



## Racial Gerrymandering Hits a Big Roadblock

On April 29, 2026, the U.S. Supreme Court narrowed the ability of states to use race as a determining factor in drawing legislative districts. This important 6-3 decision, *Louisiana v. Callais*, addressed the long-contentious issue of whether state legislatures may create so-called majority-minority districts based on race. The Court ruled that a 2024 Louisiana redistricting law that created a second majority-black congressional district, based predominantly on race, conflicted with the U.S. Constitution, specifically the Fourteenth and Fifteenth Amendments.

Critics of the decision, including dissenting Supreme Court Justice Elena Kagan, charged that the ruling gutted the Voting Rights Act of 1965 and its 1982 amendment. However, the majority ruling did *not* overturn the Voting Rights Act. Instead, it declared that states need to provide a compelling reason to justify the predominant use of race in drawing congressional districts. The state of Louisiana had failed to do this in creating a second district to ensure black representation.

*Callais is an historic decision, with profound implications for the politically crucial task of drawing legislative districts. Although the decision does not outlaw all racial gerrymandering, Callais sets a high bar for its use. The decision does not forbid political gerrymandering—the kind of gerrymandering that most people think of when they hear the word.*

In order to fully grasp the significance of the *Callais* decision, it is necessary to understand the reasoning of the Court, as presented by Justice Samuel Alito; the complex legislative and judicial context of the decision; and the implications of the decision for the Republican and Democratic Parties. The legal analysis is rather technical, but the decision will have significant political consequences, so bear with us.

The case involved a 2024 Louisiana legislative redistricting law that created a second majority-black district. The (non-African-American) plaintiffs asserted that the law violated the Voting Rights Act by discriminating against them based on race. The Louisiana legislature was responding to a 2022 lower federal court decision, *Robinson v. Ardoin*, which held that a district map drawn by the legislature likely violated the Voting Rights Act because it did *not* include an additional majority-black district.<sup>1</sup> That court pointed to paragraph 2 of the Voting Rights Act, which prohibits any state or local voting practice, law or redistricting map that results in discrimination against racial or language minorities.

### Court Reasoning in *Callais*

Similar interpretations of paragraph 2 over many years had allowed or required 28 states to create majority-minority districts for the U.S. House of Representatives. These 28 states collectively contain 148 districts where racial or ethnic minority groups comprise the majority of the population. Louisiana's creation of a second majority-black district in obedience to the *Robinson* lower-court decision drew a legal challenge claiming that the redrawn district violated the U.S. Constitution because of the clear intent to redraw the lines based on race.

Writing on behalf of the Supreme Court majority, Justice Samuel Alito stated that the Voting Rights Act did *not* require Louisiana to create an additional majority-black district. Furthermore, Justice Alito wrote, “no compelling interest justified the State’s use of race” in creating the district, and “that map is an unconstitutional racial gerrymander.”

He emphasized that “Section 2 of the Voting Rights Act of 1965 was designed to enforce the Constitution—not collide with it.” Reprimanding the lower federal court

that ordered the creation of a second majority-minority district, Justice Alito observed, “Unfortunately, lower courts have sometimes applied this Court’s paragraph 2 precedents in a way that forces States to engage in the very race-based discrimination that the Constitution forbids.”<sup>2</sup>

At issue in the *Callais* decision was whether the Voting Rights Act of 1965 as amended in 1982 *compels* majority-minority redistricting. The majority decision in *Callais* gave a resounding answer of “No” in the absence of a showing that the legislators, in drawing the previous district map, intended to suppress the minority vote. The Court noted the profound political and social changes that have occurred in the U.S., especially in the South, over the last 40 years.<sup>3</sup> The decision found that none of the historical evidence presented by the plaintiffs came close to showing intentional racial discrimination.

### Voting Rights Act and *Gingles*

Following the *Callais* decision, the Court further clarified its position on racial gerrymandering in a June 2 unsigned order in *Allen v. Milligan*.<sup>4</sup> In this order, the Court revisited standards for voting rights violations set forth in *Thornburg v. Gingles* (1986). The *Milligan* order handed the state of Alabama a major win in its long-running fight over majority-minority districts. The decision overturned an earlier federal court panel barring the legislature from enacting a district map that eliminated one of two majority-black districts.

