

COMMENTARY

From SCOTUS to "critical race theory": There's no law or fact the GOP feels bound to respect now

The Supreme Court guts the Voting Rights Act while conservatives erase the history that necessitated its passage

By **AMANDA MARCOTTE** PUBLISHED FEBRUARY 8, 2022 1:00PM (EST)



Brett Kavanaugh | Opponents to teaching Critical Race Theory are in attendance as the Placentia Yorba Linda School Board discusses a proposed resolution to ban it from being taught in schools. (Photo illustration by Salon/Getty Images)

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Two stories straight out of Alabama this week really encapsulate how the panic over "critical race theory," the war on schools and the war on democracy itself are all a piece of a singular racist right wing movement. Last week, AL.com reported that **school officials across the state say parents** are freaking out over the very existence of Black History Month, accusing schools of promoting "critical race theory" by mentioning it or honoring it in any way. And on Monday, the **Supreme Court declined to enforce the 1965 Voting Rights Act** in response to a plainly racist gerrymander in Alabama, on the grounds that doing so would interfere with the state's control of their elections systems. Yes, even though federal oversight of state election systems is literally what the Voting Rights Act was designed to do.

It's been 13 months since Donald Trump incited an insurrection on the Capitol, one that was **clearly driven by white supremacy** and the belief that the votes of Black Americans simply shouldn't count as much as those of white people. There continues to be a struggle between various factions of the GOP **over how to portray the violent insurrection itself** — to call it a glorious MAGA revolution or pretend it was a random event unconnected to the larger party — but these two stories show the sentiment that drove it has now taken root in every corner of the GOP. From the school board to the Supreme Court, Republicans are determined to stomp out anything that stands in the way of white supremacy, from history to the law to democracy itself.

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The Supreme Court's Monday decision is rife with confusing legalese, and will likely be mostly overlooked by both the media and the public because of it. But it's important. As with the **court's recent approach to the Texas abortion ban**, it showcases how the three Trump appointees to the court have transformed SCOTUS into an authoritarian body that will throw out the rule of law to enforce a far-right agenda.

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In a 5-4 decision, the conservative justices stayed a lower court's ruling that a new Alabama gerrymander disenfranchised Black voters, in a clear violation of section 2 of the Voting Rights Act. **In his defense of the decision**, Trump appointee Brett Kavanaugh didn't even bother to argue that the gerrymander was legal, but instead insisted that enforcing federal election law nine months out from an election would "lead to disruption" and that it was "unanticipated and unfair" to expect Alabama to obey a law passed 57 years ago.

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"It is hard to overstate how lawless the Supreme Court's order is," wrote Mark Joseph Stern, who covers courts and law for Slate, on Twitter. "The five ultraconservative justices broke the court's own rules to intervene with an unreasoned shadow docket decision that effectively nullifies a key provision of the Voting Rights Act. It's profoundly alarming."

The refusal of the court to enforce the plain letter text of the law is so egregious that **even Chief Justice John Roberts** — a man who **has made it his life's work to gut the Voting Rights Act** — voted with the liberal justices. Roberts may share the racist goals of the other conservative judges, but even he clearly feels uneasy with the court simply rejecting the duty to enforce the law simply because they disagree with its aims.

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By issuing this decision, the conservative judges are throwing their lot in with Trump and the Capitol insurrectionists — if the law will not uphold white supremacy, the law itself is invalid.

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It's the same impulse underpinning the panic over "critical race theory," a cover story for white conservatives trying to stomp out acknowledgment of the country's racist history and contributions made by Black Americans. Republicans spent months gaslighting the public about this, insisting the attacks on school boards and bans on "critical race theory" were about stopping supposedly

"divisive" teachings and "anti-white" racism. But their actions speak otherwise, from these complaints about Black History Month to **efforts to ban books about Martin Luther King Jr.** The goal is erasing history, literature and even facts that conflict with a white supremacist ideology.

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What was remarkable about the Capitol insurrection is that it was both an assault on rule of law and on reality itself. The rioters rejected the basic fact that Joe Biden won the 2020 election. They also rejected the basic law that asserts that the winner of the election has the right to take power. The belief that they and people like them — white conservatives — have a "right" to rule overrules everything else.

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The insurrection clearly didn't end on January 6, just because the rioters failed to overturn the election and enshrine the Big Lie. On the contrary, the insurrection has mutated and metastasized within the GOP. It has infused the whole party, from the ordinary voters freaking out at school boards to the highest court in the land. There might be a few Republican holdouts — **like Roberts or former vice president Mike Pence** — who still think things like "rule of law" and "basic facts" matter. But they have clearly lost the battle with the rest of the party, as this 5-4 Supreme Court decision

shows. There is no law or fact Republicans feel bound to respect. Anything that stands in the way of the white conservative will to power is expected to give way.

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Amanda Marcotte is a senior politics writer at Salon and the author of "[Troll Nation: How The Right Became Trump-Worshipping Monsters Set On Rat-F*cking Liberals, America, and Truth Itself.](#)" Follow her on Twitter [@AmandaMarcotte](#) and sign up for her biweekly politics newsletter, [Standing Room Only](#).

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