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Case of the Month

Alabama's 2021 redistricting plan for congressional voting maps likely violated the federal Voting Rights Act of 1965.

In 2020, Alabama's congressional map was challenged as malapportioned and racially gerrymandered in violation of the Equal Protection Clause of the U.S. Constitution [Fourteenth Amendment](#) because it had produced only one district in which black voters constituted a majority of the voting population. Alabama then created a new map based on redistricting guidelines set by the legislature which largely resembled the previous map. The state's legislature enacted the new map under the name HB1, which was signed into law on November 4, 2021.

Groups of plaintiffs, including Evan Milligan and Bobby Singleton, brought separate suits in federal court seeking to stop Alabama's Secretary of State from conducting congressional elections under HB1, claiming HB1 violated Section 2 of the federal [Voting Rights Act of 1965](#), 42 U.S.C. § 1973, and was an impermissible racial gerrymander under the Equal Protection Clause of the [Fourteenth Amendment](#). The court consolidated Milligan and Singleton's suits for purposes of preliminary injunction proceedings, and after reviewing the evidence, found that they demonstrated a reasonable likelihood of success on their claim that HB1 violated Section 2. The court preliminarily enjoined Alabama from using HB1 in forthcoming elections. Alabama requested review by the U.S. Supreme Court and a stay of the injunction, which the Court granted.

The U.S. Supreme Court reviewed the factual findings and affirmed the district court's decision to enjoin HB1, determining the lower court's legal conclusions applied established precedent correctly. The Court reviewed the lower court's analysis under an established framework, and agreed with the lower court that Milligan's evidence demonstrated that two majority-black districts could have been enacted within traditional districting criteria, that black voters were politically cohesive, that racially polarizing voting existed to defeat candidates preferred by black voters, and that there was an established history of racial and voting-related discrimination in the state. The Court rejected Alabama's argument that Section 2 should require a race-neutral benchmark, as its map had been created without any consideration of racial demographics. In rejecting this interpretation, the Court reiterated that Section 2 is focused on discriminatory effects, not discriminatory intent. [Allen v. Milligan](#), Nos. 21-1086 and 21-1087, 2023 WL 3872517 (June 8, 2023).

Why is This Case Significant?

The U.S. Supreme Court's decision upheld Section 2 of the Voting Rights Act, reaffirming the standard that election methods and voting practices must still provide equal opportunity to participate in the political process.

Highlights

Join us August 4th at the [2023 TASB/TACCA Post-Legislative Seminar](#)

New on eLaw:
[Remote Participation in Board Meetings](#)

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Governance

North Carolina legislators who adopted a congressional voting map drawn along partisan lines that was overturned by the North Carolina Supreme Court failed to demonstrate that the [Elections Clause](#) of the U.S. Constitution supported the “independent state legislature” theory, which insulates state legislatures from the ordinary exercise of state judicial review. [Moore v. Harper](#), No. 21-1271, 2023 WL 4187750 (June 27, 2023).

Business and Finance

Dog toy manufacturer failed to provide sufficient evidence that its product, which mimicked a whiskey manufacturer’s label and bottle shape, was protected by the U.S. Constitution [First Amendment](#) and qualified for an exclusion from liability for non-commercial trademark use under the federal trademark law, the [Lanham Act](#), because it used the whiskey manufacturer’s trademark to designate the source of its own goods. [Jack Daniel’s Properties, Inc. v. VIP Prod. LLC](#), 143 S. Ct. 1578 (June 8, 2023).

Personnel

Former university professor failed to show that university administrators made him change his student evaluation method in response to student complaints and that the university did not follow its own policies in handling his complaint against an administrator in violation of his academic freedom under [article I, section 8](#) and due process rights under [article I, section 19](#) of the Texas Constitution. [Fass v. Benson](#), No. 05-21-00799-CV, 2023 WL 3860441 (Tex. App.—Dallas June 7, 2023, no pet. h.) (mem. op.).

