Supreme Court strikes down Alabama congressional district map as motivated by racial discrimination

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On Thursday the United States Supreme Court ruled in favor of a lower court decision mandating that the state of Alabama redraw its congressional district maps. The lower court had found that Alabama's district map was racially discriminatory towards black voters by diluting their vote.

African Americans make up 27 percent of the state's population and have overwhelmingly voted for the Democratic Party in recent years. Despite this, the state map, which took effect for the 2022 election, created one safe Democratic district, predominately African American, and six safe Republican districts.

The gerrymandered map does this by concentrating much of the black population in a single district that includes the rural population of of the west central portion of the state, heavily African American, and then reaches out to include black areas of Birmingham and Montgomery, two of the three main cities in the state. The rest of the African American population is dispersed across other districts with Republican majorities ranging from 60 to 80 percent. A lawsuit by the ACLU and the NAACP challenged the district maps and brought the case up to the Supreme Court.

Alabama's proposed map is not a significant change from its previous district map and overall the general shape of the districts has not changed much in 30 years. District 7, the only Democratic district in the state, was established in 1992 after a lawsuit forced the creation of the first black majority district in the state since 1877.

Since then the districts have remained roughly the same. Similar challenges to Alabama's state legislature district maps came after the 2010 census brought Alabama's redistricting to the Supreme Court in 2015. However, despite the court finding that the districts were drawn with a racial intent to dilute the black vote, the court decided to return the case to a federal district court for further review. In 2017 the federal court ordered Alabama to redraw select districts for the state house and state senate. There was no ruling on the state's federal congressional districts.

This latest ruling by the Supreme Court was a surprise to many and is being celebrated by the Democratic Party and its aligned organizations as a great victory for voting rights. The decision, however, will have only a short-term effect, the court is still preparing a far greater assault on voting rights than the Alabama districts posed in themselves.

The liberal minority of the court was able to win over Chief Justice Roberts and Brett Kavanaugh, who was a last-minute defector from the conservative majority. But the views stated in their opinions leave extensive room for additional, and even more aggressive, challenges to the Voting Rights Act. A year ago, Kavanaugh sided with a 5-4 conservative majority which agreed to take up the Alabama case, but barred the lower court decision imposing a new map from taking effect in the 2022 elections.

Roberts is a right-wing justice who voted to overturn *Roe v. Wade* and spearheaded the weakening of section five of the Voting Rights Act in 2013, voicing the belief that the southern states no longer needed any special treatment due to their history of racial segregation and oppression. But he is a more traditional conservative than his far-right colleagues and favors following precedent as much as possible.

The chief justice made several objections to Alabama's argument, but central to his ruling was "Alabama's attempt to remake our §2 jurisprudence anew" by relying on computer-generated models to build a supposedly "race-neutral benchmark." Roberts rejected this argument because it demanded that the court reject other factors and change the framework that previous court rulings have set.

His opposition to changes to precedent is not based on commitment to the Voting Rights Act (VRA) but rather a demand that the Republican challengers to the VRA present a stronger case for overturning section two of the act.

This section prohibits racial discrimination in voting and defines racial voting suppression as when "members [of a protected group] have less opportunity than other members

of the electorate to participate in the political process and to elect representatives of their choice." Under the precedent set by the 1986 case *Thornburg v. Gingles*, the Supreme Court established a three-part test to determine if redistricting is racially discriminatory: 1. A minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district"; 2. The group is politically cohesive; 3. The majority votes in a politically cohesive way that would typically defeat a minority candidate.

Roberts' opinion recognized the "Black Belt" in Alabama as a politically cohesive area that merited two congressional districts. The Black Belt was originally named after the color of the soil, which is extraordinarily fertile. As a result, plantation agriculture dominated the area and slaves made up the vast majority of the population. After emancipation, free blacks still remained the majority, many working as sharecroppers for the former slaveowners. A large proportion of this area is now incorporated into the 7th Congressional District.

Roberts' statements leave the door open for challengers to the VRA to undermine this precedent, but Kavanugh's concurring opinion blows the door wide open for the abolition of section two of the VRA entirely.

In Kavanaugh's concurrence he agreed with Clarence Thomas that "the authority to conduct race-based redistricting cannot extend indefinitely into the future." In other words, there is a time limit on how long the VRA can prohibit racial discrimination and require states to provide equal voting opportunity to minority populations considered to be "special interest groups." Kavanaugh rejected this argument only because the State of Alabama did not make it in its legal briefs.

Kavanaugh and Thomas have made it clear that they are fully in support of abolishing section two of the VRA, but Kavanaugh has requested that Republican challengers present a more coherent and persuasive case than Alabama did.

For his part, Roberts is also likely to favor such a ruling in the future. Despite his apparent preference for precedent, in 2013 he led a ruling that struck down section five of the VRA, which required states with a history of racial discrimination in voting to submit their district maps for federal approval before adoption. Roberts accepted legal challenges to this part of the VRA, known as "preclearance," on the grounds that "things have changed dramatically" since the passage of the VRA in 1965.

The core of Roberts' decision was simply that section five had expired based, on an arbitrary interpretation of its utility. Roberts and the conservative majority argued that the racial discrimination of the Jim Crow era was no longer a factor affecting voting rights, and therefore pre-clearance was unconstitutional. Since 2013 the section five has been made toothless, remaining a part of the VRA but unenforceable.

This most recent court ruling is not a cause for celebration. At best, it is a win for the reactionary racialist politics of the Democratic Party, which has a history of accepting racial gerrymandering because of the guaranteed seats offered by it. The legal challenges to Alabama's districts, which were accepted after 1992 because the Democrats had at least one assured seat, are borne out of the Democratic Party's inability to present a genuine alternative to the Republican Party and concerns about securing more seats in the House of Representatives.

In reality the ruling is a tactical maneuver to wait for the right case to attack the VRA on, just as the court waited for the right case to overturn *Roe v. Wade*. There have been several court cases reining in some of the excesses of the far-right in the Republican Party recently. A federal judge declared Tennessee's anti-drag-show law unconstitutional this week and federal courts have intervened against some of the reactionary laws passed in Florida and Texas over the past few years.

However, the courts are not acting as progressive defenders of democratic rights but as referees for the ruling class, calling foul only when the fascistic elements of the Republican Party move too quickly for the comfort of Wall Street, which is concerned about the danger of provoking an angry response in the working class, which broadly defends democratic rights.