

Political Grab Bag

By Steve Bagby, Sr., Political Action Committee Chair

RECENT SUPREME COURT DECISIONS ON ELECTION LAW, VOTING RIGHTS ACT, AFFIRMATIVE ACTION AND STUDENT DEBT RELIEF --

THE SUPREME COURT GIVETH AND THE SUPREME COURT TAKETH AWAY--

GIVETH -- On June 27, 2023, in *Moore v. Harper*, the U.S. Supreme Court **rejected** the controversial election law theory that would have given state lawmakers unfettered power to set the rules of federal elections in their states, ruling that the “so called ‘independent state legislative theory’ is inconsistent with the U. S. Constitution.” (June 27, 2023 online article—*cbsnews.com*; *yahoo.com*)

The Supreme Court declined to impose new limits on state courts’ reviewing certain election-related issues by ruling against Republicans in North Carolina fighting for a congressional district map that would heavily favor their candidates. The justices ruled in a **6-3 vote** that the North Carolina Supreme Court was acting within its authority in concluding that the map constituted a partisan gerrymander under the state Constitution. (June 27 online article – *nbcnews.com*.) Chief Justice Roberts wrote the majority opinion, joined by Justices Sonia Sotomayor, Elena Kagan, Brett Kavanaugh, Amy Coney Barrett and Ketanji Brown Jackson.

“In declining to embrace the idea, which stems from an interpretation of the Constitution’s Election Clause, the court left in place a key check on state [legislatures’] authority over how federal elections in their states are conducted and their drawing of congressional maps. The decision is a major victory for voting rights advocates, who feared that a ruling adopting the independent legislature theory would wreck havoc on elections systems, and allow state legislatures to operate unchecked when setting federal elections rules and drawing voting lines.” (June 27 online article – *nbcnews.com*.) Trump advanced this theory in various cases during the 2020 election in his effort to win votes.

Fortunately for all of us, the Supreme Court rejected that interpretation of the Constitution's Election Clause. NAACP President Derrick Johnson called it a “vital protection against ongoing, malicious attempts to silence Black voters.” Eric Holder, who served as Attorney General under President Barack Obama, called it a “victory for our system of checks and balances, the cornerstone of American democracy.”

GIVETH -- In another decision by the Supreme Court On June 8, 2023, in *Allen v. Milligan*, the Supreme Court, by a vote of 5-4, issued a major voting rights decision, ruling that Alabama's new congressional map likely violates the Voting Rights Act. But even more significantly, the court declined an invitation to adopt an interpretation of the act that would have made it much more difficult to challenge redistricting plans on the ground that they weaken the collective voting power of Black people. (June 8, 2023 online article, [scotusblog.com](https://www.scotusblog.com))

Per the article, the law at the center of the court's decision in *Allen* is Section 2 of the Voting Rights Act (VRA), which bars election practices that result in a denial or abridgement of the right to vote based on race. Voters and other groups went to court in 2021 to challenge Alabama's redistricting map for its seven seats in the U.S. House of Representatives. They argued that the map violated Section 2 by diluting the votes of the state's Black residents, who make up 27% of the state's population. Specifically, they said, the state's new plan packed many Black voters into a single district in a part of central Alabama known as the “Black Belt,” while at the same time dispersing Black voters in the rest of the Black Belt into several other districts. (June 8, 2023 online article, [scotusblog.com](https://www.scotusblog.com))

The lower court, which included two judges appointed by President Donald Trump, agreed with the challengers and ruled that the map likely violated Section 2. But last year the Supreme Court put that ruling on hold, clearing the way for Alabama to use the map in the 2022 elections where Republicans went on to win six of the state's seven House seats in November. In oral argument before the Supreme Court in October 2022, a majority of the court appeared ready to side with the state and permanently set aside the lower court's ruling. But with Justice Kavanaugh joining forces with Chief Justice John Roberts and the court's three liberal justices, Sotomayor, Kagan and Jackson, the court instead upheld the lower court's ruling. In a 34-page opinion by Roberts, the majority agreed with the challengers that the lower court had correctly applied the Supreme Court's 1986 decision in *Thornburg v. Gingles*, which outlines a three-part test to evaluate

claims brought under Section 2, to reach its conclusion that the new map violated the VRA. The real issue before the court, Justice Roberts explained, was not whether the lower court had applied existing law – *Gingles* – but instead “Alabama’s attempt to remake our §2 jurisprudence anew” by focusing on computer-generated maps that are created without considering race at all. But that single-minded focus on the computer-generated maps – the so-called “race-neutral benchmark” – is inconsistent with the VRA’s requirement that courts look at the entirety of the circumstances, Roberts observed. Moreover, he emphasized, such an interpretation would require a change to the *Gingles* framework “that has been the baseline of our §2 jurisprudence for nearly forty years.” (June 8, 2023 online article - *scotusblog.com*)

