

Looking Back at the 2022 Supreme Court Term



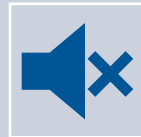
LWVUS Advocacy & Litigation Team

October 5, 2023

Housekeeping



This webinar will be recorded, and slides will be shared.



If you are not speaking, please mute yourself to minimize sound issues.



Make sure you identify yourself (name, League, State & pronouns) when asking questions.



Please add questions to the Q&A box. You can also add thoughts or discussion to the chat, but we'll address questions from the Q&A first.

Community Norms

Bring your full self and limit distractions.

What is learned here, leaves here.

No one knows everything, but together we know a lot.

Don't yuck my yum.

Oops, ouch, and educate.

Assume best intentions.

Presenters



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Caren E. Short
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Celina Stewart
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LWV at the Supreme Court

For the 2022 Supreme Court term, LWV filed amicus briefs in the following cases

- [Moore v. Harper](#)
- [Allen v. Milligan](#)
- [303 Creative LLC v. Elenis](#)
- [Students for Fair Admissions v. Harvard & Students for Fair Admissions v. UNC](#)



Results

Wins

Moore v. Harper

Allen v. Milligan

Losses

303 Creative, LLC v. Elenis

*Students for Fair Admissions v.
Harvard & Students for Fair
Admissions v. UNC*

Moore v. Harper

Argued December 7, 2022

Decided June 27, 2023

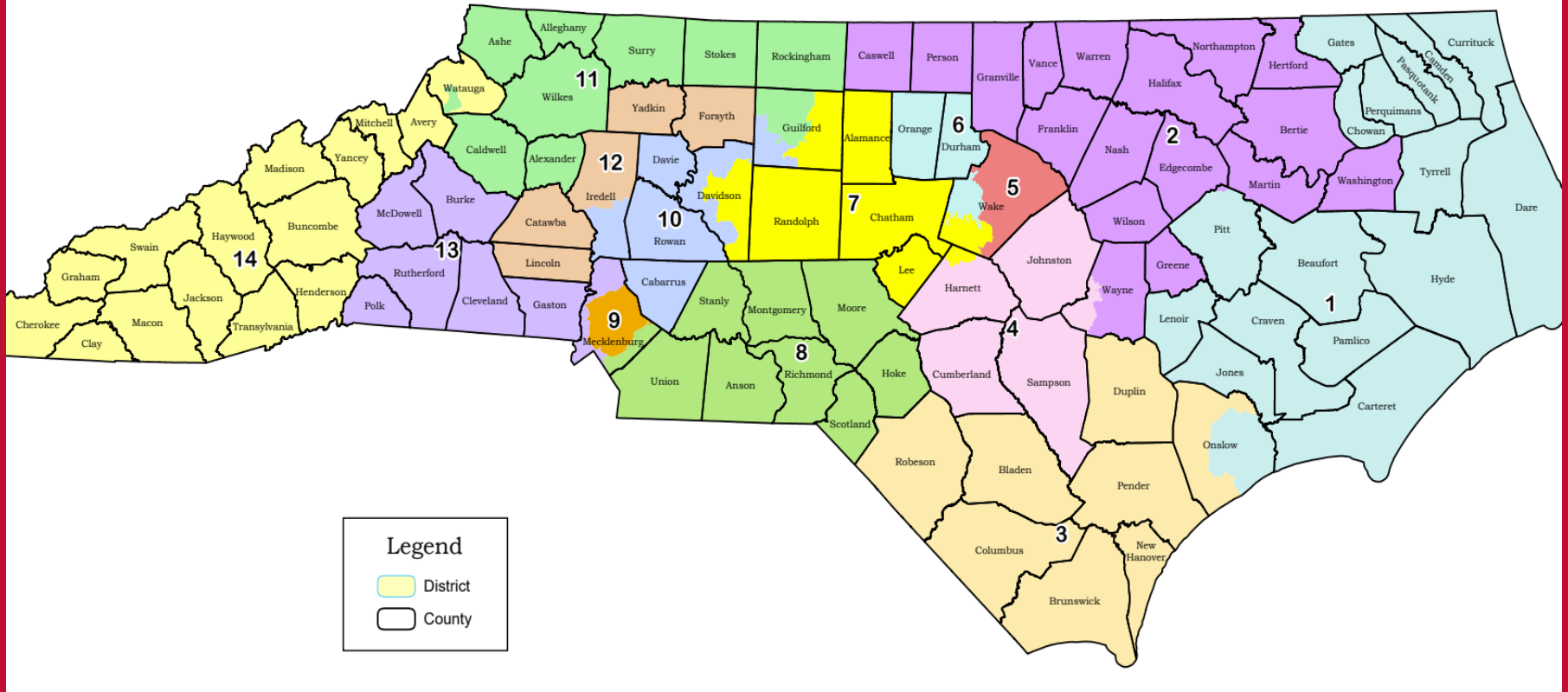
“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of ch[oo]sing Senators.”