The opening sentence of the Supreme Court’s order in *Milligan* referred to “our colorblind Constitution,” an allusion to Justice John Marshall Harlan’s famous dissent in *Plessy v. Ferguson* (1896), which declared, “Our constitution is colorblind, and neither knows nor tolerates classes among citizens.”<sup>5</sup> *The current Supreme Court is restoring a colorblind interpretation of the Constitution*, an effort that has made notable progress beginning with the Court’s decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023) concerning university admissions.

The *Callais* decision stated explicitly that the Court was not overturning the Voting Rights Act of 1965 or the 1982 amendment, which was upheld in *Gingles*. The original Voting Rights Act specified that a court could impose majority-minority redistricting if the plaintiffs showed racial *intent* on the part of the state legislature in

establishing voter districts. Congress, in amending the Voting Rights Act, broadened the standard for showing a violation to include discriminatory *results*, in the form of “less opportunity” of a protected class to elect representatives of their choice, based on “the totality of circumstances.” Nevertheless, the amendment expressly disclaimed a right of proportional representation of minority groups.

While the 1982 amendment did not adopt a full-blown “disparate impact” standard, like what came to infect U.S. employment and education law,<sup>6</sup> it opened the floodgates to legal challenges to legislative district boundaries. From 1982 to the present, more than 400 cases were brought by private plaintiffs before the federal courts charging racial voting discrimination.<sup>7</sup> In 1986 the U.S. Supreme Court in *Gingles* affirmed that a finding of a violation of the Voting Rights Act should be based on the “totality of the circumstances.”<sup>8</sup> This vague standard left the courts in the position of weighing historical and social science evidence presented by expert witnesses representing plaintiffs and defendants in each case.<sup>9</sup>

### Voting Rights As Big Business

Voting rights litigation became big business for law firms in the decades after *Gingles* as teams of lawyers and expert witnesses were hired by each side. Plaintiffs included leftist organizations such as the American Civil Liberties Union and the NAACP. Defendants were state and local government officials. *The costs of this litigation were astronomical*, although exact figures are unreported. It was common for dozens of lawyers representing plaintiffs and defendants to be assembled for each case.

Plaintiff and defense teams mustered dozens of expert witnesses, including historians, political scientists and other social scientists, to write lengthy reports and rebuttals, undergo depositions and appear in court for testimony and cross-examination. Historians argued about whether there was evidence of systematic historical racism, discrimination against minority voters, or historical discrimination in education, housing, employment and health care.

Historians representing plaintiffs often began their reports pointing to slavery in colonial and antebellum America, literacy tests, and KKK activity in the 1920s and 1960s, while ignoring evidence of legal and social

progress. The direct causal link, if any, between the institution of slavery and current voting or social patterns proved to be a central issue of contention between historical experts.

The *Gingles* decision maintained that a court involved in a voting rights case must assess minority electoral opportunities on the “basis of objective factors.” The problem was that the study of history is not based on well-defined empirical methods. Historians may agree on a specific fact, such as that there was a War of 1812, but disagree as to the causes of the war and its historical consequences. For example, an historian arguing that America was built on racism will emphasize instances of racism, while overlooking examples of anti-racist resistance, anti-discrimination legislative and court action, or racial progress.

Social science uses empirical methods, usually statistical analysis, but statistics can be disputed. *In the multitude of voting rights cases that flooded the courts, arguments in court often came down to esoteric methods used by the social science experts.*

### New York’s John R. Lewis Act

The number of racial voting rights cases accelerated with the enactment of the New York John R. Lewis Voting Rights Act in 2022. It was a response to the U.S. Supreme Court’s decision in *Shelby County v. Holder* (2013) that invalidated the formula used to determine which jurisdictions required federal oversight of their election laws—a process known as “preclearance.”

