

MS NOW's *Ana Cabrera Reports*

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12 minutes and 14 seconds

ANA CABRERA: Let's turn to more breaking news just in from Washington. We just got a major decision from the Supreme Court on redistricting. Let's go to Lisa Rubin MS NOW senior legal reporter. Lisa, bring us up to speed.

LISA RUBIN: Well, Ana, this decision is one of the most eagerly anticipated of this Supreme Court term. This is a decision coming out of Louisiana, which the Court was deciding whether or not the creation of a second majority minority voting district for its congressional races was constitutional or not. And whether or not it was in compliance with the Voting Rights Act. Here, the Court is deciding by a 6-3 vote in a decision authored by Justice Alito that the map that Louisiana created in order to comply with the Voting Rights Act is not a map that can stand the Court saying that the Voting Rights Act sometimes justifies racially based decision making consistent with the Constitution. But here that while the state's efforts to comply were laudatory, this particular district is a racial gerrymander that cannot stand. That means that it will go back down to the lower courts for further decision making about the composition of congressional maps in Louisiana, but this could have reverberations beyond Louisiana as well.

CABRERA: And I want to bring in Leah Litman, who's standing by with us. Leah, give me your reaction to this ruling. Okay. We'll come back to Leah as soon as we have some of those audio and technical issues figured out. Lisa, as far as the implications go on, this Voting Rights Act, we know is important here. And the population in Louisiana is about a third black, so will their voices and their votes be heard? I think that's the big question people are asking. Given the map was drawn in response to a previous ruling that they needed to have more representation, this population.

RUBIN: Yes. And what the Court is holding here is that this was an unconstitutional racial gerrymander. So you have to ask, are the lines going to be drawn in a way that disperses the votes of African Americans in the state of Louisiana, such that their voices will not be heard in the way that we have traditionally understood the Voting Rights Act to support. That's a legitimate question on the table. Now, how the state is going to redraw these maps in a way that complies with the Voting Rights Act, but also comports with the Court's decision today and unambiguous decision where you have all six of the Court's conservatives in the majority, and you have three of the Court's liberals in dissent? I have yet to read the dissent. We've got 92 pages of decisions here, but this is one that we expected could have larger reverberations across the country. And I just want to situate this in the context of some of these larger redistricting fights that are happening across the country. We are seeing a number of states try to redistrict for political reasons to gain a political advantage. And while we see whether or not, for example, the Virginia maps are going to hold or whether Florida is going to redistrict, this adds a whole new variable into those house maps for the 2026 election. Are states going to now reconsider some of their maps in light of today's decision, in ways that could even further throw the balance of power of the House of Representatives into disarray?

CABRERA: Lisa, stay with us. I want to bring in Barbara McQuade. She's former U.S. Attorney, also an MS NOW legal analyst. Barbara, what's your reaction to this decision?

BARBARA MCQUADE: Yeah, you know, on its face, it looks a little less than I think many people had feared, because there was some concern that the majority of the Court would strike down the Voting Rights Act in its entirety. Justice Alito, writing for the majority, does say that voting rights based on race is a compelling governmental interest. And as long as maps meet strict scrutiny, then those are permissible. But then they turn around and say, but this one doesn't, and that racial minorities are entitled to electing the candidates of their choice. But that doesn't mean based on race, it just means they can choose the Republican or choose the Democrat. And because these voters can do that, then they're no need for this second district that was created to provide a majority black district. And so, that might sound okay at first blush, but I think the real disclosure of what's happening here comes in the dissent of Elena Kagan, who says that today's decision renders Section II of the Voting Rights Act "all but a dead letter." She talks about how the Voting Rights Act was "born of the literal blood of Union soldiers and civil rights marchers," and this "betrays a faithful implementation of the Equal Protection Clause." So on its face, it looks sort of innocuous, she says, even antiseptic. But in practice, I think this is going to mean that it's going to be impossible for minority voters to ever make out a claim under the Voting Rights Act, section two.

