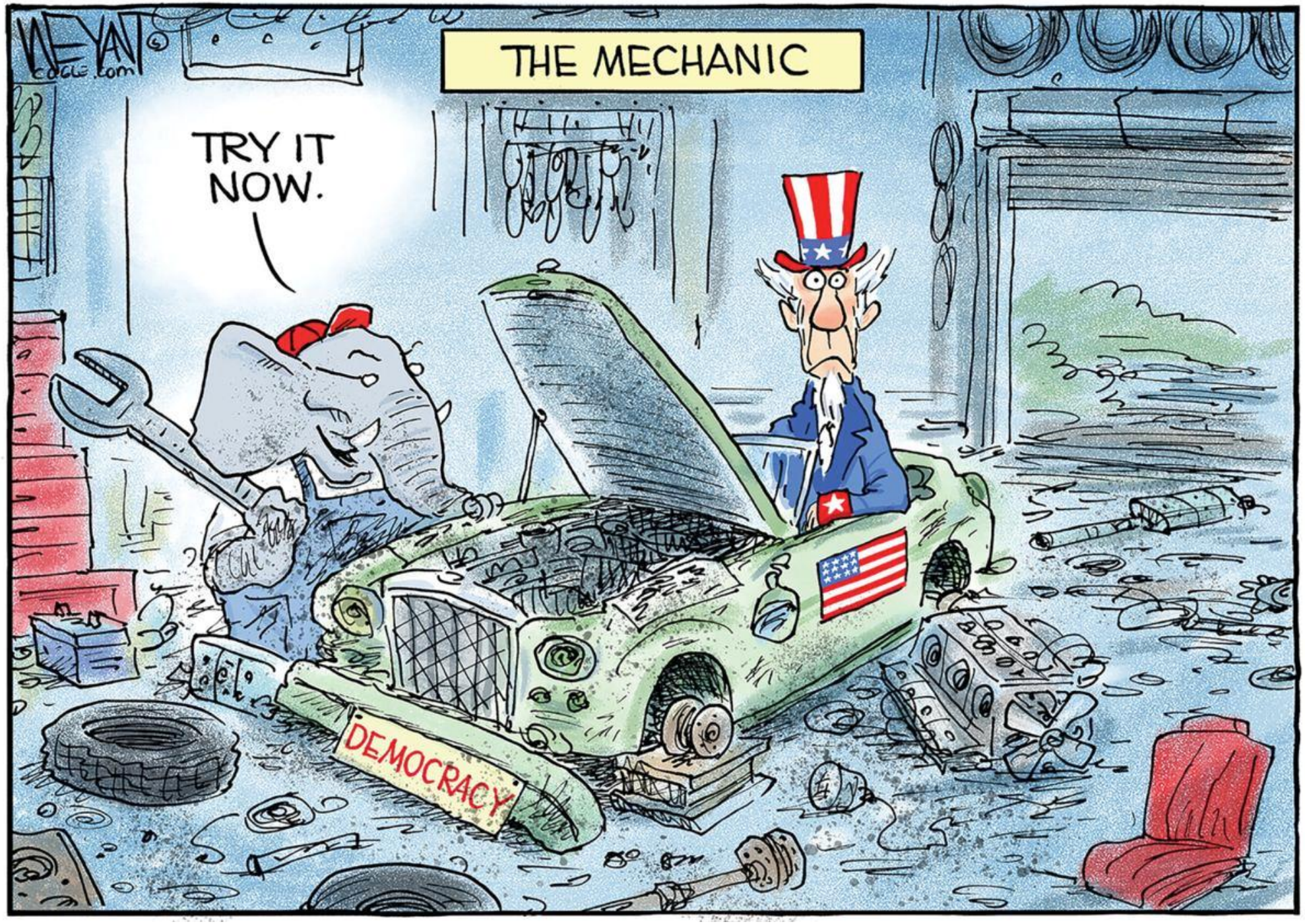


IMLA ANNUAL CONFERENCE,
LA QUINTA HOTEL & RESORT,
September 29, 2023

The Local Government Role in Election Disputes

Benjamin E. Griffith


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From Shelby County to Merrill v. Milligan and Moore v. Harper: how the VRA was preserved