Former professor provided sufficient evidence to overcome dismissal on her claims that the university violated the [Texas Commission on Human Rights Act](#) by failing to accommodate

her disability when she had a history of a knee condition, she reasonably informed the university that she needed an accommodation, and the university did not consider or provide her an accommodation. [Harmon v. Tex. Southern. Univ.](#), No. 14-21-00125-CV, 2023 WL 4003742 (Tex. App.—Houston [14th Dist.] June 15, 2023, no pet. h.).

Employees provided sufficient evidence to overcome dismissal of their claim that an employer playing sexually derogatory music in the workplace which is offensive to both men and women could create a hostile work environment and could be considered sex-based discrimination in violation of [Title VII of the Civil Rights Act of 1964](#). [Sharp v. S&S Activewear, L.L.C.](#), No. 21-17138, 2023 WL 3857491 (9th Cir. June 7, 2023).

Students and Instruction

Former student failed to provide sufficient facts that homophobic slurs and bullying by teammates based on his perceived sexual orientation, inaction by his coaches following his complaints, and subsequent dismissal from the team after he continued to complain was discrimination under [Title IX of the Education Amendments Act of 1972](#). [Grabowski v. Ariz. Bd. of Regents](#), No. 22-15714, 2023 WL 3961123 (9th Cir. June 13, 2023).

Community and Governmental Relations

Citizen’s claims he was defamed by a political candidate’s campaign statements linking the candidate’s opponent’s donors, a group that included the citizen, to crimes were dismissed under the [Texas Citizens Participation Act](#) because the statements made were non-actionable opinions that could not be considered defamatory. [O’Rourke v. Warren](#), No. 03-22-00416-CV, 2023 WL 3914278 (Tex. App.—Austin June 9, 2023, no pet. h.).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings¹ based on requests from Texas community colleges related to:

- Executed contracts or written legal agreements between specified colleges and third parties. Tex. Att’y Gen. [OR2023-16667](#) (May 15, 2023);
- Proposals received, bid tabs, and the contract pertaining to the bidding for a

specified project. Tex. Att’y Gen. [OR2023-17079](#) (May 18, 2023);

- Information regarding a request for proposals. Tex. Att’y Gen. [OR2023-17192](#) (May 18, 2023);
- Two specified proposals. Tex. Att’y Gen. [OR2023-19151](#) (June 6, 2023); and
- A specified contract. Tex. Att’y Gen. [OR2023-19391](#) (Jun. 7, 2023).



Recent Regulations and Guidance

The Texas Department of Licensing and Regulation amended [regulations](#) relating to driver education programs, provider licensure requirements, and certifications in response to statutory changes made during the 87th Legislative Session.

The Texas Department of Insurance amended [regulations](#) relating to insurance agent licensee education hour and completion requirements.

The Texas Education Agency amended [regulations](#) requiring school districts and open-

enrollment charter schools to indicate on a student’s transcript completion of the Texas First Early High School Completion Program.

The U.S. Department of Justice Civil Rights Division and the U.S. Department of Education Office for Civil Rights issued a [joint letter](#) to colleges, universities, and other postsecondary institutions regarding recent enforcement actions under the [Americans with Disabilities Act](#) and [Section 504 of the Rehabilitation Act](#) directed at digital accessibility.



In the News

The U.S. Department of Education recently announced that the release of the [updated Title IX regulations](#) and athletic eligibility regulations have been delayed to an anticipated date of October 2023.

Alvin Community College received a \$350,000 [Texas Talent Connection grant](#) from the Texas Governor’s office to support innovative education and workforce skills training programs.

Austin Community College is partnering with Round Rock ISD and Texas State University to launch a “Grow Your Own” [program](#), which will allow Round Rock ISD students to take dual credit classes at ACC then transfer to Texas State.

The Texas Governor convened a [second special session](#) of the 88th legislature beginning on June 27, 2023.

¹ Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.