



LEAGUE OF WOMEN VOTERS[®] OF VIRGINIA

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U. S. Supreme Court Revisits Redistricting

On March 1, 2006, the Supreme Court of the United States will hear oral arguments in an atypical two-hour afternoon session. The session is atypical because the Justices rarely hear arguments in the afternoon, and also because nearly all oral arguments are scheduled for just one hour. Yet, on the first afternoon of March, the Court will convene to hear four consolidated cases on a topic that has garnered national headlines, the 2003 Texas Redistricting.

An overarching legal question presented by the cases is whether the 2003 Texas redistricting plan is legal, even though it was created solely to build a partisan majority and it was the second round of redistricting using the same census data.

The four cases¹ being consolidated cover the central topics in the contemporary redistricting debate: the validity of partisan gerrymandering, the treatment of minorities under the Voting Rights Act, the legality of drawing unusual districts to deal with minority voters, and limits on the creation of minority-controlled districts.² A decisive negative ruling on any of these points would likely invalidate the entire 2003 Texas plan.

Supreme Court cases have shaped the redistricting debate for decades. The make-up of the Court has changed since the most recent case, *Vieth v. Jubelirer*, was decided in 2004. Chief Justice John Roberts has replaced the late Chief Justice William Rehnquist and Justice Samuel Alito has replaced Justice Sandra Day O'Connor. Both Rehnquist and O'Connor were in the majority in *Vieth*, ruling that the [Pennsylvania] Democrats failed to show how the court could decide that they had been the victims of unconstitutional gerrymandering. They joined an opinion (written by Scalia) that went farther than the ruling, and stated that partisan gerrymander challenges should be denied judicial review. This critical point failed to receive a majority in *Vieth*, because Justice Anthony Kennedy believed that it might be possible in other cases to find unconstitutional gerrymandering. Given his role in *Vieth*, Kennedy is expected to be the justice to watch in the Texas cases.³

The LWVVA Redistricting Committee will closely follow the Supreme Court's arguments and rulings on these cases, as we prepare our second study and gear up for possible action.

¹ The cases are: 05-204 appeal by the League of United Latin American Citizens, 05-254, appeal by Travis County, 05-276, appeal by Eddie Jackson and other Democratic and minority voters, and 05-439, appeal by GI Forum of Texas.

² Denniston, Lyle, "Court to hear Texas redistricting cases", www.SCOTUSblog.com, December 12, 2005.

³ Ibid.