H.B.1 declared violative of Section 2

Shadow Docket Stay

Oral Argument and Decision

Section 2 Violation

Black Population ¼ of Alabama

Opportunity for Two Black Majority Districts

Race-Neutral Benchmark

From Shelby County to Merrill v. Milligan and Moore v. Harper: how the VRA was preserved

Rejection of Race-Neutral Benchmark theory

Dole Compromise

15th Amendment Constitutional Analysis

Congruence and Proportionality

Temporal Argument

Section 2 Applicable to Redistricting

Section 2 Upheld

Moore v. Harper

the administration of a national election “is a significant undertaking that is largely the responsibility of local Boards of Election in the nation’s 3,143 counties or county equivalents and cities.”



Background leading up to the ISLT decision



Post Script



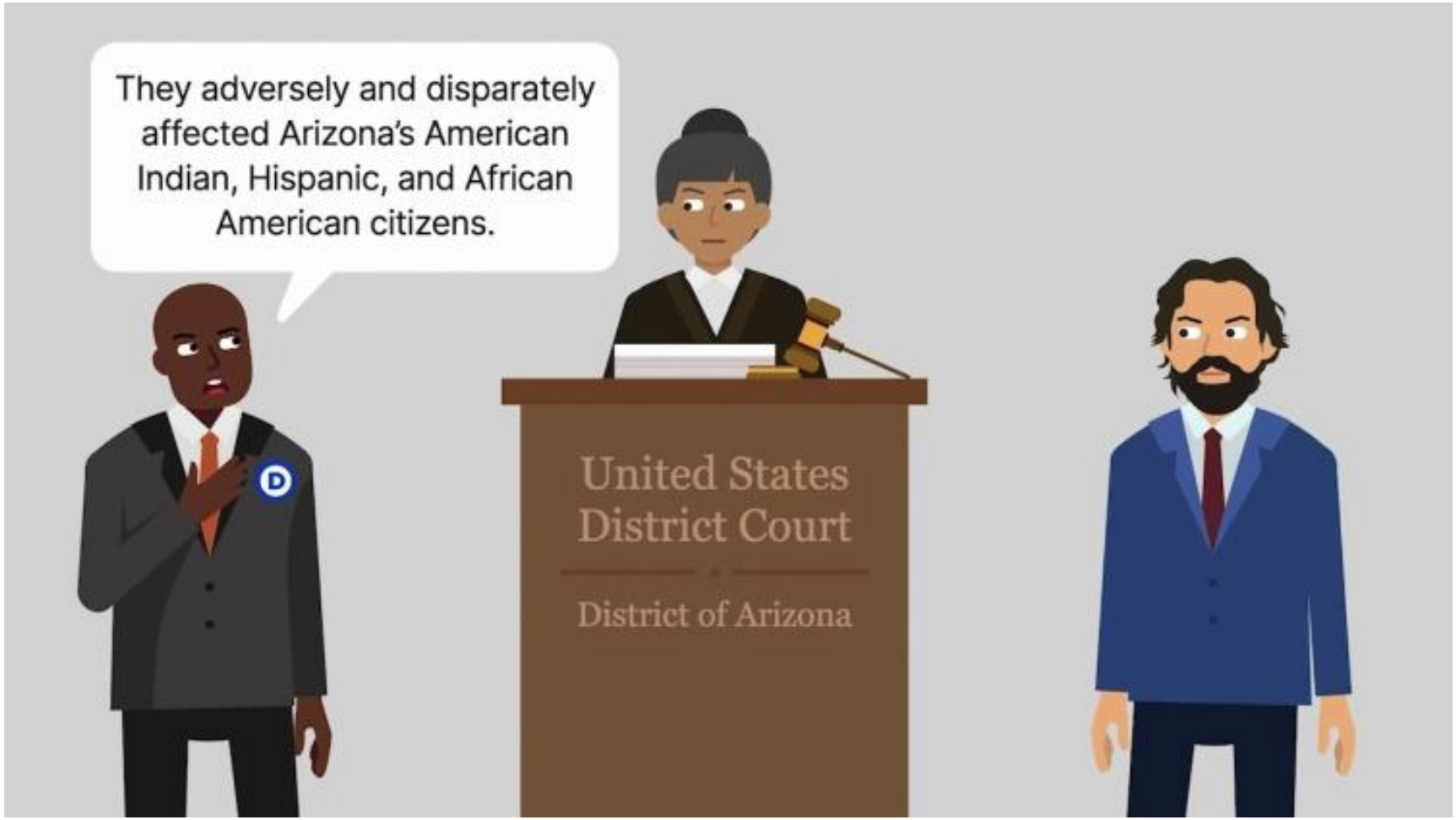
- Under the U.S. Constitution, does the state legislative body, independent of any constraints by state courts or other laws, have sole authority to regulate federal elections?

