National Redistricting Foundation
Year in Review

The National Redistricting Foundation seeks to prevent and reverse invidious gerrymandering through legal action across the country. We seek to overturn unconstitutional district maps that entrench racial or partisan bias and to challenge actions that threaten to undermine the redistricting process.

Our mission is to dismantle unfair electoral maps and create a redistricting system based on democratic values in advance of the 2021 redistricting cycle. By helping to create more just and representative electoral districts across the country, we also hope to restore the public's faith in a true representative democracy. This past year, the NRF successfully litigated to get new, more fair maps in North Carolina and Virginia, kept the Trump Administration from adding a citizenship question to the Census, and is seeking to abolish a provision of the Mississippi Constitution that was put in place to dilute the voting power of African-Americans. NRF's victories in 2019 are a testament to the range of our broad litigation strategy and ability to move swiftly.

We are pleased with this year's achievements, but we are just getting started.

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Virginia

The NRF successfully funded a racial gerrymandering lawsuit in Virginia, *Bethune-Hill v. Virginia State Board of Elections*, seeing the case through to a final victory in the United States Supreme Court in June. The lawsuit, filed by a group of African-American Virginia voters, resulted in a determination that 11 districts in the Virginia House of Delegates were unconstitutional racial gerrymanders that violated the Equal Protection Clause of the 14th Amendment and had to be redrawn. In drawing the districts, the Virginia legislature had improperly set an arbitrary minimum of 55% black voting age population for each of the districts—claiming that threshold was necessitated by the Voting Rights Act (VRA) without conducting the relevant analysis to determine that such a threshold was actually necessary. The case was appealed to the Supreme Court by state officials after the lower court ordered the state to redraw the gerrymandered districts. In June 2019 the Supreme Court rejected the state’s appeal, and the new map was used in Virginia’s 2019 elections.

The Supreme Court’s Bethune-Hill decision was an important victory for African-American voters in Virginia. The remedial map prepared by Special Master Bernard Grofman, and subsequently imposed by the lower court, created districts free from unconstitutional racial discrimination.

Census

Through 2018 and 2019, the NRF supported a lawsuit challenging the Trump Administration’s attempt to add a citizenship question to the 2020 Census questionnaire. The NRF’s suit, *Kravitz v. U.S. Department of Commerce*, was one of several such cases across the country, which collectively led to the decision by the Supreme Court this past June that the Administration had impermissibly added the question. On the last day of its 2019 term, the Court issued its decision in *Department of Commerce v. New York*. In a 5-4 decision penned by Chief Justice John Roberts, the

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Court agreed with three lower court judges, including Judge Hazel in Kravitz, that the rationale given for adding a citizenship question—facilitating the Department of Justice’s enforcement of the Voting Rights Act—was contrived and not credible. The Court’s somewhat unexpected holding was surely influenced by mounting evidence exposing the Administration’s true motivation to use the Census for Republican political gain. In an otherwise-unrelated case supported by the NRF in North Carolina, Common Cause v. Lewis, documents obtained from the files of the late Dr. Thomas Hofeller (the longtime Republican redistricting strategist) revealed two important new facts. First, it became clear that Dr. Hofeller played a significant, previously undisclosed role in orchestrating the Trump Administration’s effort to add a citizenship question to the 2020 Census. And second, Republican political operatives viewed the inclusion of the citizenship question as a necessary step to using citizenship data for redistricting, instead of total population data—a strategy that, in Dr. Hofeller’s words, would benefit Republicans and non-Hispanic whites.”

Though the Administration initially fought the Supreme Court’s ruling, President Trump ultimately announced that the Census questionnaire would be printed without the citizenship question.

The Court’s decision to bar the Administration from including the citizenship question on the 2020 Census was one of the biggest accomplishments of the year, as its effects would have had decades-long consequences on representation. This is an enormous victory for the American people, and gets us one step closer to a fair and accurate count in 2020. We will be monitoring the administration of the Census in 2020 and are prepared to bring new legal action if it is warranted.

Mississippi

In May, plaintiffs supported by the NRF filed a lawsuit, McLemore v. Hosemann, contesting Mississippi’s electoral scheme for statewide races, which requires that statewide officers win both a majority of the popular vote and a majority of the House

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districts (the “electoral vote”)—otherwise the Mississippi House gets to decide the winner of the election. Most states require only a plurality of voters to decide the winner for statewide contests. This scheme became part of Mississippi’s Constitution during the state’s 1890 constitutional convention, which had the explicit purpose of diluting the political influence of African-American voters.

On November 1, the court indicated that it is likely to find the electoral vote piece of the scheme unconstitutional. Regarding plaintiffs’ claim that the electoral vote provision violates the doctrine of one-person/one-vote, the court said, “[t]hey’re right.”

Following the court’s decision communicating this view, Mississippi Secretary of State-elect Michael Watson has said that he plans to push the legislature to initiate the process of amending the provisions of the constitution at issue in the litigation—amendments that would then need to be approved by voters. The NRF is committed to seeing that these discriminatory provisions are amended and replaced, whether through continued litigation or a legislatively initiated ballot measure.

North Carolina

A pair of NRF lawsuits in North Carolina successfully concluded this year—resulting in new, fairer maps for the state’s House, Senate, and congressional delegation. In each case, the NRF supported plaintiffs argued that extreme partisan gerrymandering violates the North Carolina Constitution. A three-judge panel of North Carolina Superior Court judges presiding over the cases agreed.

On September 3, in *Common Cause v. Lewis*, the panel unanimously held that significant portions of the state’s House and Senate districts violated the North Carolina Constitution. The court found the districting plans to be such extreme partisan gerrymanders that Democrats—in nearly any reasonable electoral environment—would be unable to reach a majority in either chamber of the state legislature. For example, in both the state House and state Senate elections in 2018, Democratic candidates won a
majority of the statewide vote, but Republicans still won a substantial majority of seats in each chamber. Following the court’s decision, the General Assembly redrew those unconstitutional districts over the course of a court-mandated two-week window. And though a handful of the districts remain gerrymandered, voters in the state will now have the opportunity, for the first time this decade, to elect legislative chambers that actually represent the will of the people.

Just a few weeks later, the NRF initiated a second, separate lawsuit in North Carolina state court, *Harper v. Lewis*, supporting plaintiffs challenging North Carolina’s congressional map. The same three-judge panel swiftly granted plaintiffs’ motion for a preliminary injunction on October 28, which led to the General Assembly drawing a new congressional map, which was then passed on November 15. Non-partisan analysts believe that the new congressional map will likely yield 8 seats for Republicans and 5 for Democrats—a marked improvement from the old map, which was designed to limit Democrats to just 3 of the 10 seats no matter how the state voted. That built-in 10-3 advantage withstood even the historic 2018 wave election.

On December 2, the three-judge panel ordered the state to hold the 2020 elections under the General Assembly’s new 2019 map, declining to push the election deadlines back in order to address lingering questions about whether the General Assembly had, yet again, instituted a partisan gerrymander. The court noted that though the new map is not perfect, it is a vast improvement over the egregious map that North Carolinians had been voting under previously.

While these new, court ordered maps are an improvement, the people still deserve better. With the redistricting process set to occur in 2021, the fight for fair maps in North Carolina and states around the country continues. The NRF is committed to fighting for voters’ rights wherever state action has impeded the voters’ will. Fighting for maps that reflect the diversity and desires of voters is absolutely fundamental to our work.
The Road Ahead

The successes of the past year are encouraging, but we remain focused on the road ahead. The NRF has a broad litigation strategy, and we are poised to intervene wherever structural barriers are erected that keep the will of voters from being realized.