The John R. Lewis Act required local jurisdictions in New York, including counties, cities, towns, villages and school districts, to obtain preapproval by the state attorney general or a state court before making certain election and voter-related changes.<sup>10</sup> One important aspect of the John R. Lewis Act is that it gave state courts, not federal courts, jurisdiction over voting rights cases.

By the time of the Supreme Court’s *Callais* decision in 2026, New Yorkers saw roughly 39 voting rights cases brought before their courts. These cases involved New York City Council Districts, county legislative districts, odd/even year elections, absentee voting procedures and a range of other issues. A number of these cases drew national attention.

For example, in *Williams et al. v. Board of Elections of the State of New York* (2025), a court decided that

Congressional District 11 in Staten Island, the only Republican-held district in the New York City, needed to be redrawn to extend the district farther into Manhattan.<sup>11</sup> In January 2026, the court hearing the case ruled in the plaintiffs’ favor and ordered that CD 11 be redrawn. The New York State Supreme Court upheld the decision.

On March 2, however, the U.S. Supreme Court granted the defendants a stay of the court-ordered redistricting, signaling a different attitude toward race-based redistricting. Seventeen days later, on March 19, the plaintiffs withdrew their suit, and the previous district map remained in force. Then the Supreme Court issued its *Callais* decision in April.

Other cases remain before the New York courts. The full implications of the *Callais* decision in regard to the New York law remain unclear—but we can be certain of further litigation. In 2025, Democrats failed to enact on a national level the John R. Lewis Voting Rights Advancement Act. On the state level, a number of states have or are considering John R. Lewis-like voting rights legislation, modeled on the New York law.<sup>12</sup>

### Political Implications of *Callais*

Republicans enthusiastically welcomed the U.S. Supreme Court’s decision in *Callais*. The battle for legislative redistricting was already underway, but in the wake of that decision Republican-controlled legislatures, especially in Southern states with majority-minority districts, have an opportunity to expand the number of Republican-leaning districts. With national surveys showing a decline in support for the Trump administration and the GOP, *Callais* offered an opportunity for Republicans to maintain control of the House in the upcoming 2026 midterms.

Legal challenges to partisan redistricting soon appeared across the country.<sup>13</sup> Republican-controlled legislatures have won many of these lawsuits so far in states including Missouri, Tennessee, Florida, Alabama, Louisiana, North Carolina, Texas and Ohio.<sup>14</sup> Republicans think they can win up to 16 new seats in these eight states, while Democrats think they can pick up six seats in California and Utah. In November, voters will decide which party is correct in its predictions. Even longstanding majority-minority districts may be attacked under the new strict-scrutiny standard for race-based redistricting.

“Disparate impact” analysis may be the next shoe to drop as the Supreme Court continues to stress “colorblind” constitutional interpretation. On June 9 the Justice Department’s Office of Legal Counsel issued an opinion concluding that the Equal Employment Opportunity Commission’s guidelines on workplace discrimination are unconstitutional because they “encourage racial quotas” and “have the effect of injecting racial considerations into the evaluation of nearly all employment practices.” The opinion cited *Callais* and *Students for Fair Admissions* in support of its conclusion. Coercive policies similar to those of the EEOC pervade many federal departments and agencies, and are now constitutionally suspect.

The real battle is to come as Democratic-leaning states continue to lose population and Republican-controlled states grow. States such as New York and California are losing people to growing states such as Florida, South Carolina and Texas.

### Who is Eligible to Vote?

A critical issue, however, is not just population shifts, but who gets to vote. Voter integrity remains essential to a republic. Approximately 170 countries across the world require some form of voter identification to vote. Nearly every European nation requires identification to vote. In the U.S., 37 states require some form of voter identification, although the form of verification varies greatly. Fourteen states do not require any form of identification.<sup>15</sup>

The American people overwhelmingly support photo identification when voting—84 percent according to a recent Gallup poll.<sup>16</sup> The failure, as of this writing, of the Republican-controlled Senate to pass the SAVE America

Act supported by the Trump administration marks a setback for a nation demanding election integrity.

The *Mindszenty Report* has consistently raised concerns over both illegal immigration and vote fraud as threats to our nation’s social and political fabric. Fair and open elections, free from racial discrimination and open to all citizens (but not non-citizens), remain an essential goal for the United States.

