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Ruling Limits Scope of Voting Act

Supreme Court Decision Could Make It Harder for Some Minority Candidates to Win

By JESS BRAVIN

WASHINGTON -- The Supreme Court narrowed the reach of the Voting Rights Act, ruling that a measure aimed at helping minorities elect their preferred candidates only applies in electoral districts where minorities number more than 50% of the voting-age population.

The decision could make it harder for some minority candidates to win election and for Southern Democrats, in particular, to draw friendly electoral boundaries after the 2010 Census.

The 5-4 ruling rejected arguments that the voting act could require legislative mapmakers to draw so-called crossover districts -- those with a substantial but less than 50% nonwhite population. In a crossover district, the idea is that minority voters would create alliances with white voters to elect their chosen candidates.

The case, *Bartlett v. Strickland*, came from North Carolina, whose state constitution prohibits dividing counties when drawing state legislative districts. State officials believed that the Voting Rights Act, adopted in 1965 to counter the effective disenfranchisement of blacks across the South, required them to create a crossover district in southeastern North Carolina. Black voters, with 39% of the district's population, would then be able to elect their chosen candidate through an alliance with a segment of white voters.

Pender County, named for a Confederate general, challenged its division into two districts. The North Carolina Supreme Court ruled that the Voting Rights Act's Section 2, which bars practices that "deny or abridge the right of any citizen of the United States to vote on account of race or color," applies only when the minority group constitutes "a numerical majority of citizens of voting age." If undivided, Pender County would be within a state House district with a 35% African-American population.

Justice Anthony Kennedy, writing for himself, Chief Justice John Roberts and Justice Samuel Alito, found that 50% was the constitutional threshold. In a democracy, being able to command a majority of votes in a single district holds a "special significance," he wrote, and cohesive majorities of minority voters shouldn't be broken up to frustrate their political power. But "Section 2 does not guarantee minority voters an electoral advantage," Justice Kennedy wrote, and they have no claim to redistricting that seeks to help them build victorious coalitions with white voters. Such a mandate would be unworkable, he wrote, requiring courts "to make predictions or adopt premises" about race-based voting patterns "that even experienced polling analysts and political experts could not assess with certainty."

The court's five-justice right wing split over its reasoning. While Justice Kennedy's plurality preserved some room for minorities to claim their votes had been diluted, in other circumstances the two most conservative justices, Antonin Scalia and Clarence Thomas, contended that such suits should always be barred.

The plurality observed that "racial discrimination and racially polarized voting aren't ancient history. Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions." While in this case, North Carolina's whole-county provision interfered, in other instances legislatures would be free to create crossover districts if they chose, Justice Kennedy wrote. "Section 2 must be interpreted to ensure that continued progress."

Justice David Souter, writing for the four liberal dissenters, argued that the ruling did the opposite. A crossover district was better than a "majority-minority district" -- where a minority group holds more than 50% -- "precisely because it requires polarized factions to break out of the mold and form the coalitions that discourage racial divisions," he wrote. He was joined by Justices John Paul Stevens, Ruth Bader Ginsburg and Stephen Breyer.

The decision is likely to place even more power in the hands of state legislatures when they draw new election lines after the 2010 Census, said Richard Hasen, an election-law specialist at Loyola Law School, Los Angeles.

African-American and Hispanic voters are overwhelmingly Democratic, so Democratic-controlled legislatures are likely to divide up plurality populations of minority groups to bolster districts that could lean Democratic, he said.

In contrast, Republican legislatures are likely to pack minority voters in as few districts as they can, to minimize their impact on swing districts. Altogether, "there might be a slight Republican benefit to this decision," Prof. Hasen said.

In April, the Supreme Court is to hear arguments over another Voting Rights Act provision, Section 5, which requires officials in areas with a history of racial bias to clear changes in election rules with the Justice Department.

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