Court’s ruling on Voting Rights Act praised; some fear law’s future

WASHINGTON – A legal expert from Jesuit-run Fordham University School of Law in New York was relieved the Supreme Court did not overturn the 2006 reauthorization of the Voting Rights Act, but he also believes the historic 1965 law was only given a stay.

“I was relieved,” said Jerry H. Goldfeder, adjunct professor of election law at Fordham and special counsel at the New York law firm Stroock & Stroock & Lavan. “During oral arguments, a number of the justices raised the constitutionality of the Voting Rights Act. Those of us who support the act were nervous they would reach a different decision.”

The Voting Rights Act was designed to assure equal participation in the electoral process by minority voters. Some observers expected the Supreme Court to strike down a key provision of the law challenged by a Texas jurisdiction as unfair and outdated, which would have seriously weakened the act.

Instead, in an 8-1 vote June 22, the Supreme Court left in place the preclearance requirements of the Voting Rights Act. Under Section 5 of the act, jurisdictions with a history of voting discrimination must obtain approval from either the Justice Department or a federal court before implementing any changes in their voting practices or procedures.

A voting district now can opt out of the preclearance requirements if it can demonstrate it has not discriminated against minority voters for a 10-year period.

The only nay came from Associate Justice Clarence Thomas, the lone black justice on

the Supreme Court.

Though U.S. Sen. Patrick Leahy of Vermont was pleased with the outcome, the Catholic Democrat said he strongly disagreed with the court's assertion that a provision in the law poses serious constitutional concerns.

The U.S. bishops have not taken a position on the case, or the ruling, according to Thomas Shellabarger, a policy adviser for the Department of Justice, Peace and Human Development at the U.S. Conference of Catholic Bishops.

The Voting Rights Act decision involved the Northwest Austin (Texas) Municipal Utility District Number One v. Holder case. It challenged the court to allow the district to either opt out of a provision in the law that requires all or parts of 16 states – mainly in the South and with a history of discrimination in voting – to get Justice Department approval before making changes in the way elections are conducted – or declare that entire stipulation unconstitutional.

A lower court had ruled that since the utility district did not qualify as a local government, it was not able to bail out of the requirement under Section 5 of the act.

The Supreme Court reversed that ruling June 22, saying "all political subdivisions" are eligible to opt out of the advance approval requirement.

After the case was argued before the Supreme Court in April, some political observers speculated the court's conservative members could have a majority to strike down part of the law.

Chief Justice John G. Roberts Jr. contended that blacks and whites now regularly register and turn out to vote in comparable numbers and called blatantly discriminatory evasions of federal decrees rare.

The Catholic chief justice conceded that significant civil rights progress could be attributed to the act, but said "past success alone, however, is not adequate justification to retain the preclearance requirement."

In its ruling on the case, however, the court sidestepped the constitutionality question of the preclearance provision.

"Essentially, the Supreme Court gave the Voting Rights Act a stay, which bodes well for its viability for the foreseeable future," Goldfeder told Catholic News Service.

Since it appears that no other case concerning the Voting Rights Act will be heard by the Supreme Court in the near future, Goldfeder believes it's possible President Barack Obama will have time to appoint justices that will change the makeup of the court, and ensure the law serves out its 25-year extension approved by Congress in 2006.

"I am relieved that the Supreme Court did not overturn the reauthorization of the Voting Rights Act," Leahy said in a June 22 statement. "Doing so would have been pure and simple judicial activism."

Though members of the American Civil Liberties Union and Attorney General Eric Holder called the decision a victory, opponents of the act said comments made by Thomas and Roberts gave them hope the law would not survive its 25-year extension.

"If someone files a new lawsuit, I think there's a very good chance that down the line they might find it unconstitutional," Hans von Spakovsky, a legal scholar at the Heritage Foundation, told The Associated Press.

Leahy also said he is concerned about the chief justice's opinion that the preclearance provision of the Voting Rights Act has achieved its purpose and should

now be relegated to history. He said that his expressed belief may make the law vulnerable when the court hears future cases.

“In fact, the democratic branches of government responsible for making such determinations received extensive evidence of continuing discrimination in covered jurisdictions,” he said. “This evidence of continuing discrimination was made part of the express findings included in and underlying the legislation passed overwhelmingly by Congress and signed by former President (George W.) Bush.”