Review of Arlington Heights factors

1. the impact of the challenged law;
2. the historical background;
3. the specific sequence of events leading up to its passage;
4. procedural and substantive departures;
5. the contemporary statements and actions of key legislators;
6. the foreseeability of the disparate impact;
7. knowledge of that impact; and
8. the availability of less discriminatory alternatives.



Discrimination on the basis of party affiliation



Lack of evidence of voter fraud



Eleventh Circuit precedent does not require evidence of voter fraud to justify adopting legislation that aims to prevent fraud.

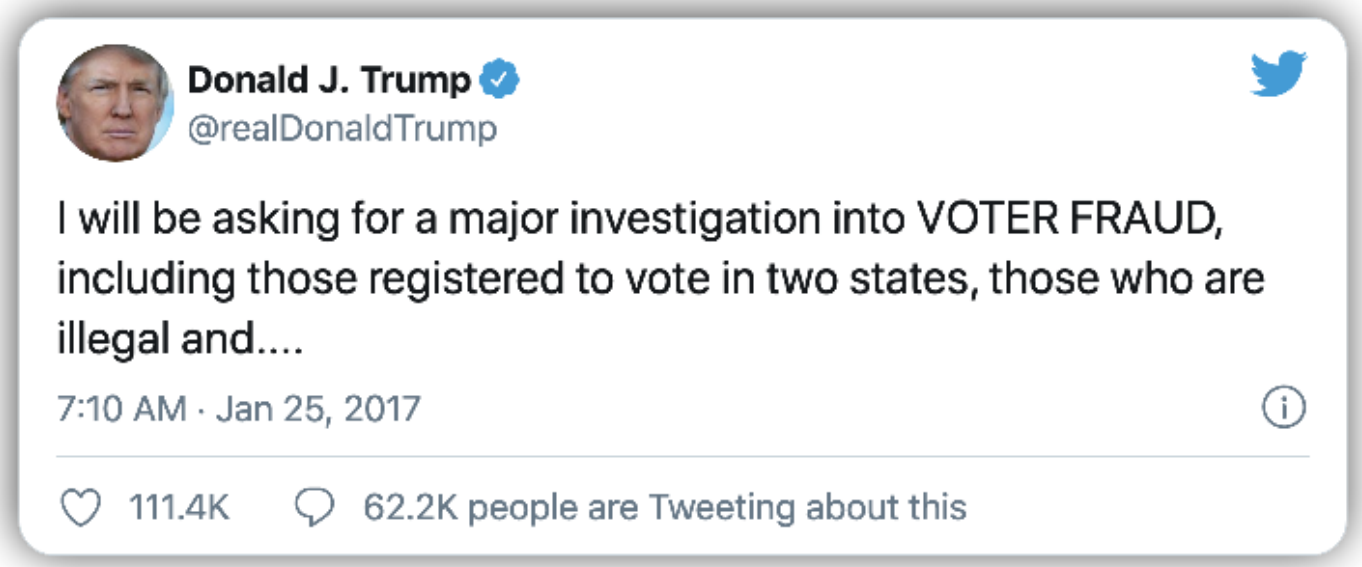


Even if it did, the record establishes that fraud, including vote-by-mail fraud, has plagued Florida elections in the past.



The record establishes that supporters of S.B. 90 sought to prevent the type of fraud that had been observed in Florida and other jurisdictions through this legislation.

