Ala., that was also before the justices Friday — "implicate a constitutional overreach too long suffered in jurisdictions where the federal government found, nearly half a century ago, discrimination against African-American voters. The goal of preventing voter disenfranchisement is un-questionably just (and constitutional), but it is no longer served by Section 5 of the Voting Rights Act. This provision now only perpetuates the very race-based political decisions the Act was intended to stop."