Meanwhile, constitutionalists can take comfort in the steady, incremental progress of the current Supreme Court in restoring proper interpretation of our colorblind Constitution.

<sup>1</sup> <https://constitutioncenter.org/blog/the-supreme-courts-callais-decision-sets-new-framework-for-racial-gerrymandering>.

<sup>2</sup> *Ibid*.

<sup>3</sup> <https://www.scotusblog.com/2026/04/in-major-voting-rights-act-case-supreme-court-strikes-down-redistricting-map-challenged-as-racial/>.

<sup>4</sup> <https://www.scotusblog.com/cases/allen-v-milligan-4/>.

<sup>5</sup> <https://reason.com/volokh/2026/06/09/office-of-legal-counsel-concludes-that-disparate-impact-liability-under-title-vii-is-unconstitutional/>.

<sup>6</sup> See, e.g., “Schools in Chaos: The Damage of ‘Disparate Impact’ Theory,” *Mindszenty Report*, July 2018.

<sup>7</sup> <https://voting.law.umich.edu/findings/>.

<sup>8</sup> <https://www.ncsl.org/state-legislatures-news/details/supreme-court-narrows-voting-rights-act-upending-redistricting-law>; <https://www.scotusblog.com/2026/04/in-major-voting-rights-act-case-supreme-court-strikes-down-redistricting-map-challenged-as-racial/>; <https://www.heritage.org/courts/commentary/why-we-cant-quit-racial-redistricting>.

<sup>9</sup> The “totality of the circumstances” includes a kitchen sinkful of arguments for litigators to make: the history of official voting-related discrimination in the state or political subdivision; the extent to which voting in the elections of the state or political subdivision is racially polarized; the extent to which the state of political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of discrimination in areas such as education, employment and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. <https://supreme.justia.com/cases/federal/us/478/30/>.

<sup>10</sup> New York Voting Rights Act, <https://legaldefensefund.substack.com/p/6-major-state-voting-rights-acts>.

<sup>11</sup> <https://www.democracymatters.com/cases/new-york-congressional-redistricting-challenge-2/>.

<sup>12</sup> [https://www.brennancenter.org/our-work/research-reports/state-voting-laws-roundup-may-2026#footnote6\\_GBtjEjYwDjZv19W6K2PTd8D1qzT8dL2yVu1Bc2x7j8\\_v2BHbLrpEIJJ](https://www.brennancenter.org/our-work/research-reports/state-voting-laws-roundup-may-2026#footnote6_GBtjEjYwDjZv19W6K2PTd8D1qzT8dL2yVu1Bc2x7j8_v2BHbLrpEIJJ).

<sup>13</sup> [https://statecourtreport.org/our-work/analysis-opinion/status-partisan-gerrymandering-litigation-state-courts?\\_gl=1%2Ag380q9%2A\\_gc\\_l\\_au%2AMTMzNTIzMDY0LjE3NzY3OTg5MzA](https://statecourtreport.org/our-work/analysis-opinion/status-partisan-gerrymandering-litigation-state-courts?_gl=1%2Ag380q9%2A_gc_l_au%2AMTMzNTIzMDY0LjE3NzY3OTg5MzA).

<sup>14</sup> <https://www.ap.org/news-highlights/elections/2026/republicans-won-the-redistricting-battle-now-voters-will-decide-whether-they-win-congress/>.

<sup>15</sup> <https://www.ncsl.org/elections-and-campaigns/voter-id>.

<sup>16</sup> <https://wisconsinwatch.org/2026/02/voter-id-americans-support-wisconsin-poll-photo-identification/>.

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The Mindszenty Report is published monthly by  
Cardinal Mindszenty Foundation

7800 Bonhomme Ave.

St. Louis, MO 63105

Phone 314-727-6279

Subscription rate: \$25 per year

Outside the U.S.A. \$35

We accept credit card payments.

Contributions to the Cardinal Mindszenty Foundation are tax-deductible to the extent allowed by law.

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