Implicitly requiring evidence of voter fraud as error



Flagrant examples of voter fraud in other parts of country as relevant



Anecdotal evidence of VBM fraud



Legislative concerns over voter fraud



Clear error regarding S.B. 90's supporters proffered justifications

It found clear error in the district court's rejection of each of the justifications for the three challenged provisions.



Erroneous finding that Drop-box, solicitation and registration delivery provisions violated Section 2



Error by Subjecting Florida to Preclearance Under Section 3(c) of the VRA



Imposing Section 3 (c) Preclearance incorrect as matter of law



"to enforce the voting guarantees of the [F]ourteenth or [F]ifteenth [A]mendment."

The March 2 Plan

The March 2 Plan was thereafter invalidated by the Court in a splintered decision reported at169 Ohio St.3d 565, 2022-Ohio-2471 (2022), in which the Court held that the plan "does not comply with Article XIX, Section 1(C)(3)(a) of the Ohio Constitution and is therefore invalid.



March 2 Plan struck down as unconstitutional partisan gerrymander



Ohio Legislators' Cert Petition on ISLT



Questions Presented in Cert Petition



1. Whether state courts violate the Elections Clause by enforcing state constitutional limits on a state legislature's power to regulate congressional elections.



2. Whether state courts violate the Elections Clause by dictating the results that congressional district maps must achieve or by crafting extraconstitutional rules for state legislatures to follow when drawing such maps.

Broad questions presented on legislative power

Can state courts enforce state constitutional limits on a state legislature's power to regulate congressional elections?

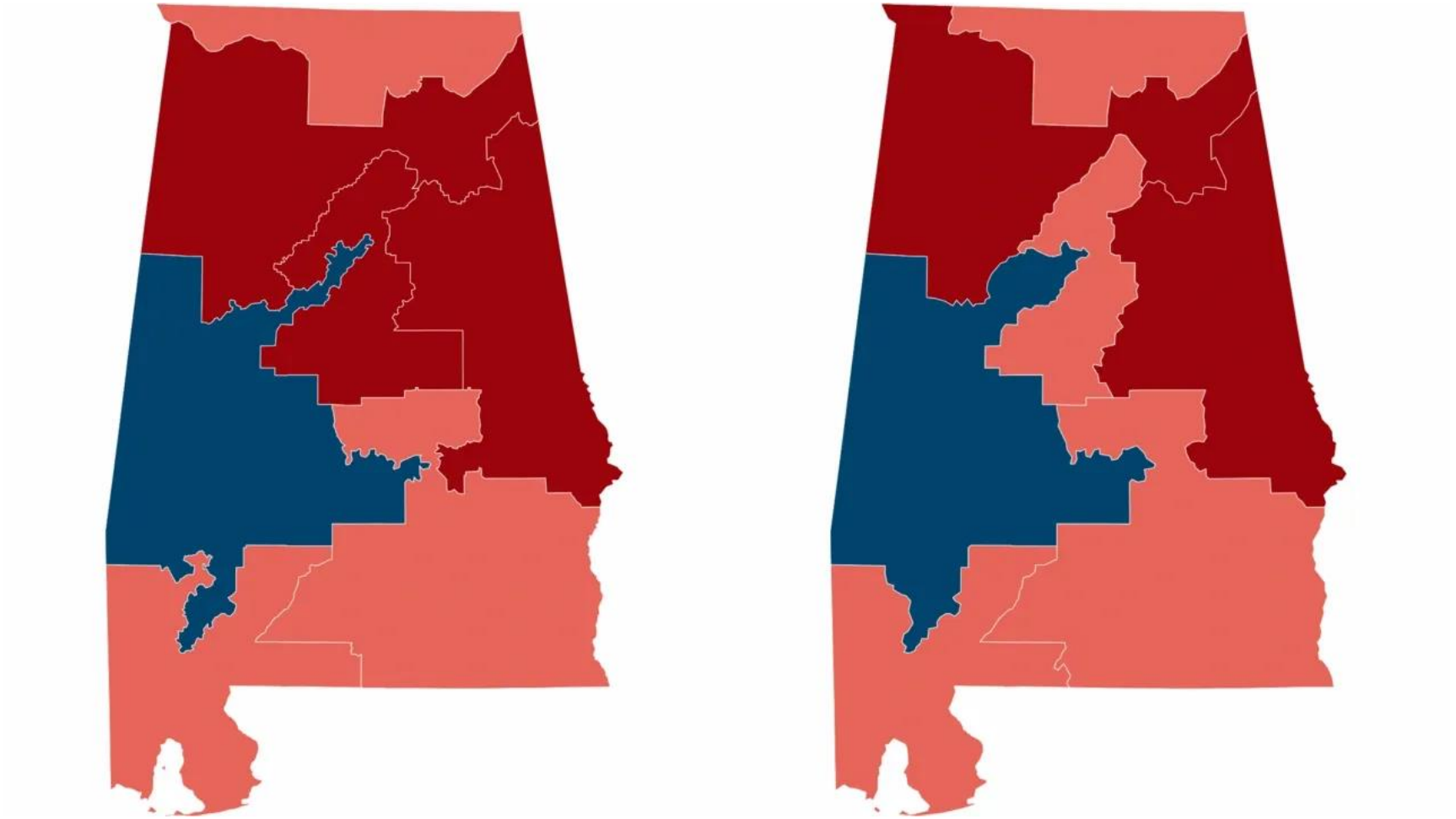
Can state courts dictate the outcomes that congressional district maps must achieve?