United States Constitution Article I Section IV

Also known as the ‘Elections Clause’ of the United States Constitution

The North Carolina Legislature and ISLT

- After its Congressional gerrymander was struck down by the North Carolina Supreme Court using the state constitution's free and equal elections clause, the Republican-controlled North Carolina state legislature appealed to SCOTUS.
- It argued that ISLT gave it the exclusive power to regulate federal elections under state law, with no checks by the state courts.



LWV's Amicus Brief

- LWVUS, LWV DC, and all 50 state Leagues filed an amicus brief
- The brief urged the Court to reject the Independent State Legislature Theory (ISLT)
- The brief outlined the potential chaos that adopting ISLT could create, including separate sets of laws for state and federal elections, and overturning of hundreds of state court decisions protecting voting rights for federal elections



SCOTUS Rejects ISLT

In a 6-3 ruling authored by Chief Justice John Roberts, the Court rejected North Carolina's attempt to impose ISLT.

This ruling is a vital victory for democracy.

“The Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review.”

Chief Justice John Roberts
in *Moore v. Harper*

Allen v. Milligan

Argued October 4, 2022

Decided June 8, 2023

Alabama's Congressional Map

- After the 2020 Census, Alabama's legislature drew only one majority-Black Congressional district
- Alabama's population is 64% white and 25% Black.
- The new map divided the Black Belt among multiple majority-white districts, preventing it from being combined with Mobile's Black population to form a second majority-Black Congressional district.

Section 2 at the Supreme Court

- Plaintiffs sued under Section 2 of the Voting Rights Act.
- A three-judge panel struck down the map as violating Section 2.
- Alabama appealed to the Supreme Court.

- The Supreme Court set the case for the October 2022 Term but allowed the map to be used for the 2022 election, saying it was too late to change the map.

LWV's Amicus Brief

LWVUS, LWV Alabama, SPLC, and local partner [Stand-Up Mobile](#) filed an amicus brief in support of Alabama's Black voters.

The amicus brief explained that Mobile and the Black Belt share a history and common interests stemming from poverty and underinvestment in health, education, and food insecurity, needs that had been repeatedly ignored due to the division of the community over decades of redistricting.



SCOTUS Upholds Section 2

- In a 5-4 decision, the Court upheld Section 2 of the Voting Rights Act.
- The Court refused to adopt Alabama's proposed "race-neutral benchmark" test.
- The Court's opinion ensures that Section 2 remains a viable tool to challenge redistricting maps that fail to provide voters of color with an equal opportunity to elect candidates of choice.
- *Would Alabama Obey?*