Deuel Ross, a African American civil rights attorney at the NAACP Legal Defense and Educational Fund, was one of the attorneys who argued *Allen v Milligan* before the Supreme Court last fall. It was his first oral argument before the court. What a significant case he argued and what a significant victory he obtained.

TAKETH - -On June 29, 2023, in ***Students For Fair Admissions, Inc. v. President And Fellows Of Harvard College and Students For Fair Admissions, Inc., v. University Of North Carolina, et al, (UNC)***, the Supreme Court, in a **6-3 vote, effectively ended affirmative action** as it relates to applying to colleges and universities, ruling that Harvard’s and UNC’s admissions programs violate the Equal Protection Clause of the Fourteenth Amendment because they failed to offer “measurable objectives to justify the use of race.” In the landmark decision overturning long-standing precedent that has benefited African American and Latino students in higher education, the Supreme Court says colleges and universities can no longer take race into consideration as a specific basis for granting admission. (June 29, 2023, online article –*cnn.com*)

Chief Justice John Roberts wrote the opinion for the conservative majority, saying that the programs involve racial stereotyping and had no specific endpoint. The opinion claims the court was not expressly overturning prior cases authorizing race-based affirmative action, and suggested that how race has affected an applicant’s life can still be part of how their application is considered. (June 29, 2023, online article –*cnn.com*)

Justice Sonia Sotomayor, joined by Justice Elena Kagan and Ketanji Brown Jackson, issued a fiery dissent, saying the opinion “rolls back decades of precedent and momentous progress.” Wisdom Cole, National Director of the NAACP Youth & College Division, called the rollback of affirmative action a “dark day in America.” “Affirmative action has been a beacon of hope for generations of Black students,” Cole said in a statement Thursday. “It stood as a powerful force against the insidious poison of racism and sexism, aiming to level the playing field and provide a fair shot at a high-quality education for all. Students across the country are wide-awake to the clear and present danger encroaching on their classrooms.” (June 29, 2023, online article –[cnn.com](#))

It is very interesting to note that the **ruling exempts military academies**. The ruling says that US military service academies can continue to take race into consideration as a factor in admissions. During oral argument, Solicitor General Elizabeth Prelogar stressed the unique interests of the military and argued that race-based admissions programs further the nation’s compelling interest of diversity. (June 29, 2023, online article –[cnn.com](#)). Wow! **Does that exemption mean that it is okay to consider race as it relates to individuals who may ultimately be going into war, i.e. putting us on the front lines, but not for individuals who may aspire to go into the Boardrooms of various companies.** That is definitely something to consider.

TAKETH - On June 30, 2023, in *Biden v. Nebraska*, the Supreme Court blocked the administration’s student loan forgiveness plan, rejecting a program aimed at delivering up to \$20,000 of relief to millions of borrowers struggling with outstanding debt. The decision was **6-3** with Chief Justice John Roberts writing for the conservative supermajority. Justice Roberts said the government needed direct authorization from Congress. “The question here is not whether something should be done; it is who has the authority to do it.” (June 30, 2023, online article –[cnn.com](#)) The court ruled that the Biden administration’s student-debt forgiveness plan does not comply with federal law by invoking the “major questions doctrine” to say that “Congress did not specifically give the secretary of education the authority to give borrowers such significant relief.” (June 30, 2023, online article - [scotusblog.com](#))

Justice Elena Kagan dissented, in an opinion joined by Justices Sonia Sotomayor and Ketanji Brown Jackson, saying, amongst other things, that “the court should not have reached the merits of the states’ claims at all because none of the states had standing.” (June 30, 2023, online article - [scotusblog.com](#))

