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U.S.

Supreme Court Rebuffs Lawmakers Over Independent Redistricting Panel

By ADAM LIPTAK JUNE 29, 2015

WASHINGTON — The Supreme Court ruled on Monday that Arizona's voters were entitled to try to make the process of drawing congressional district lines less partisan by creating an independent redistricting commission.

Justice Ruth Bader Ginsburg, writing for the majority in the 5-to-4 decision, endorsed what she called "an endeavor by Arizona voters to address the problem of partisan gerrymandering — the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power."

Justices Anthony M. Kennedy, Stephen G. Breyer, Sonia Sotomayor and Elena Kagan joined the majority opinion.

The case, Arizona State Legislature v. Arizona Independent Redistricting Commission, No. 13-1314, concerned an independent commission created by Arizona voters in 2000. About a dozen states have experimented with redistricting commissions that have varying degrees of independence from the state legislatures, which ordinarily draw election maps. Arizona's commission is most similar to California's.

The Arizona commission has five members, with two chosen by Republican lawmakers and two by Democratic lawmakers. The final member is chosen by the four others.

The Republican-led State Legislature sued, saying the voters did not have the authority to strip elected lawmakers of their power to draw district lines. They pointed to the elections clause of the federal Constitution, which says, "The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof."

Justice Ginsburg wrote that the Constitution's reference to "legislature" encompassed the people's legislative power when acting through ballot initiatives. "The animating principle of our Constitution is that the people themselves are the originating source of all the powers of government," she wrote.

In dissent, Chief Justice John G. Roberts Jr. rejected that interpretation as contrary to every other use of the term "legislature" in the Constitution. One telling example, he said, arose from the 17th Amendment, which revised how senators are chosen. The amendment shifted the decision from state legislatures to the voting booth.

"The amendment resulted from an arduous, decadeslong campaign in which reformers across the country worked hard to garner approval from Congress and three-quarters of the states," the chief justice wrote. "What chumps! Didn't they realize that all they had to do was interpret the constitutional term 'the legislature' to mean 'the people'?"

Chief Justice Roberts said it was not clear that the independent commission in Arizona was above partisanship. In any event, he said, the Constitution settled the question presented in the case.

"Like most provisions of the Constitution, the elections clause reflected a compromise — a pragmatic recognition that the grand project of forging a union required everyone to accept some things they did not like," he wrote. "This court has no power to upset such a compromise simply because we now think that it should have been struck differently."

Justices Antonin Scalia, Clarence Thomas and Samuel A. Alito Jr. joined the chief justice's dissenting opinion.

In a joint statement, the speaker of the Arizona House, David Gowan, and the Senate president, Andy Biggs, both Republicans, said: "We are disappointed that the Supreme Court has decided to depart from clear language of the Constitution. The Framers selected the elected representatives of the people to conduct congressional redistricting. It's unfortunate that the clear constitutional design has been demolished in Arizona by five lawyers at the high court."

Paul F. Eckstein, a lawyer with Perkins Coie in Phoenix who in 2002 represented a group of Latinos seeking to make the districts created by the commission at the time more competitive, called the opinion "a ringing endorsement for the use and power of voter initiatives, which not every state has."

In a second dissent on Monday, Justice Scalia, joined by Justice Thomas, said he would have dismissed the case because the State Legislature lacked standing to sue.

"Normally, having arrived at that conclusion, I would express no opinion on the merits," Justice Scalia wrote. "In the present case, however, the majority's resolution of the merits question ('legislature' means 'the people') is so outrageously wrong, so utterly devoid of textual or historic support, so flatly in contradiction of prior Supreme Court cases, so obviously the willful product of hostility to districting by state legislatures, that I cannot avoid adding my vote to the devastating dissent of the chief justice."

Fernanda Santos contributed reporting from Phoenix.

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