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Supreme Court muddles state redistricting plan

Justices heighten Democrats' reservations by upholding mid-decade change pushed through by Republicans

in Texas

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SACRAMENTO - On the day the California Senate was set to vote on giving up one of lawmakers' most cherished powers -- the ability to draw their own districts -- a U.S. Supreme Court ruling gave them pause.

By a 5-4 vote, the court a day earlier upheld a mid-decade redistricting plan pushed through by Republicans in the Texas Legislature.

The June 28 decision could end the tradition in other states of drawing legislative and congressional voting lines once a decade after the U.S. Census, although experts say that is unlikely in California.

But the court also reaffirmed there is nothing illegal about the party in power using the process to maximize its advantage -- as long as the rights of ethnic minorities are protected.

Their reservations heightened, Democrats in the state Senate put off a decision until the California Legislature returns next month from its summer hiatus -- putting any changes in the redistricting process in doubt this year.

"Many Democrats were concerned we were headed down treacherous waters and, perhaps, in the long run we would eventually regret it," said state Sen. Martha Escutia, D-Whittier, explaining the postponement.

Escutia, chairwoman of the 27-member Democratic Latino Caucus, said because Latinos were historically denied political power by adverse restricting plans, caucus members view proposed changes "with a jaundiced eye."

State Sen. Alan Lowenthal, the Long Beach Democrat who is carrying the redistricting legislation, SCA 3, predicts the measure will ultimately clear his house. Its fate in the Assembly also remains uncertain.

Never in the history of the United States has a Legislature voted to give up its redistricting role. In the dozen states where commissions draw voting lines, legislatures were divested of the power by voters.

California voters have defeated such ballot measures, most recently via Proposition 77, which was rejected by 19 percentage points last November.

"It's monumental for a legislature to vote to give up its own power," Lowenthal said, adding most Republicans in the Capitol like the idea. "It's the Democrats who are pretty much split down the middle."

Under his legislation, a constitutional amendment requiring voter approval would transfer to an 11-member commission the responsibility of drawing legislative, congressional and Board of Equalization boundaries once every decade, beginning in 2011.

The members of the panel would be chosen by a panel of retired judges, chosen by legislative leaders. But members of the Latino Caucus have expressed concerns about diversity, noting most retired judges are white men.

Senate President Pro Tem Don Perata, D-Oakland, and Assembly Speaker Fabian Nunez, D-Los Angeles -- mindful that polls show voters have a low opinion of the Legislature -- have said they would like to put a measure on the Nov. 7 ballot.

But to qualify, SCA 3 must be approved by two-thirds of each house by the end of August -- a tight schedule that some experts say makes its passage unlikely.

"It's in the intensive care unit right now," said Doug Johnson, a redistricting expert at the Rose Institute for State and Local Government at Claremont McKenna College. "A miracle could still happen, but it's on its last breath."

If the legislative effort fails, the conservative activist who launched Proposition 77 plans to take another stab with a rejiggered redistricting measure on the June 2008 ballot.

Ted Costa said that he and other proponents of change met three weeks ago with Gov. Arnold Schwarzenegger in his Capitol smoking tent to discuss various proposals.

"My particular input was if we're going to have redistricting (reform), we have to take it out of the hands of the Legislature. We can't let their surrogates do it," said Costa, whose People's Advocate organization rounded up the signatures three years ago to recall former Gov. Gray Davis.

In supporting the overhaul of redistricting last year, the governor charged "the current system is rigged to benefit the interests of those in office, not the interests of those who put them there." He has vowed to continue fighting for change.

Current legislative and congressional voting lines are the product of what critics have dubbed an "incumbency protection" deal struck by Democrats and Republicans in 2001.

In 2004, not a single one of the 153 Assembly, state Senate and U.S. House of Representatives seats in California changed party hands.

Historically, the redistricting process -- with its muddled jargon and behind-the-scenes maneuvers -- attracts little attention outside political circles.

But since 2003, redistricting has taken on a higher public profile -- driven by the mid-decade redistricting in Texas that was engineered by former House Majority Leader Tom DeLay.

The GOP picked up six congressional seats, strengthening its House majority. But the margin remains precariously slim; a shift of 15 seats in November would make San Francisco Democrat Nancy Pelosi the Speaker of the House.

Republicans already have used mid-decade redistricting to increase their chances in Georgia and Colorado, although the latter state's Supreme Court struck down the map for violating the Colorado Constitution.

Nationally, Democrats have openly discussed redistricting in states where they control the Legislature and governor's office.

Also mentioned have been New York and California, which have Republican governors, but where the office is up for grabs this fall.

But experts familiar with California say a mid-decade redistricting in the state would violate the state Constitution, as it did in Colorado. The defeated Proposition 77 sought to make that constitutional change.

In 1983, the California Supreme Court removed a GOP-backed redistricting plan from the ballot, citing a plan approved by the Democratic-controlled Legislature earlier in the decade.

"So there's strong precedence in California for making redistricting once a decade," said Morgan Kousser, a professor at the California Institute of Technology and consultant on several redistricting cases.

Tracy Westen, chief executive officer of the Center for Governmental Studies in Los Angeles, said Democrats in the Legislature may be willing to put a redistricting measure on the November ballot if Schwarzenegger supports a measure to extend legislative term limits.

"I think Democrats like that more than giving Congress, which they don't care about that much, a few Democratic seats," Westen said. "Their principal concern is how do we extend term limits."

