

The Constitutionality of Section 5: *Northwest Austin Municipal Utility District Number One v. Holder*

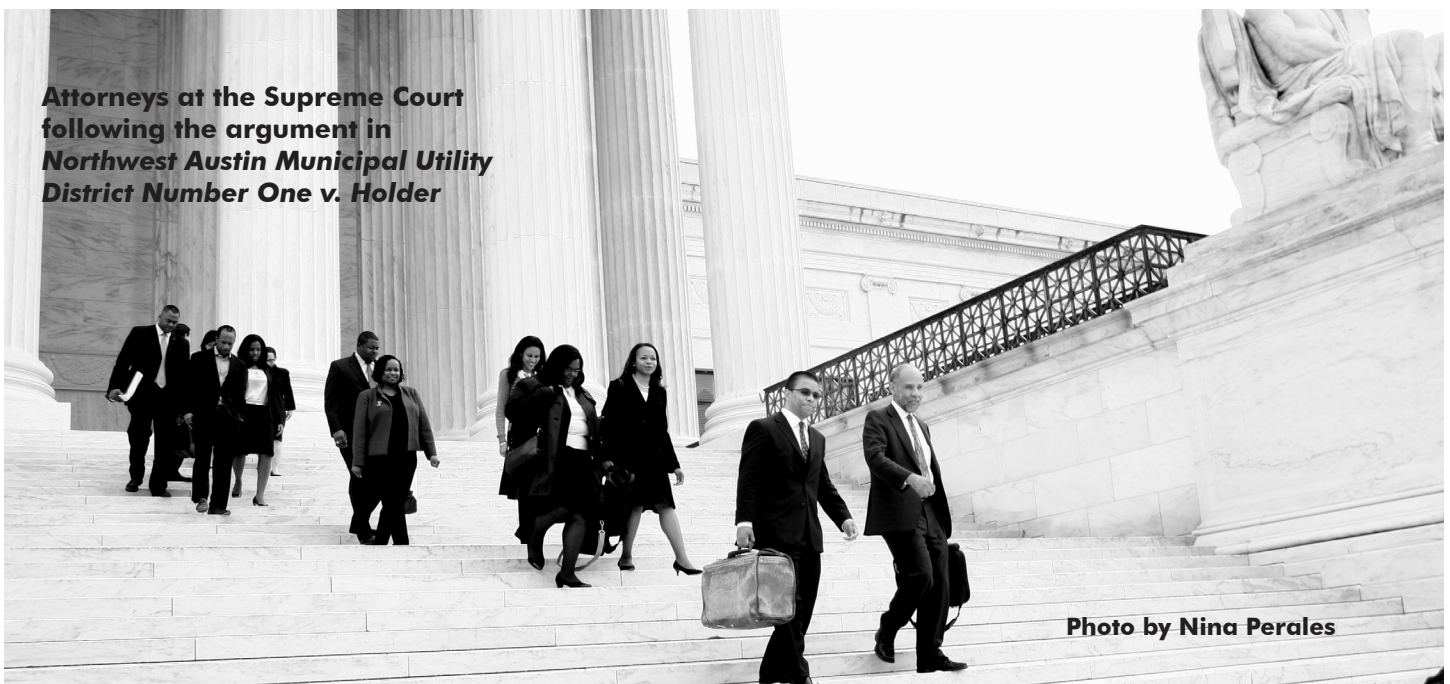
On April 29, 2009, the NAACP Legal Defense Fund (LDF) presented oral argument to the United States Supreme Court in *Northwest Austin Municipal Utility District Number One v. Holder*, a lawsuit filed by a small Austin-based utility district days after Congress overwhelmingly voted to reauthorize the federal oversight provisions of the Voting Rights Act. This case is of critical importance as it is the first case testing the constitutionality of Congress's 2006 reauthorization of Section 5. Moreover, a negative ruling in this case would have far-reaching implications for the 16 states that are wholly or partially covered under the Section 5 preclearance provision of the Act.

The Voting Rights Act has long been deemed one of the most important federal civil rights statutes given its role in preserving and protecting minority voting strength. The entire state of Texas is subject to the Act's Section 5 preclearance provision as a result of its well-documented history of voting discrimination. Section 5 requires that covered jurisdictions obtain federal preapproval for new voting changes before they can take effect. This preapproval can be obtained by the Department of Justice or, alternatively, the D.C. District Court. The changes are reviewed to ensure that they do not worsen the position of minority voters and to ensure that they were not adopted with a discriminatory purpose. Between 1982 and 2006, the Department of Justice imposed more than 600 objections to discriminatory voting changes. The vast majority of these objections were based, in part, on purposeful (and thus unconstitutional) discrimination.

The utility district, a political subunit in the State of Texas, seeks to terminate its obligations under Section 5 by seeking to "bailout" under a special provision of the Act. LDF and other Appellees in the case argued that the utility district is ineligible for "bailout" because it is not a state, county or type of jurisdiction deemed eligible for this special exemption under the Act. In anticipation of this position, the district seeks to have the Court declare the Section 5 preclearance provision of the Voting Rights Act unconstitutional. In particular, the district argues that Congress exceeded its legislative authority under the 14th and 15th Amendments of the Constitution and also argues that there is insufficient evidence of ongoing voting discrimination in Texas and other covered jurisdictions.

Several states, including Mississippi, Louisiana, and New York filed a brief in support of the Act's constitutionality, arguing that Section 5 is an effective and efficient safeguard of voting rights.

The Attorney General serves as the lead Appellee in the case. In addition to LDF, other Intervenor-Appellees include the Mexican American Legal Defense and Education Fund, NAACP, Texas RioGrande Legal Aid, People for the American Way, the ACLU, and the Lawyers' Committee for Civil Rights Under Law working in collaboration with the law firm of Wilmer, Cutler, Pickering, Hale & Dorr.



Attorneys at the Supreme Court following the argument in *Northwest Austin Municipal Utility District Number One v. Holder*

Photo by Nina Perales