

# SPECIAL

# WINDOM GALLIHER

## MONTGOMERY UPDATE

MARCH 25, 2015

## Another 5-4 vote: Legislative districts jeopardized as U.S. Supreme Court vacates lower court order

Just an hour or so before thousands retracing the path of the Selma to Montgomery march arrived at the Capitol steps, the U.S. Supreme Court made its voice heard on the 50th anniversary of the terminus of the famous trek for voting rights.

In a 5-4 decision, with Justice Anthony Kennedy filling his frequent role as the swing vote, the U.S. Supreme Court vacated a lower court's ruling that upheld the redistricting of legislative seats for the 2014 elections.

The Supreme Court did not order new elections, but rather vacated the order and told the lower court to readdress the issue.

In 2012, the Alabama Legislature — controlled by a Republican supermajority for the first time since Reconstruction — drew new district lines. Immediately following the legislative session, the Alabama Black Legislative Caucus and others filed suit, alleging that African-Americans were unfairly packed into selected districts guaranteed to maintain the same level of minority level of membership in the Legislature. The problem, as the caucus saw it, was that African-Americans that didn't live in those districts had their votes diminished.

A three-judge panel, led by former state Attorney General Bill Pryor, rejected the claims on a 2-1 vote.

At the time, the GOP supermajority that wrote the districts noted that the U.S. Department of Justice, which of course reports to President Obama, had pre-



**THE U.S. SUPREME COURT'S KING OF SWING, JUSTICE ANTHONY KENNEDY, VOTED WITH THE COURT'S FOUR LIBERAL JUSTICES TO QUESTION THE METHOD BY WHICH THE DISTRICTS WERE DRAWN**

cleared the plan, and that should prove that nothing nefarious had been done to African-American voters.

As the case made its way to the Supreme Court, Republicans extended their supermajorities in both houses — ousting several white Democrats along the way. After the elections, Republicans held a 26-8-1 advantage in the Senate and a 72-33 advantage in the House of Representatives.

Justice Stephen Breyer wrote the opinion on behalf of the majority, which also included Justices Ruth Bader Ginsburg, Elena Kagan and Sonia Sotomayor.

In his opinion Justice Breyer posed that the lower court and the Legislature “asked the wrong question.”

“They asked: “How can we maintain

present minority percentages in majority-minority districts?” But given (Voting Rights Action Section 5's) language, its purpose, the Justice Department Guidelines, and the relevant precedent, they should have asked: ‘To what extent must we preserve existing minority percentages in order to maintain the minority's present ability to elect the candidate of its choice?’ Asking the wrong question may well have led to the wrong answer,” Justice Breyer wrote.

Leading the dissenters were Justices Antonin Scalia and Clarence Thomas, both of whom issued strongly worded opinions. Justice Scalia called the majority's opinion “unprincipled,” while Justice Thomas called it “misguided and damaging,” saying it would force states to

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**HOUSE GENERAL FUND BUDGET CHAIR REP.  
STEVE CLOUSE (R-OZARK) HAS TOUGH JOB**

## Clouse taps brakes on tax talk — for now

To the relief of many — mainly, his legislative teammates — House General Fund Budget chair Rep. Steve Clouse (R-Ozark) postponed plans to hold a hearing on a variety of revenue measures until later in the session.

The hearing was scheduled for April 1, but Rep. Clouse decided to hold hearings with a variety of agencies to

understand their budget requests before opening the discussion on the various revenue bills.

With the Supreme Court ruling offering the threat of new elections, the thought that tax votes could come perhaps a year before another election would certainly dampen what little enthusiasm there is for any talk of taxes.

## Court

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consider factors other than population — such as voter turnout.

In 1982, a new Legislature was elected under recently drawn lines, but those lines were tossed by the U.S. Supreme Court and new elections were held a year later.

What happened then watered the seeds of an underground Republican Party. Instead of holding primaries, the State Democratic Executive Committee — controlled by the AEA and like-minded allies — voted to hand-pick nominees, replacing several incumbents along the way.

The resulting purge of conservative Democrats led to the first wave of party-switching and saw a handful of Republicans swipe legislative seats. More came after the disputed 1986 Democrat gubernatorial runoff.

It can be easily argued that the 1983 Supreme Court ruling pushed the ball that kept rolling until the GOP gained a supermajority.

This time, Republicans — and the contributors to their campaigns — have little desire for a do-over. With the order merely vacated, one wonders if rehearing the case — with the correct questions asked and answered — could yield the result that the districts are appropriate.

That's certain to be the goal of Senate President Del Marsh (R-Anniston) and Speaker of the House (R-Auburn), who had two of the costlier races of the 2014 cycle and are perfectly content with the current districts.

In the previous Senate, two Democrats — Tammy Irons of Florence and Marc Keahey of Grove Hill — didn't bother running for re-election in the new districts.

Longtime powerhouse Sen. Roger Bedford (D-Russellville) was upset by Dr. Larry Stutts to extend the GOP grip in the Senate.

In the House, Republicans grabbed five formerly Democrat seats to increase their numbers.

The curious part of the issue is where the incumbent Democrats fit in all of this. Certainly, they will publicly speak of a desire for new elections, but as some areas continue to trend more Republi-

can, another race might not be what they want personally. Some might not find new districts as friendly in a primary.

Also, since the election, the major financier in 2014 against the GOP supermajority — the Alabama Education Association — has imploded.

AEA spent borrowed millions and got nothing for it — the smooth passage of the charter schools legislation last week testifies to that.

Prior to the session, AEA fired the architect of the effort and borrower-in-chief, Executive Secretary Henry Mabry. Since then, it has backed into the shadows in the halls of the Legislature this session, leaving local school boards and superintendents to fight virtually alone against the charter schools bill.

How could AEA possibly fund candidates in Republican and Democrat primaries, or another general election? The logical assumption: there's no way it can.

The next few weeks should provide some clarity on the legal strategy the GOP supermajority will take to get judicial approval for the current districts. They'll be praying the whole way there will be no return to campaign mode.

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**Note:** The Windom Galliher Montgomery Update will publish weekly during the Legislative Session.