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Texas redistricting brief argues for demise of Voting Rights Act

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Texas' Republican leaders dislike the Voting Rights Act.

No revelation there.

Republicans also supposedly despise having unelected "activist" judges supersede the will of elected representatives.

Heard that broken record.

But if the state's lawyers could entice the Supreme Court to use Texas redistricting as a tool for smacking down Section 5 of the act before the 2012 elections?

Well, woo-hoo! Ambitious and calculating Texas Attorney General Greg Abbott no doubt wouldn't complain.

And the will of Congress in reauthorizing the act in 2006? Too bad, so sad.

The Voting Rights Act of 1965 was historic legislation designed to protect racial and ethnic minorities who had been subject to intimidation, poll taxes, arbitrary tests and other practices that impeded their political participation. Congress has renewed the law multiple times, the last for 25 years. The vote was 390-33 in the House, 98-0 in the Senate. It would be political suicide to vote against an iconic civil rights law.

A July 27, 2006, White House news release about the reauthorization said: "In signing this bill, President (George W.) Bush honored the memory of three women who devoted their lives to the struggle for civil rights - Fannie Lou Hamer, Rosa Parks and Coretta Scott King."

But the act's Section 5 has long been a lightning rod. It's not hard to see why. It requires jurisdictions with a history of illegal discrimination to get voting changes approved by the Justice Department or a federal court. The point is to prevent changes that reduce the

ability of racial and language minority groups to elect candidates of their choice. That in itself is a somewhat amorphous standard that causes plenty of argument.

And preclearance applies only to Texas and 16 other states, though some of those are only partly covered. The group includes Alaska, New York and South Dakota as well as former members of the Confederacy, and inclusion is based on 1972 conditions. Jurisdictions can get a court declaration that they no longer need to be subject to the requirement, and dozens have, mostly in Virginia.

In a 2009 case involving the Northwest Austin Municipal Utility District, the Supreme Court wrestled with Section 5's constitutionality but ultimately left it intact.

The Texas redistricting question that the justices will take up during arguments Monday isn't directly about Section 5.

The high court has been asked to decide which voting districts the state is supposed to use this year in races for the state House and Senate and Congress: maps drawn by the Legislature, a different set devised by a three-judge federal court in San Antonio or some variation on one or the other. The ongoing confusion over the maps stems from delays in getting the Legislature's plans pre-cleared. A federal panel in Washington has said some of those maps are problematic, and a trial set for later this month is needed to sort things out.

Ilya Shapiro, a senior fellow at the Cato Institute, argues that the justices should tackle Section 5 head-on in Texas' case because the law "now facilitates the very discrimination it was designed to prevent."

But the justices don't have to mess with pre-clearance to decide which maps should be used until the D.C. panel decides the legitimacy of the legislative plans.

It's clear, though, that Abbott would like them to - or at least insert some language in their ruling that would help undo Section 5 in cases from Alabama and North Carolina that are winding through lower courts.

Texas' brief laying out its argument for the Supreme Court refers repeatedly to Section 5's "intrusion into state sovereignty," cites the Northwest Austin case and reminds the justices about their fears, doubts and serious questions about the provision's continuing validity.

The state proposes holding 2012 elections under the Legislature's maps even though they haven't yet received the approval the law requires. But doing that basically would gut the preclearance requirement - without the justices actually having to strike down an iconic civil rights law or waiting for Congress to amend it.

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