United States: Court Rules Against Voting Rights—Opens Door to Return of Jim Crow Racist Laws

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A federal court on November 20 issued a decision that would severely curtail enforcement of the Voting Rights Act,(VRA) that could affect voters of color nationwide and will probably be appealed to the Supreme Court.

The decision opens the door wider to a return to Jim Crow laws that once ruled the South. Those laws made it nearly impossible for African Americans to vote or function as equal citizens.

The Voting Rights Act prohibits voting practices or procedures that discriminate on the basis of race or color. It did not specify who could file suits against violators of the law.

Individuals and voting rights groups denied

The federal 8th appellate court ruled, for the first time, that a key section of the VRA, Section 2, adopted by Congress in 1965, can only be enforced by the U.S. attorney general. The decision upheld a ruling by U.S. District Judge Lee Rudofsky, who in 2022 dismissed a lawsuit challenging Arkansas' new district map because, he said, that the Justice Department had to join the plaintiffs for the lawsuit to be considered.

Voting rights groups in Arkansas had argued in their lawsuit that a new map of congressional districts weakened Black voters' electoral power in the state.

Rudofsky, an appointee of President Donald Trump, gave Attorney General Merrick Garland, appointed by President Biden, five days to join the groups in the case. When Garland refused, the case was dismissed.

The appellate court affirmed the ruling by the district judge. It went further, saying only the U.S. government can sue to enforce the Voting Rights Act that allowed Black people to vote across the country with few restrictions.
For the first two hundred years of the country, first under slavery and then in the Jim Crow South, that was not the case.

The new ruling would dismantle the primary mechanism voting rights groups use to protect against racial discrimination in voting, often in the form of lawsuits challenging electoral maps.
In their decision, the 8th court judges did note that, in the past 40 years, at least 182 successful Section 2 of the VRA cases have been filed and, of those, only fifteen "were brought solely" by the attorney general.

In the majority opinion, Judge David Stras — a Trump appointee — wrote that while courts have, for much of the last half-century, "assumed" that Section 2 is enforceable in lawsuits filed by individuals

or groups, “a deeper look has revealed that this assumption rests on flimsy footing.” Stras was joined in the majority opinion by Judge Raymond Gruender, a George W. Bush appointee.

In his dissent, Chief Judge Lavenski Smith —also a Bush appointee — said that, while “admittedly, the Court has never directly addressed the existence of a private right of action under [Section 2],” the Court has “repeatedly considered such cases, held that private rights of action exist under other sections of the VRA, and concluded in other VRA cases that a private right of action exists .”

“Until the Court rules or Congress amends the statute, I would follow existing precedent that permits citizens to seek a judicial remedy,” the Chief Justice wrote. “Rights so foundational to self-government and citizenship should not depend solely on the discretion or availability of the government’s agents for protection.”

“Eliminating individual people’s right to sue” under the VRA “runs contrary to settled law, common sense and any basic concept of fairness: When the government discriminates against people, they should have a right to fight back in court,” said Paul Smith, senior vice president at the Campaign Legal Center.

Richard L. Hasen, a professor of law and political science at the University of California, wrote that the 8th court majority reached its decision “with a wooden, textualist analysis” despite “recognizing that the Supreme Court and lower courts have for decades allowed such cases to be brought, assuming that Congress intended to allow such suits.”

Wendy Weiser, who directs the Democracy Program at the Brennan Center for Justice at New York University School of Law, said that this is why it is “very significant” that the 8th court would use such logic to decide “something so significant and so radical” that she argued would be “devastating to the enforcement of the Voting Rights Act.”

Weiser said the 8th court’s decision suggests that, nationally, there’s “an environment where judges feel like it would be permissible for them to just rewrite the law, upend precedent, and core rights and protections.

“The intent of the civil rights law, which outlaws racial discrimination as it relates to voting, has typically been enforced by lawsuits from these groups, not by the government itself.”

VRA basically gutted

The Supreme Court has over the last decade generally sought to weaken voting rights for African Americans falsely claiming race is not nor should be a consideration in court rulings because there is no more racial discrimination in the U.S. — a laughable statement.

Section 2 and Section 4 were the heart of the law. Section 4 had mandated that the Justice Department be contacted before former Jim Crow states could remap voting districts or rewrite election laws. The VRC also said in Section 5 such “preclearance” by the Justice Department must be followed by those states. Section 4 and 5 prevented new voting maps from being drawn without such pre-approval.

Section 4 was overturned by the Supreme Court in 2013 thus invalidating preclearance. The Court vote was a 5-4 majority. The deciding vote was cast by Chief Justice John Roberts, a long time opponent of equal rights.

Immediately after that decision states across the South passed new anti-voting laws that restricted Black voting rights.

The 2013 decision only applied to Section 4, which was seen as the backbone of the VRA. It did not overturn Section 2 that allowed civil rights groups and individuals to sue states for voting discrimination.

What happens next?

Since 2013 the Supreme Court has heard cases filed by civil rights groups and individuals.

In June this year, for example, the Supreme Court, in a 5-4 decision, ruled against an Alabama congressional map that included just one district with a majority of Black voters, requiring the drawing of a new map in that state.

Abha Khanna — who argued the case before the Supreme Court — said she was thrilled with the ruling because it ensured that districts in Black communities are drawn as they were intended under the VRA.

In November, the conservative U.S. 5th appellate Court affirmed the right of individuals to bring such actions.

If the Supreme Court upholds the 8th court decision, that would completely "gut" nationwide limited protections of voting rights and essentially limit cases to "what the Department of Justice can and chooses to take on," Khanna said.

"It's doing so in part under an environment where it has been encouraged to do so by, I think, the more radical turn in the U.S. Supreme Court."

Few civil and voting rights advocates expect the Supreme Court to protect voting rights. The court only last year said the use of race in college admissions was unconstitutional, declaring the Constitution as "color blind."

The role of the Supreme Court for most of its history has been to limit equal rights for Black people and other people of color. The exception was during the mass civil rights movement in the 1960s when historic civil rights and voting rights legislation of the VRC was adopted and upheld by the Court.
A possible return to Jim Crow type racist laws is a reminder how quickly advances in equality can be overturned. It is not the first time this has happened. After the second American Revolution, the Civil War of 1861-65, freed slaves won the right to vote and became close to equal citizens, a few being elected to office and owning land.

But in 1877 Congress decided to remove Union troops protecting former slaves from violent white supremacists. Within 10 years, Jim Crow segregation laws were enacted across former slave states and Black people lost most of their civil rights written in the post-Civil War amendments to the Constitution.

It took nearly one hundred years to get those civil rights back. That's why the Supreme Court 2013 decision was seen as a major blow. And why the 8th Circuit appellate court ruling on who can file suits is being seen so gravely.

What's needed in response is a new civil rights struggle. It is the only way to reverse these decisions, that uphold the legacy of white supremacy of the "Founding Fathers" who drafted the Constitution.

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