

Cozen O'Connor Attorneys Support Critical Voting Rights Cases

Tuesday, November 1, 2022

The National Celebration of Pro Bono is held during the last week of October and highlights the work of those in the legal profession who dedicate their time and talents to make a positive difference. This year, we celebrate by sharing the high-impact work of a group of Cozen O'Connor attorneys who have devoted significant time to critical voting rights cases. We also recognize National Native American, American Indian, and Alaskan Native Heritage Month this November, and we are pleased to be partnering with an incredible organization, the Native American Rights Fund (NARF), on one such case, *Merrill v. Milligan*, which is currently before the Supreme Court of the United States.

With a critical midterm election just a week away, it can be tempting to focus more on the candidates themselves than on the very real threat of disenfranchisement and ever-growing barriers being erected throughout the United States. The right to vote has been called the most “fundamental political right” because it is “preservative of all rights.” With this belief guiding their work, Cozen O'Connor lawyers have endeavored tirelessly with others in the voting rights community on multiple fronts to protect this most fundamental political right.

Merrill v. Milligan

Cozen O'Connor, along with co-counsel the NARF, submitted a Supreme Court amicus brief on behalf of their client the National Council for American Indians in a case of critical importance for the preservation of Section 2 of the Voting Right Act. On October 4, the Supreme Court heard oral arguments and a decision is expected in the first half of 2023.

BACKGROUND

At issue in the case is whether the state of Alabama's 2021 redistricting plan for its seven seats in the U.S. House of Representatives violated Section 2. The voting rights community is deeply concerned that the case could be a vehicle for the conservative members of the Supreme Court to roll back four decades of legal precedent that protects the voting power of minority communities throughout the United States.

The Voting Rights Act of 1965, one of the most important laws in U.S. history, established that states may not draw legislative districts that dilute minority voting power and prevent communities of color from having a chance to elect their preferred candidates.

While nearly one-third of Alabamans are Black, the 2021 redistricting plan includes only one majority black district (out of seven total districts). Black voters and civil rights groups filed suit against the state, arguing that Alabama's maps violated Section 2 of the Voting Rights Act and would need to be redrawn to better represent the state's demographics. Based on extensive expert testimony, the plaintiffs argued that the newly drawn maps “lump” as many of Alabama's Black voters into that single congressional district as possible in order to dilute the black vote. The three judge panel (including two Trump-appointed judges) unanimously ruled in plaintiffs' favor. Following the ruling, the State of Alabama appealed that decision to the Supreme Court. In one of the High Court's infamous “shadow docket” rulings, the Court voted (5-4) to stay the lower court's ruling pending the full decision on the merits.

Dozens of parties have joined the coalitions on either side of the case. U.S. Attorney General Dana Nessel joined a coalition of 21 state attorneys general and issued an *amicus* brief urging the Court to

affirm the lower court's ruling that the maps be redrawn. They are joined by the American Bar Association, the Brennan Center for Justice, a bipartisan group of U.S. Senators, as well as historians, civil rights groups, legal scholars, and other interested parties.

AMICUS BRIEF

The State of Alabama, as petitioner, argues that race cannot play any role whatsoever in the creation of district maps. This runs counter to the history and purpose of the Voting Rights Act, long-standing case law, and would likely gut Section 2. The Cozen O'Connor team and the Native American Rights Fund filed the brief on behalf of the National Congress of American Indians, the nation's oldest and largest organization of American Indian and Alaska Native tribal governments and their members.

The brief provides a comprehensive account of the historical and current denial of Native American voting rights. "Our goal was to provide the court with a unique perspective of the Voting Rights Act in the context of Native American voting rights, including understanding past- and present-day discrimination and understanding the unique physical and cultural composition of tribal communities," shared associate Cassandra Jacobsen.

The Cozen O'Connor team was led by Michael de Leeuw in partnership with Jacqueline De León of the Native American Rights Fund. Cassandra Jacobsen and Emily Fulginiti assisted with drafting, and summer associates Eliza Reinhardt and Zachary Weiss provided extraordinary research, proofing, and cite checking.

You can read the *amicus* brief [here](#).

WHAT'S NEXT

Oral arguments in the case took place on October 4, 2022. You can listen to a recording of the arguments [here](#).

Edmund G. LaCour Jr., Alabama's solicitor general, argued for an exceedingly narrow and restrictive interpretation Voting Rights Act. This view was widely disputed by the majority of the Court, including Chief Justice Roberts and Justices Barrett and Alito. The conservative justices refocused the case on the issue of whether the district in question was "reasonably configured."

Deuel Ross from the NAACP Legal Defense Fund and Elizabeth B. Prelogar, the U.S. solicitor general, argued in support of the map's challengers. General Prelogar argued that "under the state's approach, nothing would stop Alabama and many other states from dismantling their existing majority-minority districts, leaving Black voters and entire swaths of the country with no ability to elect their preferred representatives." The Court's three liberal justices vehemently supported her. Justice Elena Kagan said, "Under our precedent, it's kind of a slam dunk."

Analysts have been careful not to read too much into the conservatives' rejection of some of Alabama's arguments. The Court's conservative supermajority appeared to be searching for a way to uphold the congressional map drawn by Alabama lawmakers. If the Court votes to uphold the map, it would be the third Supreme Court decision in a decade to undercut the Voting Rights Act's protections for minority voters. A decision in the case is expected by June 2023 and will impact the district for the 2024 elections.

