Right-wing Supreme Court justices attack US Voting Rights Act

Ed Hightower
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On Wednesday, the US Supreme Court heard oral arguments in the case of *Shelby County v. Holder*, which challenges the key enforcement provisions of the Voting Rights Act (VRA) of 1965.

Right-wing justices Antonin Scalia, Samuel Alito and John Roberts made clear their opposition to the act. Justice Clarence Thomas, the fourth member of the far-right bloc on the court was, as usual, silent, and the "swing vote," Justice Anthony Kennedy, acidly questioned the continued relevance of the landmark ruling.

The tenor of these reactionaries suggested the existence of a five-vote majority to either overturn or eviscerate the provisions of the law that require states of the former Jim Crow South and certain other jurisdictions to pre-clear changes in voting procedures with the federal government, so as to insure the right of blacks and other minorities to vote.

The very fact that the Supreme Court agreed to hear the challenge to the Voting Rights Act, which had been rejected by the federal trial court and the Court of Appeals for the DC Circuit, is indicative of the ferocity of the assault on democratic rights being waged by the ruling class. It reflects the aggressive posture of the court's right-wing bloc, which may be poised to usurp the power of Congress, as stipulated in the 15th Amendment of the Constitution outlawing voting discrimination based on race, to pass legislation to enforce the Amendment's provisions. Congress has repeatedly voted to extend the VRA, most recently in 2006, when both houses voted overwhelmingly to extend the act for another 25 years (98 to 0 in the Senate, 390 to 33 in the House).

The Voting Rights Act marked the high water mark of the civil rights movement of the 1950s and 1960s. In the preceding decades, African Americans, who were guaranteed all of the constitutional rights of whites through the 14th and 15th amendments to the Constitution passed in the aftermath of the Civil War, nevertheless suffered severe repression at the hands of state and local governments in the American South, including de facto disenfranchisement through poll taxes and literacy tests backed up by brutal violence and terror.

In the mass struggles of the 1950s and 1960s, hundreds of thousands of African Americans in the South backed by white workers and youth across the country fought against legal segregation in marches, sit-ins and protests, many of which met with violent attack both from state and local authorities and from organized terror groups such as the Ku Klux Klan. Bombings, lynchings and beatings claimed many lives.

The outcome of these struggles was the Civil Rights Act of 1964 and the Voting Rights Act of 1965. The VRA covered all of Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia and Alaska, as well as parts of Arizona, Hawaii and Idaho. In 1975, Texas was added due to findings of persistent discrimination against non-English-speaking persons. Today, all or part of 16 states fall under the pre-clearance requirement of the VRA.

Immediately after the 2006 renewal of the VRA by Congress, a Texas municipality challenged it on grounds similar to those at issue in *Shelby County*. In its review of that case, commonly referred to as NAMUDNO (*Northwest Austin Municipal Utility District Number One v. Holder*), seven Supreme Court justices signed on to an opinion by Chief Justice Roberts that depicted Sections 4 and 5 of the act, the key enforcement sections, as outdated, and the 2006 congressional renewal as failing to take into account progressive changes in the South.

Shelby County largely concerns Section 5 of the Voting Rights Act, the pre-clearance provision. The suit also targets Section 4 of the act, which defines which jurisdictions will be subjected to the pre-clearance requirement.

Attorneys for Shelby County, Alabama argue that jurisdictions in their state should not be treated differently from those in any other state, claiming that there is no more overt discrimination against minority voters in Alabama jurisdictions than in any other state. During oral arguments, Alabama's attorney brushed aside evidence of recurrent and frequent attempts to disenfranchise minority voters in Alabama and the states in question, insisting that the pre-clearance requirement posed an unacceptable intrusion into the sovereign state's interest in managing elections within its borders.

The questioning by justices Scalia, Roberts and Alito, with Kennedy largely following suit, indicates a possible if not probable overturn of at least Section 4 of the VRA, leaving it up to Congress to create a new formula for determining which jurisdictions fall under the scope of pre-clearance, a remote prospect in the present political context that would have much the same effect as striking Sections 4 and 5 altogether.

Scalia's contributions were particularly provocative. Referring to the ever-broader support for the VRA at each successive congressional renewal, Scalia made the following extraordinary comment:

"Now, I don't think that's attributable to the fact that it is so much clearer now that we need this. I think it is attributable, very likely attributable, to a phenomenon that is called perpetuation of racial entitlement…It's a concern that this is not the kind of a question you can leave to Congress."

Justice Kennedy posed the unrelated and almost nonsensical question to the government's lawyer: "If Alabama wants to have monuments to the heroes of the civil rights movement, if it wants to acknowledge the wrongs of its past, is it better off doing that if it's an [sic] own independent sovereign or if it's under the trusteeship of the United States Government?"

The nominally liberal justice Stephen Breyer appeared inclined to conciliate with the right-wing majority, asking the government's attorney, "What is the standard for when it [the VRA] runs out? Never? That's something you have heard people worried about."

The overturning or emasculation of the VRA would serve as a green light for broader attacks on democratic rights, and the right to vote in particular. *Shelby County* takes place in the context of more than a decade of mounting attacks on the right to vote, beginning with the infamous *Gore v. Bush* decision of December 2000, in which the Supreme Court shut down the counting of votes in Florida and handed the presidency to George W. Bush.

More recently, the Supreme Court ruled in *Citizens United* that corporations had the right to donate unlimited cash to election campaigns. This term it is hearing a suit to lift all restrictions on the amount of money individuals can donate to candidates for office. The domination of the electoral process and the political system by corporate money is being institutionalized and written into the law of the land.

The recent spate of disenfranchising measures adopted by states across the US in the form of voter ID laws, the curtailment of early voting and the purging of voter rolls represents more than just a gift to the Republican Party, whose strategists fear changing demographics will contribute to future electoral losses. It represents an ongoing and escalating break with democratic norms on the part of the corporate-financial elite.

The attack on the Voting Rights Act is an attack not just on minority workers, but on the democratic rights of the working class as a whole.

American and world capitalism face the deepest economic crisis since the Great Depression of the 1930s, and with it, growing resistance to relentless attacks on workers' livings standards. This is the source of the turn by the ruling class toward police state forms of rule, from indefinite military detention and domestic spying to the authority claimed by President Obama to assassinate people branded as terrorists, including US citizens.