US Supreme Court issues first ruling to limit Voting Rights Act

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The 8-1 ruling by the US Supreme Court Monday on the Voting Rights Act has been greeted with a mixture of relief and praise from many civil rights groups and liberal commentators. “It’s fair to say this case was brought to tear the heart out of the Voting Rights Act, and today that effort failed,” said Debo Adegbile, lead attorney for the NAACP Legal Defense and Educational Fund.

But a closer examination of the decision and the political context in which it was made reveals that the court has opened the door to gutting the most fundamental US civil rights law, whose passage in 1965 marked a watershed in the struggle against institutionalized racial discrimination.

In *Northwest Austin Municipal Utility District Number One v. Holder*, a local utility district in Austin, Texas sued the federal government over the constitutionality of Section 5 of the Voting Rights Act, which requires that certain state and local government units apply to the US Department of Justice for “preclearance” before they make any changes in their election rules, including changes in voter registration procedures and electoral district boundaries.

The 1965 law specified nine states and parts of several others, including most of the former Confederacy: Texas, Louisiana, Mississippi, Alabama, Georgia, South Carolina and most of Virginia. Alaska, Arizona and portions of Florida, North Carolina, Michigan, New Hampshire, South Dakota and New York City are also affected, most of the latter because of discrimination against Hispanic and Native American voters. Including all their counties, cities, school districts, utility districts and other governmental entities, a total of some 17,000 jurisdictions are subject to preclearance.

Any of these jurisdictions may seek a “bailout”—permanent exemption from the requirement for preclearance—provided they meet certain criteria in terms of a record of non-discrimination. But since the Justice Department routinely approves most election law changes, and efforts to seek exemption from the Voting Rights Act would be looked on unfavorably by most voters, only 17 such bailouts have been granted in the more than 40 years since the law was passed.

The current case was brought at the instigation of a right-wing legal foundation that sought an opportunity to overturn a key section of the Voting Rights Act, and utilized an obscure legal entity in a wealthy section of Texas’ capital city to provide the necessary plaintiff. Northwest Austin Municipal Utility District Number One filed suit against the Voting Rights Act after refusing to file for preclearance with the Justice Department to move its only polling station.

The trumped-up character of the case is demonstrated by the fact that none of the states covered by the Voting Rights Act—most of them governed by right-wing Republican administrations—has made a similar challenge. Nor did any prominent elected officials, Democratic or Republican.

A federal district court and then a circuit court of appeals ruled against the lawsuit on two grounds: that the Voting Rights Act has been repeatedly found to be constitutional, and that the utility district did not have standing to bring suit because it is not a governmental entity as defined by the law, since it is not responsible for the registration of voters, but relies on a registration roll maintained by the county government.

The court suit was clearly intended to give the right-wing majority on the Supreme Court the opportunity to find Section 5 unconstitutional, and at oral arguments in April it appeared that the five right-wing justices were determined to do so. They spoke sarcastically of the law’s treatment of the southern states as an historical anachronism and suggested that by renewing the law for another 25 years, in 2006, Congress had acted in an unconstitutional fashion, violating the principle of sovereign equality of the states.

Justice Anthony Kennedy said that the law meant that “the sovereignty of Alabama is less than the sovereign dignity of Michigan. And the governments in one are to be trusted less than the governments in the other.” Kennedy is the swing voter in most 5-4 court decisions, siding usually with the right-wing bloc, but occasionally with the liberal minority. He was widely expected to provide the fifth vote to declare Section 5 unconstitutional.

The decision issued Monday by Chief Justice John Roberts echoed the earlier declarations about how much progress has been made in the South. “The South has changed,” he wrote. “The evil that Section 5 is meant to address may no longer be concentrated in the jurisdictions singled out for preclearance. The statute’s coverage formula is based on data that is now more than 35 years old, and there is considerable evidence that it fails to account for current political conditions.”

Despite this language, the 8-1 majority declined to invalidate Section 5. Instead, seizing on a technical aspect of the lower court decision, the majority ruled that the utility district was, in fact, a governmental entity and entitled to apply for a bailout. The lower

court ruling was overturned and the utility district authorized to seek Justice Department exemption, which would now require a decision by the Obama administration.