Can they craft extra-constitutional rules that state legislatures must follow when drawing such maps?

Elections Clause argument



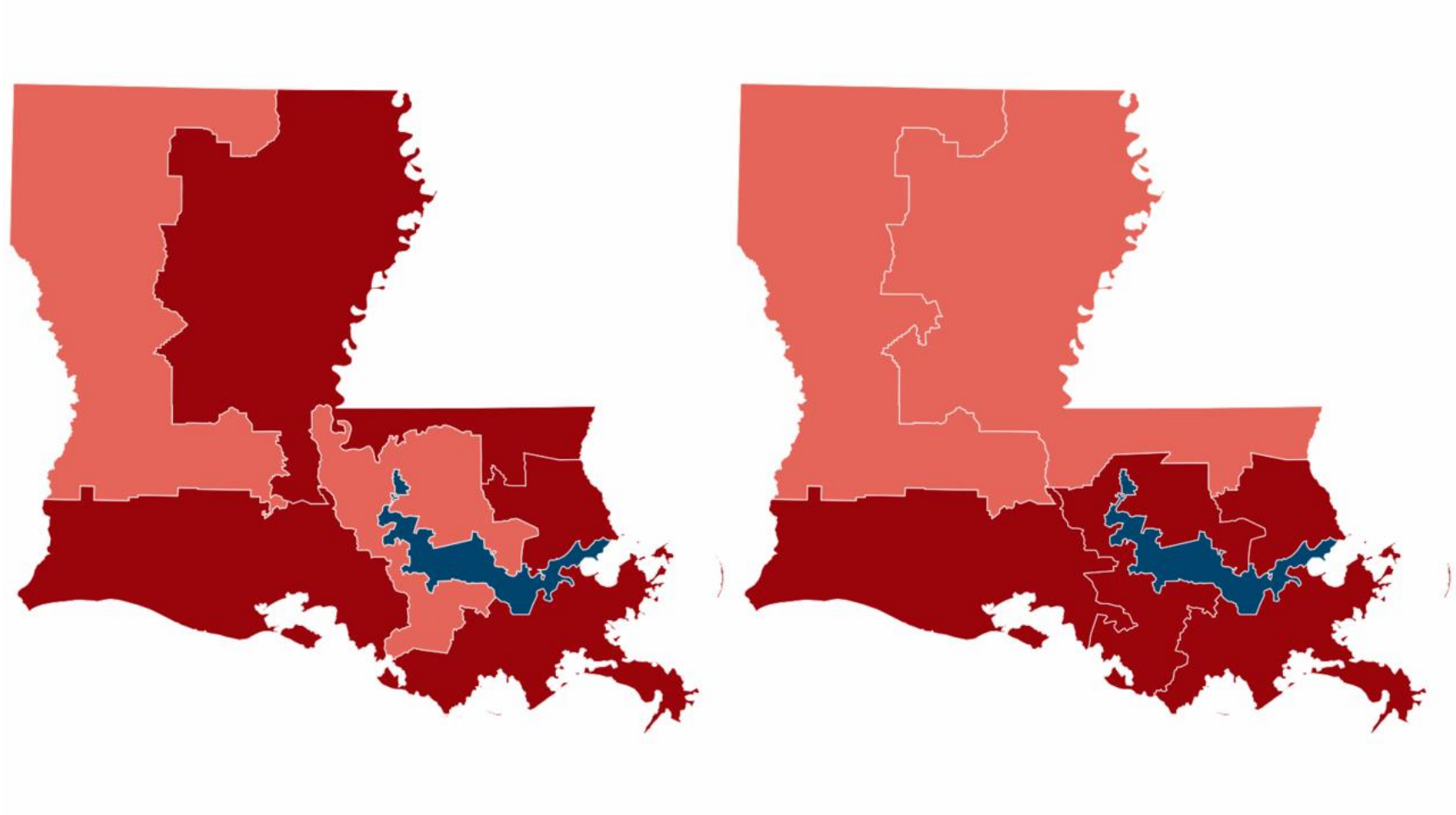
Louisiana case paused pending decision in Allen