CABRERA: Right. And as I mentioned, I want to bring in Leah Litman for this. The current maps that are now being thrown out were drawn after Courts had ruled that the previous map didn't adequately represent the population there and was in violation of the Voting Rights Act. So what is the Supreme Court suggesting? Is the proper remedy?

MCQUADE: Is it for me or Leah?

CABRERA: Leah.

LITMAN: So, what the Supreme Court is saying is that the Voting Rights Act actually did not require the state of Louisiana to draw an additional majority minority district. So, instead of striking down what remains of the Voting Rights Act, Section II, and its protections for multiracial democracy and restricting, the Supreme Court has adopted an exceptionally narrow and cramped reading of Section II, one that will essentially almost never require states to draw additional majority minority districts. What the Court effectively said is, so long as the plaintiffs who are challenging these maps that states draw can't identify an alternative map that would both provide an additional majority minority district and retain the same partisan composition as the state's initial map, then the state often isn't going to be required to draw that second district. The reality, however, is that there's racial polarization in voting, so race and party are inextricably linked. And what that means is it's almost never going to be possible for plaintiffs to show that a state can draw an additional majority minority district, but that additional majority minority district will still vote Republican in the way that the previous district would have. That's why Justice Kagan, in dissent, is writing for the Democratic appointees and calls this ruling one that renders what remains of the Voting Rights Act a nullity. She situates this latest ruling in a trilogy of cases that the Supreme Court has issued, dismantling the Voting Rights Act. She says, look,

back in 2013, in *Shelby County vs. Holder*, the Court effectively nullified what was the pre-clearance regime, which required certain states with especially egregious histories of voting discrimination, to get the federal government's permission before changing their voting laws or policies. Then, in a later decision, *Brnovich v. DNC*, the Supreme Court effectively made it almost impossible to challenge what are called voting preconditions, rules that affect who can vote like a voter identification requirement. And since that decision in *Brnovich*, there have been zero — zero successful Section II challenges to voting conditions. The decision today in *Louisiana vs. Calais* completes the set because it effectively dismantles the last leg in the Voting Rights Act protections, which was for redistricting, whereas previously the Voting Rights Act had said when a state draws districts in ways that have the effect of diluting the voting power of racial minorities, of effectively making it so racial minorities votes count for less than white voters, and that they can never elect the candidates of their choice. Now, the Supreme Court has said, go ahead. State legislatures draw districts, maybe even redraw districts in ways that lock voters of color out of power, that is, to undo the Voting Rights Act and what it did for this country, namely, make it into a multiracial democracy.

CABRERA: Lisa, what happens now with the midterms? Does Louisiana have to create new maps?

RUBIN: It does, Ana. On the very end of the decision says that this is going to be remanded to the District Court. And by that, I take it to be a three-judge panel in the Western District of Louisiana to — for further proceedings, which means that Louisiana's maps will be withdrawn unless Leah understands that differently. That's my understanding of today's decision. The other question, though, of course, is whether or not other states will also use today's decision as a basis to further redraw maps in their own states. It used to be that mid-decade redistricting was an anomaly, something that we never saw unless called for by a Court's decision. But of course, we are now seeing across the country all sorts of reasons for redistricting. And this decision may be a pretext for other states to say, oh, wait a second, we have too many majority minority districts that wouldn't pass muster under the new configured test for section two, given how stringently the Court is drawing that test, maybe we too need to configure our own districts before they're challenged in court, so I do think Louisiana's maps will be withdrawn at a minimum, and we may see some other states try to do the same in theoretical compliance with today's decision, Ana.

CABRERA: Leah, what do you see as the ripple effects? Are there other states that could now redraw their maps that you think are going to be likely to do so?