Alabama Disobeys the Court

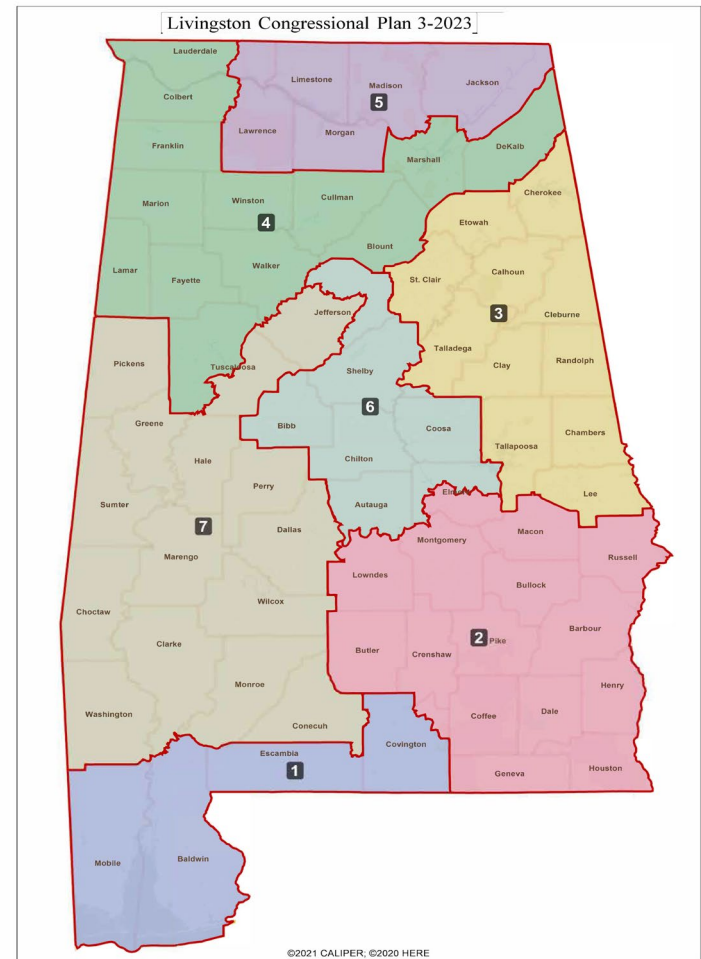
Rather than obey the Court, Alabama refused to draw a second majority-Black Congressional district, submitting a [new map](#) with only one majority-Black district.

The district court rejected the map.

Alabama appealed to the Supreme Court again, seeking to avoid drawing a second majority-Black district yet again.

On September 30, SCOTUS rejected this attempt a second time.

Impacts BEYOND Alabama.



Above: The remedial map enacted the by the Alabama Legislature and rejected by the three-judge panel.

303 Creative v. Elenis

Argued December 5, 2022

Decided June 30, 2023

Background of *303 Creative v. Elenis*

- Plaintiff Lori Smith, owner of 303 Creative, wanted to expand her business by creating wedding websites.
- A strong believer that marriage was only between a man and woman, Ms. Smith, alleged two provisions of the Colorado Anti-Discrimination Act (CADA) were unconstitutional, alleging fears of being fined and penalized under the provision if she did not offer wedding websites to same-sex couples.

LWV's Amicus Brief



LWVUS, THE NATIONAL WOMEN'S LAW CENTER, AND 34 OTHER ORGANIZATIONS FILED AN [AMICUS BRIEF](#) SUPPORTING COLORADO AND THE CONSTITUTIONALITY OF THE CADA PROVISIONS.



THE BRIEF WARNED THAT ALLOWING FREE SPEECH EXCEPTIONS TO ANTI-DISCRIMINATION LAWS COULD UNDERMINE THEIR ABILITY TO PROTECT MARGINALIZED GROUPS



The Court sides with Ms. Smith against CADA

- In a 6-3 ruling authored by Justice Gorsuch, with all three liberal justices in dissent, the Court ruled that Ms. Smith could not be required to create websites celebrating same-sex weddings.
- The justices were sharply divided on the reach and effect of the decision.



“A business open to the public seeks to deny gay and lesbian customers the full and equal enjoyment of its services based on the owner’s religious belief that same-sex marriages are ‘false.’ The business argues, and a majority of the Court agrees, that because the business offers services that are customized and expressive, the Free Speech Clause of the First Amendment shields the business from a generally applicable law that prohibits discrimination in the sale of publicly available goods and services. That is wrong. Profoundly wrong.”