Republicans’ Bait-and-Switch



Post-Allen v. Milligan erasure efforts



Proposed Joint Remedial Plan



Fifth Circuit enters the fray in Robinson v. Ardoin



- Denial of Stay Pending Appeal
- Appeal expedited

Summary of salient points

This case arises from Louisiana's congressional redistricting process. After the 2020 census, the state was apportioned six seats, the same number as during the previous redistricting cycle.

The Louisiana Legislature thus enacted a map that, like the one in force during the last decade, created just one black-majority district, in the state's southeast. The Governor vetoed the map, but the Legislature overrode his veto on March 30, 2022. Later that day, the plaintiffs brought this action.

The Plaintiffs claimed that, under the Voting Rights Act ("VRA") as interpreted by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986), Louisiana was required to create a second black-majority district. They sought a preliminary injunction to require the Legislature to do so in time for the 2022 election.

After a five-day evidentiary hearing, the district court issued a 152-page ruling and order granting the plaintiffs' motion. *Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022)

Summary of salient points



The district court concluded that the plaintiffs had carried their burden under *Gingles*. That ruling meant that the plaintiffs had shown that (1) Louisiana's black population is sufficiently large and compact to form a majority in a second district, (2) the black population votes cohesively, and (3) whites tend to vote as a bloc usually to defeat black voters' preferred candidates. *Id.* at 50-51.



After methodically reciting and rejecting all of the reasons advanced by the State in support of its motions for stay pending appeal, the Fifth Circuit denied those motions and directed that this appeal is "*sua sponte* EXPEDITED," directed the Clerk to issue an expedited briefing schedule and to calendar this matter for argument before the next available randomly selected merits panel. It also noted that its ruling here concerns only the motions for stay pending appeal; "our determinations are for that purpose" only "and do not bind the merits panel." *Veasey*, 870 F.3d at 392.



The district court gave the Legislature until June 20 to enact a remedial plan that would then be used in the November primary election.



At this preliminary, non-merits stage, the defendants have merely fallen short of carrying their burden. That said, neither the plaintiffs' arguments nor the district court's analysis is entirely watertight. And it is feasible that the merits panel, conducting a less-rushed examination of the record in the light of differently framed arguments, may well side with the defendants.

Executive Summary of Recommendations

1. Voting time extensions in presidential elections should be available when force majeure events are extraordinary and catastrophic and disrupt regular voting, but not for disruptions that are intrinsic to the voting process.

2. In implementing the ECRA, state legislatures should designate which officials are authorized to trigger an emergency response in a presidential election, creating mechanisms for both state and local officials to initiate the process of extending voting time.

3. State legislatures need not limit how early before Election Day a voting extension may be authorized or how long a voting extension may last because emergencies differ in scope and require tailored responses.

