

BenchMark: NCJW's Judicial Nominations Campaign

Voting Rights and the Supreme Court

Our vote is our voice. However, voting rights have long been advanced and rolled back in federal courts across the country. The cases below detail how the US Supreme Court has shaped voting rights over the past century, but it is important to remember that all courts matter. Like Supreme Court justices, judges sitting on federal district and circuit courts serve for life and make critical decisions about the rights of all Americans. Justice for all depends on a fair, diverse, and independent judiciary committed to core constitutional rights, including voting rights.

- *Guinn v. US* (1915): Oklahoma passed a law creating an exemption from the literacy test requirement for voting that applied only to those men whose grandfathers had been eligible to vote in 1867, thereby excluding all men of African descent. The US Supreme Court struck down the discriminatory law finding that it violated the Fifteenth Amendment, which **extends the right to vote to male US citizens of all races**.
- *Smith v. Allwright* (1944): The Democratic Party of Texas, which was a “voluntary association,” passed a resolution that allowed only whites to participate in Democratic primary elections. Lonnie E. Smith, an individual of color, sought to vote in the 1940 Texas Democratic primary, but he was denied the right to vote by a county election official. The US Supreme Court held **white-only primaries unconstitutional**.
- *Gomillion v. Lightfoot* (1960): The Alabama legislature re-drew the electoral district boundaries of Tuskegee, replacing what had been a square shaped district with a twenty-eight sided configuration. The effect of the **new district was to essentially exclude all people of color** from the city limits of Tuskegee and place them in a separate district. It was clear that the district was drawn with only one purpose in mind — to deprive political power to people of color. In a unanimous decision, the US Supreme Court held that the Alabama legislature’s re-districting violated the Fifteenth Amendment.
- *Reynolds v. Sims* (1964): Voters from Alabama challenged the apportionment of their state legislature, noting that the last apportionment of the Alabama legislature was based on the 1900 federal census. The Alabama legislature had population variance ratios as great as 41-to-1 in their Senate. In an 8-1 decision, the US Supreme Court found the Equal Protection Clause requires that **districts within state legislative bodies must be apportioned to accurately reflect the basic democratic principle of "one person, one vote,"** meaning they must represent roughly the same number of voters. This decision prompted the reapportionment of numerous state legislatures.
- *Harper v. Virginia Board of Elections* (1966): A resident of Virginia challenged the state's **poll tax** was unconstitutional. After a three-judge district court dismissed the complaint, the case went to the US Supreme Court. In a 6-3 decision, the Supreme Court held that **poll taxes violated the Equal Protection Clause**. The Court noted when it comes to voting, a state’s interest “is limited to the power to fix qualifications,” and an individual’s wealth (or race) is not relevant to their ability to “participate intelligently in the electoral process.”
- *South Carolina v. Katzenbach* (1966): The Voting Rights Act of 1965, among other requirements, prevented states from using a "test or device" to deny citizens the right to vote.

South Carolina filed suit alleging unconstitutionality of certain provisions of that law. In an 8-1 decision, the US Supreme Court **upheld the Voting Rights Act**, noting the enforcement clause of Fifteenth Amendment.

- *Oregon v. Mitchell* (1970): The 1970 Voting Rights Act Amendments lowered the minimum voting age to 18 in state and national elections, expanded bans on literacy testing, and forbade durational residency requirements for voters. Texas, Idaho, Arizona, and Oregon challenged the constitutionality of the amendments. The Supreme Court held that while the **Voting Rights Act provisions that banned literacy tests and prohibited residency requirements were permitted by the Fourteenth and Fifteenth Amendments, the voting age requirement was not**. Shortly after the ruling, Congress passed the 26th Amendment to the US Constitution which lowered the minimum age for voting in both federal and state elections to 18.
- *Shaw v. Reno* (1993): North Carolina became entitled to an additional seat in the US House of Representatives based on the 1990 census. North Carolina's first reapportionment plan was rejected by the US Attorney General, but its second plan, creating two black-majority districts, was allowed. Several state residents filed suit claiming that the plan was an unconstitutional racial gerrymander in violation of, among other things, the Fourteenth Amendment. In a 5-4 decision, the Supreme Court held that although the state's plan was racially neutral on its face, the resulting irregular district shape suggested an effort to separate voters into different districts based on race. Although the case was sent back to the lower court, the Supreme Court made it clear that **redistricting based on race must be held to a standard of strict scrutiny**.
- *LULAC v. Perry* (2006): Plaintiffs filed suit in 2003 after the Texas state legislature passed a redistricting plan that diluted racial minority voting strength. In a 5-4 decision, the US Supreme Court held that the redistricting plan did not violate the Constitution, but part of the plan violated the Voting Rights Act of 1965 by **redrawing a district in such a way as to deny Latino voters as a group the opportunity to elect a candidate of their choosing**.
- *Arizona v. Inter Tribal Council of Arizona, Inc.* (2013): The state of Arizona passed a law in 2004 requiring voters to **show specified documentation as proof of citizenship when registering to vote**. The Tribal Council of Arizona and others sued claiming that the requirement violated the Fourteenth and Twenty-fourth Amendments as well as the National Voter Registration Act (NVRA) of 1993. The case eventually was heard in the US Supreme Court which ruled 7-2 that states could not add additional requirements to those already in the NVRA, but that the state could petition to have NVRA requirements changed.
- *Shelby County v. Holder* (2013): Shelby County, Alabama challenged the pre-clearance requirements of the Voting Rights Act of 1965 (VRA), which prohibits districts with a history of voter suppression from changing their election laws without advance official authorization. In a 5-4 decision, the US Supreme Court ruled that the section of the VRA that selected the districts needing advance authorization to change their election laws was unconstitutional based on an outdated formula. This decision **eviscerated the pre-clearance requirements of the VRA**. The impact of this decision was immediate as several states and localities implemented restrictive new voter laws, many of which are being challenged in the federal courts.
- *Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015): In 2000, Arizona voters amended Arizona's Constitution, removing redistricting authority from the

