Updated Sept. 2022

NC NAACP v. Moore

Limits on the Overreach of a Racially Gerrymandered Legislature

Case Background:

On August 19, 2022, the North Carolina Supreme Court issued a groundbreaking ruling that, for the first time in the United States' history, placed a check on the power of a racially gerrymandered legislature.

The North Carolina Supreme Court ordered that while a racially gerrymandered legislature may continue to engage in ordinary legislative acts such as passing regular legislation, it does not have unlimited power to begin the process of amending our state constitution.

The N.C. Supreme Court did not hold that a racially gerrymandered legislature could not pursue any constitutional amendment, but instead set certain important limits that provide guardrails to our democracy.

What the Court Ruled:

In 2017, federal courts found that the North Carolina General Assembly was illegally constituted. Following that determination, the N.C. Supreme Court said that first, a constitutional amendment will only be subject to scrutiny if the legislature reached the supermajority necessary to pass an amendment (three-fifths of all members in both House and Senate) by relying on votes from districts made possible by an illegal racial gerrymander.

The court found that the record is clear in this case that the legislature relied on votes from the illegal racial gerrymander to place the Constitutional Amendments on the ballot—when, here, two-thirds of all districts needed to be redrawn to cure the racial gerrymander.

Second: If this test is met, then the North Carolina Supreme Court described three types of amendments that must be voided:

(1) Amendments that would immunize legislators who were elected because of illegal gerrymandering from losing their power

(2) Amendments that would perpetuate the exclusions of certain voters from the democratic process

(3) Amendments that would discriminate against the same class of voters who lost their voice due to the gerrymandering.

In other words, **a racially gerrymandered legislature cannot use its illegally obtained power to change our constitution** in a way that further entrenches the power structure illegally secured through gerrymandering. And it **cannot use that power to target and harm a set of voters** whose voices were diminished in the election of the gerrymandered legislature, and thus the constitutional amendment process.

What this means:

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The court's opinion was thoughtful, well-reasoned, and grounded in the longstanding principle in our constitution that **it is the people of North Carolina that have power, not legislators.** The court stressed the difference between our constitution and regular legislation by explaining that changing our constitution can **change our very system of democracy** and upend our structures of power.

The court **honored our constitution**, and the people of North Carolina who drafted it, by upholding the importance of the legislative supermajority requirement before the amendment process can begin. By contrast, **the dissent would ignore** this key requirement set out in Article XIII of North Carolina's constitution and allow a constitutional alteration any time a bare majority of voters vote for it, a process completely foreign to North Carolina, its constitution, and law.

Importantly, from the outset, **all parties have agreed** that this case poses a question of North Carolina law, not federal law. It is the longstanding role of the North Carolina Supreme Court to **settle questions of state law.**

The Dissent asserts that the fact that a slim majority of voters approved the amendments after they were illegally placed on the ballot should override the Constitution's requirements for the legislature to place amendments on the ballot. **However, the Dissent's suggestion cannot be reconciled with the fact that the illegal supermajority engaged in intentional racial gerrymandering, suppressing and diluting the votes of African Americans to be in power. It also ignores the fact that when the NC NAACP filed suit and took every effort to get a ruling before the amendments were placed before voters,** the defendants argued against early resolution. At that time, **the Defendants said there was no need for early action because if the NC NAACP prevailed, the amendments would simply be voided.**

What happens next:

The two amendments at issue in this case are the requirement for photo voter ID, and a lowering of the state's income tax cap from 10% to 7%. The court sent both amendments back to the trial court for an evidentiary hearing to determine if they fall within any of three categories of amendments that are forbidden from a racially gerrymandered legislature.

Mandatory photo voter ID has long been recognized as a tool to **disenfranchise Black voters**. And a lowering of the state income tax cap is just the latest step in a long line of racist efforts to limit the ability of our state government to fairly collect the revenue needed to support public sector through investments in everything from education to protection of the air we breathe and water we drink. **The NC NAACP, represented by attorneys at the Southern Environmental Law Center and Forward Justice, will push forward to provide evidence demonstrating how both amendments fall into those three categories and should be voided- and protect the power of voters in this state.**

Will this be appealed to the U.S. Supreme Court?

All parties consistently acknowledged this case concerns solely a **question of state law.** Counsel for legislative defendants has made this clear in statements in court and in briefs.