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a Better Future Now”

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Ruth Bader Ginsburg Makes Her Mark

If you’re looking for the justice on the Supreme Court who mirrors Thurgood Marshall’s tenure on the bench, it is not Sonia Sotomayor, the “Wise Latina.” And it certainly isn’t Clarence Thomas. It is Ruth Bader Ginsburg, the second woman to serve on the nation’s highest court.

This became clear in the Fisher v. University of Texas affirmative action case. With Elena Kagan recusing herself, the court voted 7-1 to send the case back to court of appeals for additional review. The lone dissenter was Ginsburg.

“The University of Texas at Austin (University) ... has steered clear of a quota system like the one struck down in Bakke, which excluded all nonminority candidates from competition for a fixed number of seats....” she said. “Justice Powell’s majority opinion in Bakke “rules out a racial quota or set-aside, in which race is the sole fact of eligibility for certain places in a class.’ And, like so many educational institutions across the Nation, the University has taken care to follow the model approved by the Court in Grutter v. Bollinger.”

In sending Fisher back to the 5th Circuit Court of Appeals in New Orleans, the 7-1 majority emphasized that the lower court should apply a standard of strict scrutiny, meaning the University must prove that it has tried all available race-neutral approaches before allowing race to be considered a factor in admissions.

THE CURRY REPORT

George E. Curry



Ginsburg wrote in her dissent, “I have said before and reiterate here that only an ostrich could regard the supposedly neutral alternatives as race unconscious.”

Continuing to address the issue of race directly, Ginsburg said, “I have several times explained why

was joined by Stephen G. Breyer, Sotomayor and Kagan. The conservative majority struck down Section 4 of the Voting Rights Act, effectively gutting one of the nation’s most effective tools to curb discrimination against Black voters.

“In the Court’s view, the very success of Section 5 of the Voting Rights Act demands its dormancy,” Ginsburg said. “Congress was of another mind. Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated.”

She explained, “The Voting

Under our constitutional structure,
Congress holds the lead rein in
making the right to vote equally real
for all U. S. citizens.

government actors, including state universities, need not be blind to the lingering effects of ‘an overtly discriminatory past,’ the legacy of ‘centuries of law-sanctioned inequality.’ Among constitutionally permissible options, I remain convinced, ‘those that candidly disclose their consideration of race [are] preferable to those that conceal it.’”

In Shelby County v. Holder, the Voting Rights Act challenge, Ginsburg filed a dissenting opinion that

Rights Act of 1965 (VRA) has worked to combat voting discrimination where other remedies had been tried and failed. Particularly effective is the VRA’s requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights.”

Quoting a 1966 decision in South Carolina v. Katzenbach, Ginsburg said, “A century after the

Fourteenth and Fifteenth Amendments guaranteed citizens the right to vote free of discrimination on the basis of race, the ‘blight of racial discrimination in voting’ continued to “infec[t] the electoral process in parts of our country.”

The Voting Rights Act directly addressed that infection, Ginsburg stated.

“Although the VRA wrought dramatic changes in the realization of minority voting rights, the Act, to date, surely has not eliminated all vestiges of discrimination against the exercise of the franchise by minority citizens,” she said.

Ginsburg noted, “After considering the full legislative record, Congress made the following findings: The VRA has directly caused significant progress in eliminating first-generation barriers to ballot access, leading to a marked increase in minority voter registration and turnout and the number of minority elected officials. But despite this progress, “second generation barriers constructed to prevent minority voters from fully participating in the electoral process” continued to exist, as well as racially polarized voting in the covered jurisdictions, which increased the political vulnerability of racial and language minorities in those jurisdictions.”

She noted that Congress, not the judiciary, should have the final say on voting matters.

George E. Curry is editor-in-chief of the NNPA News Service.

The Shameful Voting Rights Decision

NNPA GUEST COLUMNIST

Sherrilyn A. Ifill

court has declared that Section 4 unconstitutional. This essentially hollows out the foundation of Section 5.

The court’s decision is a shocking usurpation of power from the Congress, which in 2006 held hearings over the course of nine months, heard from almost 100 witnesses and amassed a 15,000-

Charleston County proposed switching from single-member district to at-large voting for the council, and failed to inform any of the Black members of the school board of the proposed change. In 2001 in Kilmichael, Miss., the all-White town council decided to simply cancel the town’s election, once a number of Blacks decided to run, and data showed that the jurisdiction had become majority Black.

In each of these cases, Section 5 prevented the discriminatory plans

It’s hard to imagine a piece of
legislation with a greater pedigree
and for which more people have
fought and died than the Voting
Rights Act

page record. The result of Congress’ searching inquiry was its determination that voting discrimination continued in the jurisdictions identified in Section 4 of the Act. In fact, the record was replete with examples of voting discrimination in those areas.

For example, Congress found that city officials in Calera in Shelby County, Ala. discriminated in 2008 when they reduced the Black population in the sole majority Black council district from 70 percent to 29 percent. Congress learned that in 2003 once Blacks won a majority of seats on the Charleston, S.C. school board,

from reaching fruition. Today, that protection has been removed, by a 5-member majority on the court that substituted its judgment for the record painstakingly amassed by Congress.

This decision is devastating for minority voters in cities, towns, and counties all over this country. In essence, the voting protections of 48 years have been removed with a stroke of the court’s pen.

Now we have to act. The NAACP Legal Defense and Educational Fund has been fighting voting discrimination for more than 50 years, and we won’t stop

now. Here’s what you can do:

1) If you live in the South or in a jurisdiction formerly covered by section 5, tell us about any voting changes happening in your community. The court struck down section 4 of the act and, in effect, removed the power of Section 5, but the rest of the Act still provides protections for minority voters. The Voting Rights Act is not dead. But without section 5, you are our eyes and ears. Go to our website at www.naacpldf.org to “Take Action,” email us at vote@naacpldf.org, or call the Election Protection hotline shared by national civil rights groups at 1-866-OUR-VOTE.

2) Call your representatives in Congress and tell them that they must fix the Voting Rights Act. Tell them they must act now to restore protections to minority voters in the south.

3) Join us for the 50th anniversary of the March on Washington on August 24 in Washington, D.C. We need a massive mobilization to show America that we will not go back on voting rights. Contact the National Action Network for more information.

We can win this. But to win, we will need to be in the courts, in the streets, on the airwaves and in the halls of Congress. Starting now!

[A version of this article appeared in The Root, an online publication of the Washington Post]

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