Justice Clarence Thomas, the ultra-conservative who is the only black member of the court, supported the district's right to seek a bailout, but argued for going further and declaring Section 5 unconstitutional on the grounds that obstacles to blacks voting in the South no longer exist. Roberts indicated sympathy for this argument, but wrote in his decision: "Whether conditions continue to justify such legislation is a difficult constitutional question we do not answer today."

It must first be pointed out that the factual basis of Thomas's argument—largely unchallenged in the media coverage of the decision—is patently false. Particularly in the decade since the stolen presidential election of 2000, the right to vote of blacks and other minorities has been under systematic and escalating challenge, both in the southern states and nationally.

The theft of Florida's electoral votes in 2000 and the installation of George Bush in the White House by the Supreme Court were possible only because of the systematic suppression of minority voting in the state, through a series of measures including the lifetime ban on voting by former prison inmates, the purging of minority voters from the registration rolls on other pretexts, and discriminatory distribution of polling places and voting machines—to say nothing of the notorious "butterfly ballot" in Palm Beach County. Without these actions, Bush would have been so far behind his Democratic opponent, Al Gore, that theft of the election in Florida would have been politically impossible.

New and more technically sophisticated methods of minority voter suppression were employed in subsequent elections, and may well have tipped the balance in Ohio in the 2004 presidential campaign, ensuring Bush the electoral votes needed for reelection. These include so-called "voter caging," in which mass mailings are sent to predominately minority areas in the months before an election. The mail returned as undeliverable is stockpiled and used at the polls to challenge the right of the addressees to vote.

Republican-controlled governments in Georgia, Indiana and other states have enacted laws requiring voters to bring photo ID to the polls, a measure which has been upheld by the Supreme Court as politically neutral, but which has the deliberate effect of reducing the proportion of poor, minority and immigrant workers able to vote, since they are least likely to have photo IDs.

Given the probability that the five right-wing justices—the same five who upheld the photo ID law in Indiana last year—were prepared to overturn Section 5, it seems apparent that they pulled back from doing so because of political considerations.

One legal analyst, former solicitor general Walter Dellinger, commented that since on Thursday the court is expected to issue a sweeping decision against affirmative action in the New Haven firemen's case *Ricci v. DiStefano*, Chief Justice Roberts may have thought that gutting the Voting Rights Act the same week might provoke a political reaction.

There are also international considerations. Under conditions where the entire US political establishment is seeking to mobilize world opinion against Iran, on the grounds of an allegedly rigged presidential election, it may have seemed the wrong time for the highest US court to demolish the country's most renowned legal protection for minority voting rights.

Whatever the immediate reasons for holding back, however, it is clear that the court is laying the basis for the repudiation of Section 5. While the other main provisions of the Voting Rights Act have not been challenged in the courts since the 1960s, Section 5 has always been the key enforcement mechanism, giving the federal government, acting through the Justice Department, unprecedented supervisory authority over the actions of state and local governments.

It is worth recalling what sort of nation the US was in 1965. The year marked the 100th anniversary of the victory of the Union over the slave-owning Confederacy in the Civil War, yet blacks in the South lived under a brutally repressive regime that included their effective disenfranchisement through a patchwork of state and local Jim Crow voting laws. These included poll taxes, literacy tests and such measures as the "grandfather clause," which stated that a voter's grandfather also had to have been a registered voter. By hook and by crook, the great majority of voting-age black citizens were disenfranchised. All of the present justices of the Supreme Court lived through this era and know what a toll in struggle against mob and police violence was required to overthrow Jim Crow. All of them—most disgracefully Clarence Thomas—know that racial discrimination and injustice are not museum relics but the living experience of tens of millions of Americans.

None of the four liberals on the court sought to articulate this sentiment, however. None of them even filed a concurring opinion defending the constitutionality of Section 5 or seeking to mitigate the harsh criticism of the law in the majority opinion drafted by Roberts. None of them spoke from the bench in support of the Voting Rights Act. Instead, they settled for a rotten compromise that merely gives the right-wing faction time to attack the civil rights legislation through a more favorable legal avenue.

Their conduct provides a further demonstration of the decay and cowardice of American liberalism, and the complete inability of any section of the bourgeois political establishment to defend democratic rights. The struggle against racial discrimination, and the struggle for democratic rights as a whole, is the task of the working class.