How the Voting Rights Act, Newly Challenged, Has Long Been Under Attack

A federal ruling this week was only the latest in decades of legal challenges to a law that has shored up Black Americans' political power.

By Nick Corasaniti
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The Voting Rights Act, a landmark law that has for decades protected Black Americans from attempts to erode their political power, was dealt one of its most significant challenges this week when a federal appeals court moved to strike down a crucial part of the legislation.

But the ruling on Monday, which would block private citizens and civil rights groups from suing under a key provision of the law called Section 2, is just one of dozens of threats the law has faced: The Voting Rights Act has been under sustained legal and political assault since the day Lyndon B. Johnson signed it in 1965.

Beyond the country's polarized racial politics, a large part of why the law has been such a magnet for legal challenges has to do with the nature of the American electoral system. With both parties angling for the smallest of edges, changes to voting rules and to the playing field of elections often end up in court.

"Because the law affects the jobs of actual politicians, it's no surprise that it would be caught in the partisan cross hairs," said Nathaniel Persily, a law professor at Stanford Law School. "And election litigation itself has increased markedly in the last two decades, so we shouldn't be surprised if V.R.A. litigation and challenges to the V.R.A. have increased over that period as well."

The ability of private citizens to bring legal challenges under Section 2 of the law has led to some of the biggest victories for voting rights supporters in past decades. And they continue to try to wield the law: On Monday, Black voters in North Carolina filed a lawsuit challenging new state legislative maps as a racial gerrymander in violation of Section 2.

The ruling on Monday is almost certain to be appealed to the Supreme Court, where many legal challenges to the Voting Rights Act have ended up. Here's a look at a few of the most important ones.

South Carolina v. Katzenbach, 1966

A central part of the original Voting Rights Act was the "preclearance" provision in Section 5, which required states with a history of racial discrimination at the polls to obtain approval from the Justice Department before changing their voting laws.

Almost immediately after the law was signed in 1965, Daniel R. McLeod, the South Carolina attorney general, filed a direct challenge to the Supreme Court. One of his main arguments was that the provision trampled on states' rights and created an unequal system of voting among states across the country.

The court, in an 8-to-1 ruling written by Chief Justice Earl Warren, rejected those arguments, stating that the Fifteenth Amendment to the Constitution "authorizes the National Legislature to effectuate by 'appropriate' measures the constitutional prohibition against racial discrimination in voting."

Beer v. United States, 1976

In 1960, New Orleans drew its district maps to divide up Black voters in a way that ensured no Black representative was elected to the seven-member City Council for a decade.

When the city redrew the maps in 1970, with the Voting Rights Act in effect, it proposed one district with a majority of Black voters and kept two with predominantly Black populations overall. The city also kept two at-large districts.

Under Section 5 of the Voting Rights Act, New Orleans had to seek approval from the Justice Department and the United States District Court for the District of Columbia. The plan was rejected on the grounds that it would undermine Black voters' rights.

An appeal reached the Supreme Court, which devised a test to clarify the reach of Section 5 claims. The court established that the V.R.A. prohibited voting changes that would lead to a "retrogression," or backslide, of a minority group's rights. The justices read the law as not necessarily guaranteeing representation for people of color, but instead preventing their rights from returning to an earlier state.

This meant that New Orleans could keep its map with a single district where a Black representative could be elected, and that other places could meet a lower threshold for ensuring minority representation.

Shaw v. Reno, 1993

After the 1990 census, North Carolina was forced to redraw a map to include a new district with a majority of Black voters; it snaked north to south through the state, cutting through multiple counties in an odd shape. Ruth Shaw, a white voter in North

Carolina, filed a lawsuit arguing that the new map violated the equal protection clause of the Fourteenth Amendment, and it eventually wound up at the Supreme Court.

In a 5-to-4 decision, the court ruled in favor of Ms. Shaw, stating that "a covered jurisdiction's interest in creating majority-minority districts in order to comply with the nonretrogression rule under Section 5 of the Voting Rights Act does not give it carte blanche to engage in racial gerrymandering."

Justice Sandra Day O'Connor, who wrote the majority opinion, explained further.

"A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid," she wrote.

The ruling effectively meant that race alone could not be the basis for changing district lines, again limiting the reach of the Voting Rights Act in establishing more districts with a majority of Black voters or other people of color.

Georgia v. Ashcroft, 2003

This case stemmed from the Justice Department's rejection of a map drawn by the Georgia legislature as retrogressive under Section 5 of the Voting Rights Act, leading to another appeal before the Supreme Court.

In another 5-to-4 decision, Justice O'Connor wrote an opinion that would significantly alter the initial retrogression standard established in Beer v. United States.

"Section 5 allows States to risk having fewer minority representatives in order to achieve greater overall representation of a minority group by increasing the number of representatives sympathetic to the interests of minority voters," Justice O'Connor wrote.

A new test assessing the "totality of the circumstances" was more appropriate, the court found, further limiting the reach of Section 5.

Shelby County v. Holder, 2013

Earlier rulings like Shaw v. Reno and Georgia v. Ashcroft limited the scope of Section 5, but left it intact. Next, challenges to the constitutionality of the section began to appear before the Supreme Court. In 2009, the justices rebuffed one such challenge.

But in 2013, the court dealt a devastating blow to the heart of the Voting Rights Act.

In a 5-to-4 ruling along ideological lines in Shelby County v. Holder, the court ruled that states with a history of racial discrimination in voting practices, mostly in the South, could change their election laws without advance federal approval.

“Our country has changed,” Chief Justice John G. Roberts Jr. wrote for the majority. “While any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.”

Brnovich v. Democratic National Committee, 2021

The Shelby County decision, as well as a 2008 ruling upholding a photo identification requirement, helped usher in a wave of voting restrictions from Republican-led state legislatures.

Under Section 2, the Democratic National Committee challenged two such laws in Arizona, one regarding who could collect and drop off absentee ballots and another requiring election officials to discard ballots cast at an incorrect precinct.

In the past, most legal challenges to voting laws were brought under Section 5. But after the Shelby decision, some voting rights lawyers turned to Section 2, a crucial part of the law that prohibits election or voting practices that discriminate against Americans based on race.

The court, however, ruled in a 6-to-3 opinion in 2021 that Section 2 could be used only when voting laws or policies imposed substantial and disproportionate burdens on minority voters that effectively blocked their ability to cast a ballot.

“Where a state provides multiple ways to vote,” Justice Samuel A. Alito Jr. wrote for the majority, “any burden imposed on voters who choose one of the available options cannot be evaluated without also taking into account the other available means.”

More cases seeking to weaken the Voting Rights Act are likely to land before the Supreme Court — a reflection of just how sustained the challenges to the law have been.

“If you compare it to some of the bedrock type of civil rights laws from the ’60s — thinking about the Civil Rights Act of 1964 or the Fair Housing Act of 1968 — certainly there have been challenges to those statutes,” said Jon Greenbaum, the chief counsel for the nonpartisan Lawyers’ Committee for Civil Rights Under Law and a former Justice Department lawyer. “But not like this.”