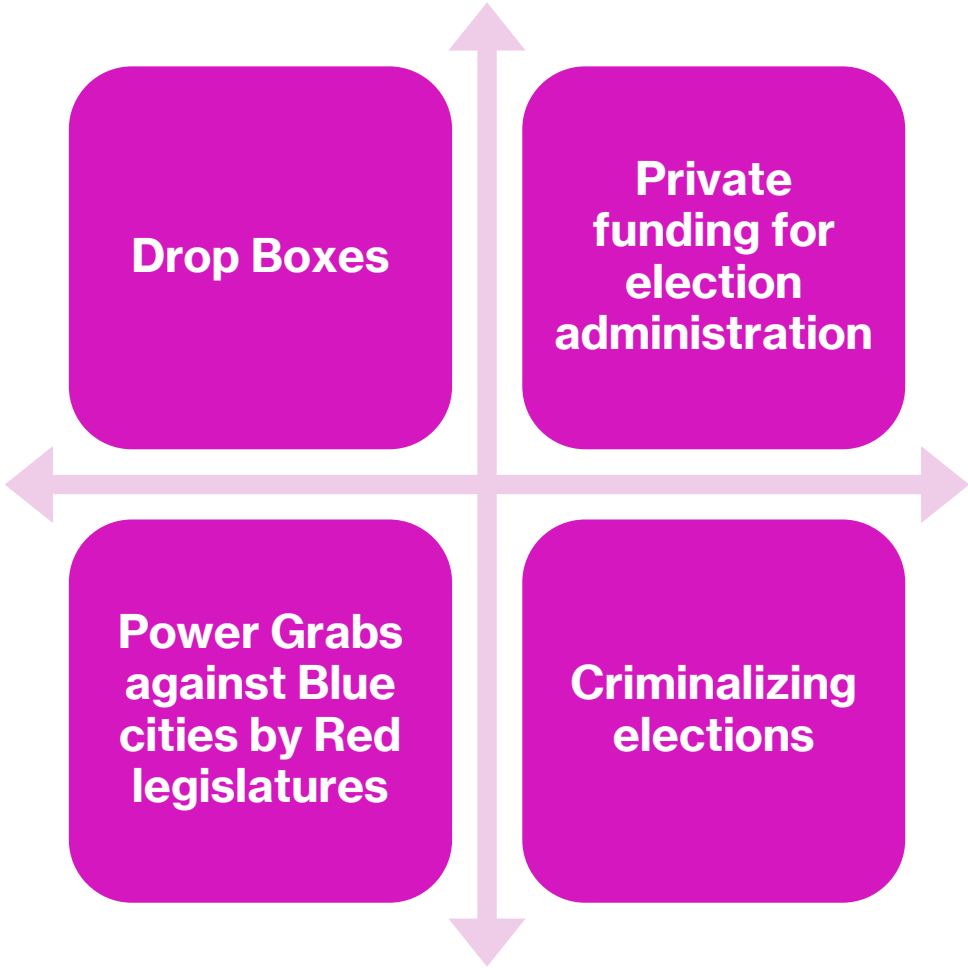
The Rule of Law Clinic Report concludes



The Anti-Voting Bills Republicans Enacted This Legislative Session

- **Vote-by-Mail (VBM) and other forms of mail-in voting**
- **Photo ID Requirements**
- **Residency Requirements**
- **Ballot Collection**

The Anti-Voting Bills Republicans Enacted This Legislative Session



SAFEGUARDS FOR AI USE IN ELECTIONS

A New Era for AI

Challenges to Elections

Voter Suppression and Election Security

Vulnerability to AI-driven Disinformation - Ticking Time Bomb

Threats to Democracy

SAFEGUARDS FOR AI USE IN ELECTIONS

- AI-generated Deepfakes
- Potential for Disinformation
- Erosion of Trust in Election Information Ecosystem
- Comprehensive and Global Coordinated Response for Election protection
- Interagency Efforts Required to Defend Against Damage to Democracy

SAFEGUARDS FOR AI USE IN ELECTIONS

CISA-Resources on Disinformation

FEC Political Ads Disclosure Coverage

Federal Government Efforts on Deepfake Detection

AI Developers and Social Media

Congress and State Legislatures

SAFEGUARDS FOR AI USE IN ELECTIONS



Generative AI tools and Open-source Alternatives



Transparency to Promote Safe AI Use in Elections



Coordinated Global Response


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LABEL OTHER END
LABEL OTHER END
LOVE