LITMAN: It's very possible. So one expert on voting rights, professor Nick Stephanopoulos at Harvard Law School, actually estimated that a ruling to this effect in *Louisiana vs. Calais* could affect up to potentially 50 legislative districts. Now, that's not to say all of those states might redraw their districts so close to the midterm elections, but that does underscore what a significant effect this ruling will have on our democracy, and who is able to obtain political power. So Florida, we know, has expressed interest in potentially doing some redistricting, their initial plan for when they were going to do so was push back when we didn't have this decision last week. But my guess is they will get that process started now, and it's possible other states

will follow. It's possible the President will invite other states to do more redistricting like he did when he invited them to do more partisan redistricting last year. So it remains to be seen exactly how many states might scramble to try to affect the upcoming midterm elections. But I think it's all but a certainty that many states will redraw the districts within the next few years, and certainly after the next redistricting cycle, in ways that will make it so much harder for voters of color to actually select the candidates of their choice.

CABRERA: Leah Litman, Barbara McQuade, and Lisa Rubin, thank you, ladies, for catching this breaking news with us.

(...)

11:31:03 a.m.

3 minutes and 43 seconds

CABRERA: We are following more breaking news this morning. The Supreme Court striking down a Louisiana congressional map and weakening a key section of the voting rights act that protects against discrimination. Joining us now, MS NOW senior legal reporter Lisa Rubin. So, Lisa, walk us through this decision. What does it mean and what comes next.

RUBIN: Well, let's talk about on a first, the implications for Louisiana, the Court striking down, as you noted, the congressional map that provided for a second majority minority district, where more than 50 percent of the voting population was African American. And the Court now also refining the test for finding whether or not a district is drawn in a racially discriminatory way, saying that Section II of the Voting Rights Act "imposes liability on," I'm reading from the opinion, "only when the evidence supports a strong inference that the state intentionally drew its districts to afford minority voters less opportunity because of their race." That means that people who are challenging the drawing of a particular district have to show that alternative explanations are not possible, and that the only plausible explanation is racial discrimination, as opposed to, for example, a partisan gerrymander which this Court again and again has said is permissible. As for the implications for Louisiana itself, that's very much up in the air right now, with Louisiana leaders telling local press that they don't really understand exactly how this is all going to play out. For example, the Secretary of State in Louisiana, Nancy Landry, told a local publication, "my lawyers are currently analyzing the opinion. We are limited in what we can say at this time as this continues to be active litigation, with the case remanded for proceedings back to the Western District of Louisiana." That's a federal district court that was involved in this case at a lower level. So, Ana, on a lot of uncertainty right now, the voting rights act upheld. But again, on a test that is so stringent that many commentators saying it will be almost impossible for any challengers to districts being drawn to show that racial discrimination was, in fact, the reason for the district lines being drawn the way they were.

CABRERA: And I want to read part of Justice Kagan's dissent, in which she writes in part: "The Voting Rights Act was born of the literal blood of Union soldiers and civil rights marchers. It ushered in awe inspiring change, bringing this nation closer to fulfilling the ideals of democracy and racial equality. And it has been repeatedly and overwhelmingly reauthorized by the people's

representatives in Congress. Only they have the right to say it is no longer needed. Not the members of this Court.” Lisa, what do you make of that argument that this change to the Voting Rights Act should be done by Congress, not the court?

RUBIN: I think the justice has a very solid point there, because what is happening here is that the Court is technically upholding Section II of the Voting Rights Act, but changing the sort of the goalpost about what it means to show that the lines are drawn in a racially discriminatory manner. And Justice Kagan is saying we should not be the ones to change the meaning of this act. This was done by congress to remedy racial discrimination, not to prohibit the use of race, to sort of act as a remedial factor. And so those are decisions that belong to Congress. Congress should be doing its job. I should note, Ana, also that many of the justices who are in the majority of today’s decision have in other decisions this term essentially said the same thing, that Congress should be the one making those policy decisions, not the court.

CABRERA: All right. Lisa Rubin, thank you so much for bringing us that.