State of Louisiana v. Chisom

Cozen O'Connor has teamed with the NAACP Legal Defense Fund (LDF), along with Louisiana civil rights lawyers William Quigley and Ronald Wilson, in a high-profile case in Louisiana to protect a longstanding consent decree in the landmark *Chisom* litigation. For decades, the consent decree has

ensured that Black Louisiana voters have an equal opportunity to elect candidates of their choice to the State Supreme Court. Before the consent decree, no Black person had ever been elected to the Louisiana Supreme Court. To this day, no Black justices have been elected outside of the opportunity district created by the consent decree.

Late last year, the state of Louisiana suddenly and baselessly moved to dissolve the consent decree. In response, the Cozen O'Connor team highlighted the continued need for the *Chisom* remedial consent decree to address the dilution of Black voting power in Louisiana and the state's lethargic efforts to satisfy its burden to dissolve the historic order. Following briefing and argument (done, in part, by litigation associate Amanda Giglio), the District Court denied the state's motion in its entirety.

The attorney general has since appealed the District Court's decision to the Fifth Circuit. On Monday, October 24, 2022, the Cozen O'Connor team filed its opposition brief in the Fifth Circuit. Notably, Governor John Bel Edwards and former Chief Justice Bernette Joshua Johnson, who served on the Louisiana Supreme Court from 1994 to 2020 in the *Chisom* seat, also filed appellate briefs supporting the team's brief.

The Cozen O'Connor team is led by Michael de Leeuw, Amanda Giglio, Andrew D. Linz, and Nathan J. Larkin assisted with briefing and argument.

Nairne, et al. v. Ardoin

Cozen O'Connor attorneys have teamed with LDF and the American Civil Liberties Union (ACLU) to challenge the legality of the redistricting map governing elections of the Louisiana Legislature under Section 2 of the Voting Rights Act.

The Cozen O'Connor team has played a key role in this fast-paced, critical litigation, arguing discovery disputes before the District Court, working closely with the team's experts (who will ultimately play a critical role in proving the claims at issue), and collaborating with LDF and the ACLU on key strategic decisions. The case is set to go to trial next year. It will likely be one of the first cases to litigate violations of Section 2 of the Voting Rights Act following the Supreme Court's decision in *Merrill v. Milligan* (discussed above).

The Cozen O'Connor team is led by Michael de Leeuw and Amanda Giglio and includes Noelle Engle-Hardy, Jessica Erickson, William Lesser, Emily Shoor, Josephine Bahn, Daniel Brobst, Connor Rowinski, Jacqueline Green, Andrew Stanko, Dakota Knehans, and Casey James.

A Powerful Experience

The experience of working on the brief was a powerful one for the Cozen O'Connor attorneys and summer associates.

"I feel strongly that attorneys have an obligation to use their education, experience, and connections to advocate for and provide a voice for those who do not have the ability or resources to do so on their own," shared Cassandra Jacobsen. "Born and raised in Minnesota, I have lived on Dakota land my whole life, but it was not until I visited family members who work for Indian Health Services in New Mexico, next to Navajo Nation, that I understood some of the practical challenges Native Americans still face. While it is just a drop in the bucket, protecting Native American voting rights is a step in the right direction. On a personal level, contributing to a brief that Supreme Court justices will read is a career milestone I will never forget."

"Having the opportunity to work on drafting a Supreme Court *amicus* brief as a summer associate was such a meaningful and memorable experience," shared Eliza Reinhardt, a rising 3L at Brooklyn Law School.

"If someone would have told me I would get the opportunity as a summer associate to help draft an *amicus* brief to the Supreme Court, I wouldn't have believed them," shared Zachary Weiss, a rising 3L at the Cardozo School of Law. "Working on this case was an unbelievably impactful assignment that I will always remember."

"I am proud of our younger lawyers who have shown dedication to (and passion for) this critical work," shared Michael de Leeuw. "And I am also proud that Cozen O'Connor's leadership recognizes the importance of pro bono work and supports impact litigation projects throughout the firm."

"Working on *Chisom* and *Nairne* has been an unparalleled experience and has made me incredibly proud to work at Cozen O'Connor. Ensuring that all Americans have an equal opportunity to have their voice heard and represented at all levels of government is more important now than ever before. And working with incredible teams of lawyers at the ACLU and LDF on these critical issues has inspired me to be a more creative, thoughtful, and aggressive litigator," says Amanda Giglio, a senior litigation associate in the New York office.

About Pro Bono at Cozen O'Connor

Access to legal counsel is a fundamental right of every citizen in a democratic society. Cozen O'Connor is committed to helping ensure that universal access is a reality. Since our founding in 1970, we have dedicated tens of thousands of attorney hours to pro bono representation of indigent individuals and charitable institutions. The firm is also a signatory to the Law Firm Pro Bono Challenge of the Pro Bono Institute and strives to provide 3% of billable hours to pro bono clients every year. Over the last five years, Cozen O'Connor has climbed 48 places on The American Lawyer's annual pro bono ranking of the nation's largest law firms, most recently ranking 67th on the list of 200 firms.