

U.S. SUPREME COURT

VOTING LAW SCRUTINIZED

Conservative justices appear willing to blunt key provision

John Kruzel and Andrew Chung

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WASHINGTON – The U.S. Supreme Court’s conservative justices signaled their willingness on Oct. 15 to undercut another key section of the Voting Rights Act, the landmark 1965 federal law enacted by Congress to prevent racial discrimination in voting.

Questions they posed during arguments in a major case involving Louisiana electoral districts reflected an interest in curbing the Voting Rights Act’s Section 2, which bars voting maps that would result in diluting the clout of minorities, even without direct proof of racist intent.

The court, with its 6-3 conservative majority, in recent years has moved American law dramatically rightward. Republicans currently hold a slim majority in the U.S. House of Representatives, and a decision gutting Section 2 could benefit them.

While the conservative justices seemed united in their skepticism toward this provision, exactly how they might depart from its current application was unclear.

Some seemed focused on making it harder to prove claims under Section 2 while others signaled opposition to any consideration of race in the drawing of legislative districts – even to remedy a Section 2 violation. Still others suggested phasing out the provision’s remedial role.

“This court’s cases, in a variety of contexts, have said that race-based remedies are permissible for a period of time, sometimes for a long period of time – decades, in some cases – but that they should not be indefinite and should have an end point,” conservative Justice Brett Kavanaugh told Janai Nelson, president of the NAACP Legal Defense Fund, who was arguing on behalf of a group of Black voters.

Republican President Donald Trump’s administration backed the challenge to the Voting Rights Act, advocating for raising the bar for proving a Section 2 violation.

The group of Black voters represented by Nelson appealed a lower court’s finding that a voting map that added a second Black-majority congressional district in Louisiana was guided too much by racial considerations in violation of the constitutional promise of equal protection under the law.

Louisiana’s Republican-led legislature added the second Black-majority district in response to a judge’s ruling that an earlier map that it had approved containing just one Black-majority district likely harmed Black voters in violation of Section 2.

Louisiana, where Black people make up roughly a third of the population, has six U.S. House districts. Black voters tend to favor Democratic candidates.

The court’s liberal justices emphasized how gutting Section 2 would sharply depart from prior Supreme Court rulings, including a major 2023 decision siding with Black voters in Alabama in a similar case concerning electoral districts.

Section 2 gained greater significance as a bulwark against racial discrimination in voting after the court, in

People protest in Washington on Oct. 15 as the U.S. Supreme Court hears arguments regarding the composition of Louisiana electoral districts. ELIZABETH FRANTZ/REUTERS

An activist holds a U.S. flag during a rally in front of the Supreme Court in Washington on Oct. 15. The court heard a case on the Voting Rights Act. ALEX WONG/GETTY IMAGES

a 2013 ruling authored by conservative Chief Justice John Roberts, gutted a different part of the Voting Rights Act.

Nelson told the justices that racially polarized voting is a reality and that it would be reckless to deem Section 2 unnecessary. The map initially drawn by the legislature, Nelson said, had diluted Black voting power in a bid to hand the state's White electorate "entrenched control." White people represent a majority of Louisiana's population.

The legislature's subsequent creation of a second Black-majority district to remedy that discrimination did not violate the Constitution, Nelson added.

Redistricting process

In a process called redistricting, the boundaries of legislative districts across the United States are reconfigured every decade to reflect population changes as measured by the national census. Redistricting typically is carried out by state legislatures.

Conservative Justice Samuel Alito questioned Nelson about the degree to which state lawmakers are allowed to draw maps to favor their own political parties and protect politicians already in office. The Supreme Court has permitted lawmakers to pursue this goal, though party affiliation and race of voters are often strongly correlated.

In practice, Nelson said, racially polarized voting explains why there has never been a Black person elected to a statewide office in Louisiana, adding that "race is playing an outsized role in the electoral process in Louisiana."

Roberts questioned how the justices are to know how these conditions present a violation of the Voting Rights Act. "What is meant by 'outsized?'" Roberts asked Nelson.

A decision gutting Section 2 could allow Republicans to reconfigure as many as 19 districts in the 435-seat House, according to a report by Democratic-affiliated advocacy groups Fair Fight Action and Black Voters Matter Fund.

The map redrawn by the legislature that added a second Black-majority district prompted a lawsuit by 12 Louisiana voters who described themselves in court papers as "non-African American." They argued that the second Black-majority district unlawfully reduced the influence of non-Black voters like them. A three-judge panel ruled 2-1 in their favor, prompting the appeal to the Supreme Court.

Liberal Justice Elena Kagan tried to focus the arguments on the real-world impact of a decision gutting Section 2. Kagan asked Nelson what would happen if the provision ceased to operate to prevent vote dilution in redistricting.

“I think the results would be pretty catastrophic,” Nelson said, noting that Section 2 is triggered only when “extreme conditions exist.”

Louisiana’s reversal

The Supreme Court also heard arguments in the case in March, but in June sidestepped a decision and ordered another round of arguments.

Louisiana initially had appealed the three-judge panel’s ruling and argued in March on the same side as the Black voters. But it subsequently changed its stance and has urged the justices to forbid race-conscious map-drawing altogether.

“Race-based redistricting is fundamentally contrary to our Constitution,” Benjamin Aguinaga, Louisiana’s Republican solicitor general, told the justices.

The electoral map with two Blackmajority districts was based on “racial stereotypes that this court has long criticized,” Aguinaga said. It was premised on the idea that “a Black voter, simply because he is Black, must think like other Black voters, share the same interests and prefer the same political candidates,” Aguinaga added.

Justice Department lawyer Hashim Mooppan told the justices that plaintiffs who bring a Section 2 claim should have to present a map that is “superior” to the state’s preferred map in respecting a range of race-neutral principles.

Liberal Justice Sonia Sotomayor told Mooppan that the administration’s approach would effectively gut Section 2.

“The bottom line is just get rid of Section 2,” Sotomayor said. “Because the test you’re providing doesn’t do anything for the ‘effects test’ that Congress identified.”

Liberal Justice Ketanji Brown Jackson echoed this concern.

“So you don’t get a remedy for an actual dilution or problem with your vote, the kinds of things that Congress cared about and the Constitution requires ... unless this was intentional on the part of the state?” Jackson asked Edward Greim, a lawyer for the “non-African American” voters.

The Supreme Court is expected to rule by the end of June.

Janai Nelson, president of the NAACP Legal Defense Fund, argued on behalf of a group of Black voters in the Supreme Court case. JEMAL COUNTESS/GETTY IMAGES FOR LEGAL DEFENSE FUND