- Justice Sonia Sotomayor, writing for the dissent

Students for Fair Admissions v. Harvard

Argued October 31, 2022

Decided June 29, 2023

Background of the Cases

- Students for Fair Admissions (SFFA) filed two separate lawsuits against Harvard and UNC, alleging their use of race as one of many factors in the admissions process to ensure diversity was illegal under the Equal Protection Clause of the Fourteenth Amendment.
- The two cases were consolidated and heard before the Supreme Court on the same day.

LWV's Amicus Brief

LWVUS, together with 36 other pro-equality organizations, filed an amicus brief led by the National Women's Law Center urging the Court to uphold affirmative action in admissions policies in higher education

The League and its co-amici pointed to the benefits affirmative action brought to college campuses, including the inclusion of women of color and diverse student bodies.



Conservative Majority Strikes Down Affirmative Action in College Admissions

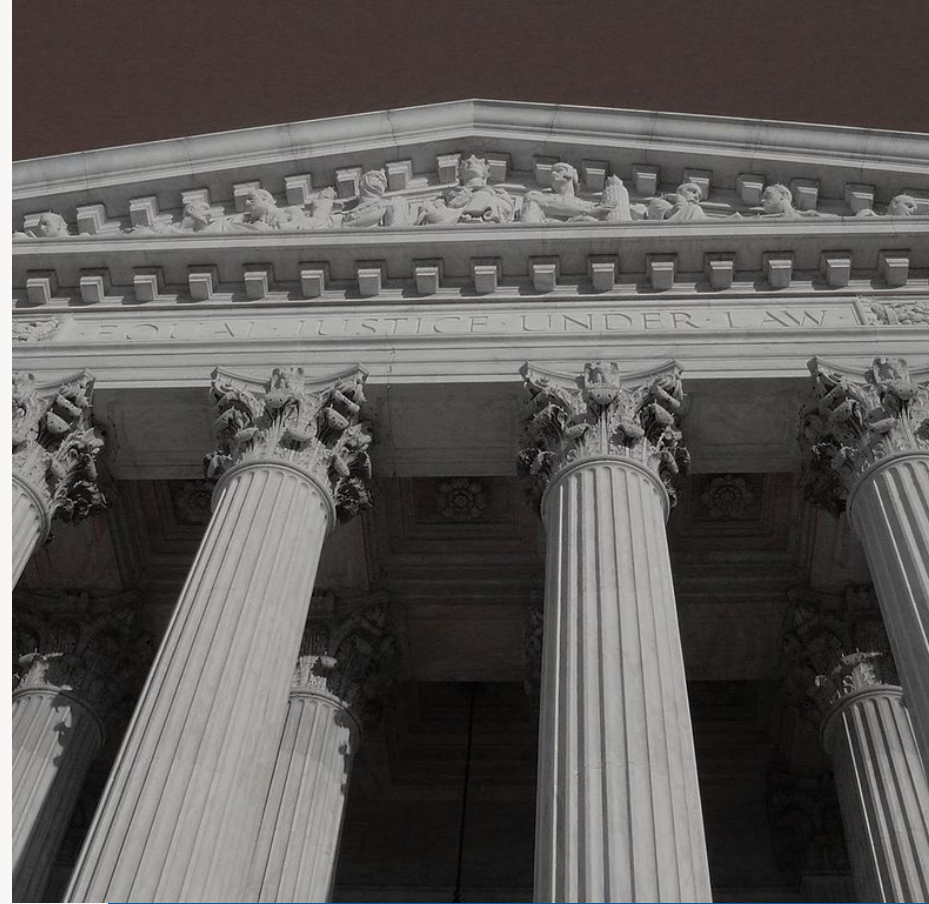
With all three liberal Justices in dissent, Chief Justice John Roberts and the five conservative Justices hold that using race as a factor in college admissions violates the Fourteenth Amendment of the US Constitution.



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Can Race Still Be Considered?