Arizona Legislature and vesting it in an independent commission. Following the 2010 census, the independent commission adopted redistricting maps. The Arizona Legislature challenged the redistricting map for congressional districts alleging it violated the “Elections Clause” of the US Constitution. In a 5-4 decision, the US Supreme Court protected voters by **upholding Arizona’s voter-passed redistricting reform**.

- *Evenwel v. Abbott* (2016): Texas voters challenged the state’s most recent congressional district maps, arguing that they should reflect the eligible voter population, rather than total population, so that the voting power of individuals living in districts with higher numbers of ineligible voters would not be diluted. The US Supreme Court rejected this argument, and ruled unanimously in favor of Texas. The Court held that **the principle of “one person, one vote” requires using the total population to create district maps**.
- *Bethune-Hill v. Virginia State Board of Elections* (2017): Virginia lawmakers used race to create 12 state legislative districts, each of which was required to have a population of at least 55 percent voting age African Americans. A federal district court upheld the districts due to their geographic consistency, as opposed to disjointed and misshaped districts that are sometimes the result of redrawing districts. In 2017, the Supreme Court held that the district court’s **legal standard for determining whether race predominated in determining 11 of the 12 state legislative districts was too restrictive**, and remanded the case to the district court to consider the districts under a more expansive rule.
- *Cooper v. Harris* (2017): After the 2010 Census, North Carolina legislators created a requirement that two particular voting districts have a Black voting age population of 50 percent plus one. After the two districts were redrawn, thus adding two additional Black majority districts in the state, two residents sued on the basis that the redistricting was racially motivated and diluted African American voters’ influence in other districts. The federal district court found that unconstitutional racial gerrymandering did occur. The Supreme Court affirmed that the **redrawing of North Carolina’s districts was predominately determined by race** and that the State’s interest in complying with the Voting Rights Act as reason for such redistricting did not justify its racial considerations.
- *Husted v. A. Philip Randolph Institute*: Ohio instituted a practice of canceling voter registrations if, after not voting in two consecutive federal elections, a registered voter did not respond to a mailed notice or vote in the next four years. Many voters did not receive or understand the notice, and only learned they had been purged from the voter rolls when they were turned away on Election Day. The Sixth Circuit found the practice violated the National Voter Registration Act of 1993, which allows states to cull their voter lists only when registered voters die or move to other states and explicitly bans infrequent voting as a reason to revoke voter registration. In a 5-4 decision, the Supreme Court reversed the Sixth Circuit’s decision, holding that **revoking an individual’s voter registration on the basis of inactivity does not violate the law**.
- *Virginia House of Delegates v. Bethune-Hill* (2019): After the Court’s 2017 ruling in *Bethune-Hill*, the district court ordered Virginia to adopt a new redistricting plan, finding that the prior plan focused on race and was therefore unconstitutional. The Commonwealth of Virginia did not appeal the ruling, but the Virginia House of Delegates did. In a 5-4 decision written by Justice Ginsburg, the Court held that the House of Delegates, as a single chamber of a bicameral legislature, **lacked the legal right to appeal the invalidation of Virginia’s redistricting plan**, allowing the district court ruling to stand by default.