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Alabama Gerrymandering

On November 12th the Supreme Court heard arguments for the case of *Alabama Legislative Black Caucus v. Alabama*. The case revolves around the Alabama legislative’s plan for redistricting following the 2010 census and questions the relative weight of a single vote in an election. In Alabama blacks vote Democratic in large numbers while whites skew in the opposite direction, voting Republican. The most recent presidential election saw blacks voting 95% for Obama and whites 84% for Romney.[[1]](#footnote--1) In this environment, where the racial and partisan divides can be tracked largely by skin color, the Court is looking to decide whether the recent plan is unconstitutionally race-based or simply partisan.

Critics of the plan, specifically the Alabama Legislative Black Caucus argue that the policy negatively affects black voters in Alabama by flooding already majority black districts with more black voters. These claims attack the plan as an infringement on the voting rights of minorities under the voter dilution piece of Section 2 of the Voting Rights Act of 1965.[[2]](#footnote-0) Shifting more black voters to already majority black districts not only dilutes the weight of those votes in those districts, but also takes black voters out of majority white and more evenly divided districts.

A similar issue was seen in *LULAC v. Perry (2006)* when the Court heard arguments on a 2000 redistricting plan from Texas. The ruling held, against arguments that the Texas plan was motivated solely by partisan concerns, that the plan was constitutional. In District 23 specifically, Justice Kennedy found, the increasingly politically active, growing Latino population was diluted in order to protect the seat of an incumbent. That district specifically needed to be redrawn. Despite the partial violation under the Voting Rights Act, the Court could not agree on a test for measuring the partisan nature of a plan and thus, ruled that it could not strike down the plan as a whole, effectively giving tacit acceptance to plans motivated by partisan concerns.[[3]](#footnote-1)

Alabama argues that its 2010 plan is merely an example of the party in power redrawing a state map in accordance with changes in census data. Certain districts had decreased in population since the last census in 2000 and in order to adhere closely to the principle of one-person, one-vote the new plan repopulated those districts. The one-person, one-vote standard was established in *Reynolds v. Sims* (1964) and allowed deviation from that principle of up to 10% to account for the variance in makeup of different districts: city, suburb, rural, etc.[[4]](#footnote-2) The standard was later modified in *Larios v. Cox* (2004), taking away the 10% deviation protection.[[5]](#footnote-3) The stated goal of Alabama’s plan was to adhere to this strict standard, creating districts of equal population size. That this redistricting plan largely benefits the current Republican majority in the Alabama legislature by shifting large populations of blacks is a side effect.

All of this comes in the context of historical voter discrimination in Alabama and on the heels of the Court striking down of Section 5 of the Voting Rights Act. Section 5 contained a preclearance formula, used since 1965 and last updated in 1975, for areas with a history of voter suppression by which any plans for redistricting would require preapproval from the U.S. District Attorney and the U.S. District Court for D.C. Writing for the Court in *Shelby v. Holder* (2013), Justice Kennedy described the preclearance formula as outdated. He was, however, clear to state that the “decision in no way affects the permanent nation-wide ban on racial discrimination in voting found in Section 2.”[[6]](#footnote-4)

Insert *Alabama Legislative Black Caucus v. Alabama*. The Alabama legislature has redrawn the state map with the pretense of promoting equality across state voting, in adherence with Supreme Court rulings. However, regardless of the clarity of its motives, the legislature’s plan will, by most accounts, dilute the votes of an historically discriminated against minority. All of this without needing the preapproval required under the now defunct Section 5 of the Voting Rights Act. Due to the political makeup of Alabama, there can be no functional decision made on the motives of the plan. Any argument made about racial bias can simply be countered by the fact that race and party lines blend together. Disproportionately negative effects on black voters are warranted, not because they are *black* voters, but instead because they are *Democratic* voters.

The irony of the entire case is that in 2000 the roles of the Republicans and Democrats were reversed. Republicans challenged the Democratic redistricting plan on grounds that it diluted the votes of white Republicans in Alabama. The two judges in the majority of the federal court ruling of this case weighed this heavily in their decision: “This record offers no reason to conclude that the rules for redistricting were turned upside down when Republicans gained control of the Alabama Legislature. The parties have switched sides, but the law that governs their disputes remains the same. We refuse to read the Voting Rights Act and the Fourteenth and Fifteenth Amendments as mandating some kind of Democratic candidate protection program.’”[[7]](#footnote-5)

Every 10 years the same process may repeat itself. One party loses power and fights back against the other attempting to take it. This case may be different in that now the black citizens in Alabama, a state with a history of voter suppression are petitioning. The Court showed in *Perry* its stance on the issue, using Section 2 tests of the Voting Rights Act, still active as opposed to Section 5, to strike down part of a plan that potentially discriminated by race. However, the question about partisan redistricting remains. If the justices cannot all agree on a test to use for such general cases, they will not be able to strike down an entire redistricting plan on those grounds.

1. <http://www.npr.org/2014/11/12/363375057/supreme-court-case-seeks-source-of-alabama-gerrymandering> [↑](#footnote-ref--1)
2. Voting Rights Act of 1965 [↑](#footnote-ref-0)
3. *League of Latin American Citizens v. Perry (2006)* [↑](#footnote-ref-1)
4. *Reynolds v. Sims* (1964) [↑](#footnote-ref-2)
5. *Larios v. Cox* (2004) [↑](#footnote-ref-3)
6. *Shelby v. Holder* (2013) [↑](#footnote-ref-4)
7. Three judge federal court ruling on case: <http://sblog.s3.amazonaws.com/wp-content/uploads/2014/07/13-895-pet.pdf> [↑](#footnote-ref-5)