In response to the court's ruling, **President Biden** announced that his administration will pursue another pathway to providing some student debt relief, which is based on a different law than the one the now-defunct student loan forgiveness program was linked to. This new pathway requires the Department of Education to undertake a formal rule-making process, which typically takes months. Details were not released on who might benefit if that process is successful. The President also announced that the administration will take steps to ease the transition period for borrowers when monthly student loan repayments resume in October. (June 30, 2023, online article –*cnn.com*)

This decision will likely become an issue in the 2024 presidential race, as President Biden can try to galvanize liberals by claiming the conservative court prevented him from delivering debt relief to potential voters. (June 30, 2023, online article – *cnn.com*)

LEGISLATION TO FIGHT HOMELESSNESS /SOLVE THE AFFORDABLE HOUSING CRISIS -

Our California Congresswoman, Maxine Waters, recently introduced three bills in the House of Representatives that offer far-reaching fixes for the nation's worsening housing affordability and homelessness crises. (June 27, 2023 online article - *msn. com*) Per the article, the legislation — which includes expanding housing vouchers and sending \$100 billion to help first-time, first-generation homebuyers — is focused on reducing the racial wealth gap. The gap between the rate of homeownership among Black versus white families is now at its widest point in a decade and contributes significantly to the wealth gap. **As stated by Congresswoman Waters: "Together, these bills represent the single largest and most comprehensive investment in affordable housing in U.S. history and comes at a time when our nation's housing and homelessness crisis has reached its worst state."** (June 27, 2023 online article - *msn. com*)

One bill — the *Housing Crisis Response Act of 2023* — includes over \$150 billion in funding for affordable housing and investments in closing the racial housing gap. It aims to create almost 1.4 million affordable homes and help 294,000 households pay rent, while strengthening oversight of fair housing practices to battle discrimination.

Another bill — the *Ending Homelessness Act of 2023* — includes \$10 billion to provide housing for people experiencing homelessness and would make the temporary US Interagency Council on Homelessness permanent.

It would also dramatically expand the federal housing voucher program to make it an entitlement that all Americans who qualify for can receive, rather than being turned away due to lack of supply. Currently, just 20% of those who are eligible for housing vouchers actually got them, lawmakers found, and those who receive them first sit on a waitlist for an average of two and a half years. Overall, just one in six eligible families live in public housing, receive a rent-reducing voucher, or live in a subsidized multifamily unit, according to the US Census Bureau.

The third piece of legislation — the *Downpayment Toward Equity Act of 2023* — would send \$100 billion in assistance to about 5 million first-generation homebuyers, who are disproportionately Black and Hispanic. It would provide up to \$20,000 in aid for first-generation homebuyers and up to \$25,000 for "socially and economically disadvantaged" buyers. (All descriptions of the bills are set forth in the June 27, 2023 online article - *msn. com*)

Per the article, it is appropriate that Congresswoman Waters, the top Democrat on the House Financial Services Committee, is a leading voice on housing affordability and homelessness issues, as California is disproportionately impacted by these issues. The state is dealing with an enduring housing shortage and skyrocketing rent and home prices. While California is 12% of the country's total population, it's home to 30% of people experiencing homelessness and half of the unsheltered homeless population in the US. **We applaud Congresswoman Waters for her leadership on these issues as these bills will help California and the nation as a whole.**

Help is definitely needed in California as the recent Homeless Count showed a 9% year-over-year increase in homelessness in the county, and a 10% jump in the city. (June 29, 2023 online article – *abc7.com*) According to the results of the point-in-time count conducted in January, there were 75,518 people experiencing homelessness in the county, and 46,260 in the City of Los Angeles, which is up from 69,144 in the county last year, and 41,980 in the city.

Despite making some progress with the Inside Safe program and other efforts in housing the city's homeless, L.A. Mayor Karen Bass said there needs to be more urgency and resources allocated to address the problem. She stated that "[m]y

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own wish is that we would treat it as a hurricane. That there would be a state of emergency acknowledged on a national level that would allow us to bring in FEMA." (June 29,2023 online article – *abc7.com*) **Short of a declaration of a “state of emergency” which would bring in FEMA, we hope the bills introduced by Congresswoman Waters get enacted as there is an absolute and obvious need for funds to address the growing problem of homelessness.**

Thank you for reading!