“[N]othing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise”



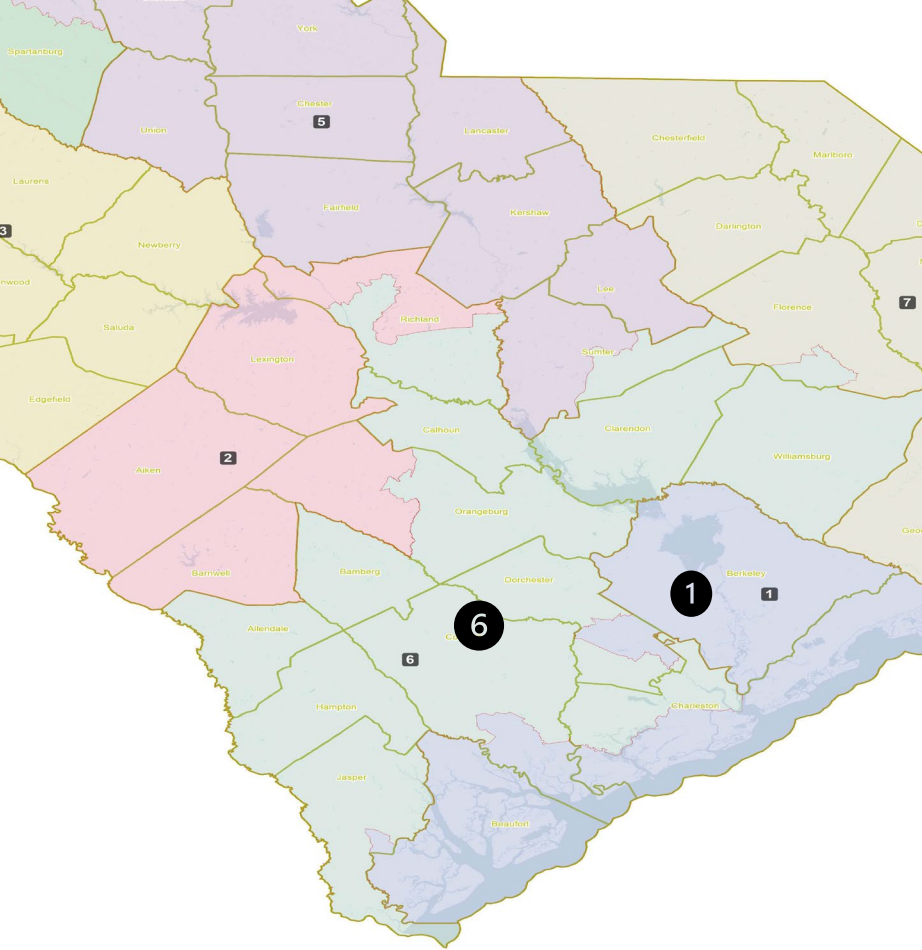
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Cases to Watch for the 2023 Term

SC Congressional Redistricting

- South Carolina passed a new congressional map in 2022.
- During the redistricting process, LWV South Carolina testified that Charleston County and other communities of interest should be kept whole.
- Despite this and other testimony, SC's map split Charleston County, moving over 30,000 Black residents out of the 1st Congressional District into the 6th.





Alexander v. South Carolina NAACP

- Plaintiffs filed a federal lawsuit arguing that South Carolina’s First Congressional District was racially gerrymandered
- A three-judge panel struck down the district and ordered a redraw; South Carolina appealed to the Supreme Court
- LWV South Carolina and LWVUS each filed amicus briefs supporting the plaintiffs asking the Court to uphold the panel’s decision

Why *Alexander v. South Carolina* NAACP Matters

- 2021 Redistricting was first cycle without Section 5 VRA protections
- South Carolina previously had to submit redistricting plans to DOJ to prove they would not harm Black voters
- Lawsuits to protect against racial discrimination in redistricting are expensive, time-consuming, and difficult to prove.
- Case will be heard October 11
- Decision Spring/Summer 2024



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Questions?

