CONCORD MONITOR

The 50 biggest winners at the Supreme Court

By Grant Bosse – June 30th, 2013

The nine justices of the U.S. Supreme Court all agreed on one thing this week: states matter. In a pair of high-profile cases, the court's liberal and conservative wings each joined with swing voter Anthony Kennedy to reach decisions that greatly reduced the power of the federal government to contradict state decisions.

On Tuesday, the court ruled 5-4 in Shelby Count v.

Holder that Sections 4 and 5 of the Voting Rights Act of 1965 could no longer be justified. The section of the landmark civil rights law designated which states and counties need to pre-clear changes to their election laws with the federal Department of Justice. This was an effort to prevent legislatures in the segregated south from bringing back Jim Crow laws designed to discourage black Americans from registering and voting.

Because New Hampshire has an unenforced literacy test on the books and had abnormally low voter turnout in 10 towns in 1968, these towns had been on the DOJ's list of suspicious voting districts for 40 years.

The southern Democrats who stood in the schoolhouse door to protect Jim Crow gave way to Reagan Democrats, and now the covered jurisdictions are predominantly Republican. The Obama Administration has used Section 5 of the Voting Rights Act as a political weapon. As Attorney General Eric Holder has used his Section 5 veto to block a redistricting plan in Texas and Voter ID legislation in South Carolina.

Writing for the court in Shelby, Chief Justice John Roberts found that the extraordinary circumstances that justified federal review of prospective changes in state law no longer exist. Rather than mark the tremendous progress in race relations in the past half century, liberals erupted with outrage and exaggeration. They claimed that Roberts had declared an end to racism and destroyed the Voting Rights Act.

That's simply not true. The Voting Rights Act is still in force, discriminatory election laws are still illegal, and the DOJ still has oversight jurisdiction to ensure fair elections nationwide. The only thing that's changed is that state governments no longer have to play "Mother May I" with federal bureaucrats who presume that states are racist until proven otherwise. One of the states covered under Section 5 until the Shelby decision was Virginia, which voted for Barack Obama for president, twice.

On Wednesday, Kennedy joined his four liberal colleagues in Windsor v. U.S. to strike down the Clinton-era Defense of Marriage Act. The federal government must now recognize marriages

between anyone legally married in their state, including same-sex couples. A separate coalition ruled that private citizens had no standing to appeal the California Supreme Court's decision invalidating Prop 8, clearing the way for same-sex marriage ceremonies to resume in our largest state.

While Kennedy's decision in Windsor is heavy on equal protection arguments, the decision does not extend same-sex marriage to states that have yet to approve it. Taken together, the DOMA and Prop 8 cases firmly leave the definition of marriage to the states.

Supporters of same-sex marriage are likely to use Windsor as a precedent in other states, the Supreme Court rather plainly sidestepped the opportunity to declare a right to marriage. They could someday take up an appeal of a state's decision to grant or deny same-sex marriage benefits but haven't shown any interest in doing so.

Critics point out that Kennedy's broad equal protection arguments start us down a slippery slope, forcing the federal government to recognize polygamy. Kennedy's sloppy prose leaves no room for such distinctions, but only if a state were to legalize polygamy. And that's not likely to happen.

The libertarian CATO Institute was trumpeting the triumph of states' rights this week, having filed amicus briefs on the winning side of both cases, as well an affirmative action case that raised the threshold to justify racial preferences in academic admissions.

CATO's Ilya Somin calculates that CATO was on the winning side of 15 of the 18 cases in which it filed briefs this term. If you know a gay couple whose adoption, immigration or insurance claims are now recognized by the federal government, thank the Koch Brothers.

The Jim Crow South isn't coming back, we no longer have to presume state legislatures are racist, and states can be trusted to write their own marriage laws. I'll take it.