

THE LAURA FLANDERS SHOW

DECIDING THE FATE OF DEMOCRACY IN NORTH CAROLINA

LAURA FLANDERS: Hi, I'm Laura Flanders, joining you from North Carolina where we've been looking at the local roots of the January 6th insurrection in Washington, DC. In earlier episodes, we've looked at the growth of paramilitary training facilities here and the militarized power of partisan sheriffs and police. This time we're looking at the long history and present of anti-democratic election law. And a legal case that could throw all sorts of elections into the kind of chaos we saw after 2020. Ostensibly, the historic decision by the North Carolina Supreme Court is about gerrymandering but the impulses behind the case date back generations and are all about maintaining white power. What's at stake and why does it matter? What does the pushback look like? We're here to find out. Over the last two decades as North Carolina has become increasingly urban and diverse. Republicans here have done everything they can to hang on to power whether or not they have the support of the majority of the populace. With unlimited amounts of campaign cash, extreme gerrymandering and the end of federal oversight over voting rights they've been able to secure a virtual lock on the general assembly, even though North Carolina is a closely divided state. Josh Stein is the State Attorney General.

JOSH STEIN: I was elected first in 2016, and then reelected in 2020. And the job of Attorney General is really to be the people's lawyer, to represent the people of North Carolina, to protect the people of North Carolina. We fight for people's fundamental rights, their rights to live their lives free of discrimination, no matter who they are, and the right to vote which is in our democracy, the most important right.

LAURA FLANDERS: North Carolinians vote roughly 50/50 Republican and Democrat with African Americans voting heavily democratic and the Republican vote heavily white. Yet Republicans enjoy a veto proof supermajority in both houses of the state government. How did that come about?

JOSH STEIN: Because they have abused the line drawing process, which happens every decade after a census, in order to manipulate it so that they get more power. They favor certain voters, their voters and they discriminate against other voters who may disagree with them, and in the process, they make some people's votes worth more than others, and that is antithetical to what democracy is supposed to be. This legislature has been elected time and time again under unconstitutional

maps, and that is problematic. So it's not a surprise they have these powers because that's what they've done is manipulate it to their advantage.

LAURA FLANDERS: A case in point in 2016, Democrats won 46% of the vote in North Carolina's congressional races, but only managed to win 3 out of the state's 13 seats. The US Supreme Court eventually ruled that the maps used in those elections were racially gerrymandered and had to be rewritten.

JOSH STEIN: Under the new maps. Our congressional delegation in Washington today is seven Democrats and seven Republicans in a 50/50 state. Now, they're not happy with that because they want to be able to make whatever decision they want, ignoring the will of the people and that's wrong.

LAURA FLANDERS: While racial gerrymandering has been declared unconstitutional, the US Supreme Court has ruled that claims of unconstitutional partisan gerrymandering, writing maps to benefit one party over another, is a matter for the states to adjudicate. How they do that is the question at the heart of the case decided on April 28th. Hilary Harris Klein is Senior Council for Voting Rights for the Southern Coalition for Social Justice. She helped argue the case at the North Carolina Supreme Court.

HILARY HARRIS KLEIN: In 2021, after the last US census was released North Carolina's legislatures redrew all of our electoral maps, and when they did that they intentionally drew extreme partisan gerrymanders. We know that because our client, Common Cause, along with other plaintiffs sued in court contending these were illegal partisan gerrymanders. And that case went to trial in January of 2022 and the trial court unanimously held that all of the maps were extreme partisan gerrymanders, intentional gerrymanders that would be non-responsive. If there was an election it would be non-responsive to the will of the voters.

LAURA FLANDERS: In their April 28th decision a newly elected Republican majority on the North Carolina Supreme Court not only reinstated maps that their Democratic predecessors on the same court had found to be gerrymandered, but argued that only the general assembly, not the courts or the executive branch, had any authority over redistricting. They also reversed two other decisions: one voiding a discriminatory voter ID law and another that restored the right to vote for those convicted of felonies after their release.

JOSH STEIN: We're all supposed to have the right to vote but we have to have those votes mean something for each vote to be equal. And they're not when there is partisan gerrymandering. We can't underestimate how damaging that is to our long-term health. So there's a problem, there's a sickness and that means we have to treat it, and we have to address it and we have to underscore to people that their vote does count, and that it will be heard, and that they can vote safely and securely, and that is our collective work.

LAURA FLANDERS: This collective work is bolstered by a long history of activism in North Carolina including the pioneering civil rights work of legal scholar Pauli Murray.

ANGELA M. THORPE: Pauli is what we might describe today as gender non-conforming, but that same space did not exist for them in the 20th century. Pauli was a legal scholar. They were thinking differently and futuristically about legal concepts in ways that their counterparts and even their mentors were unable to. That is what laid the groundwork for their impact for civil rights.

HILARY HARRIS KLEIN: Pauli Murray is hugely influential to anybody doing civil rights in North Carolina, and I think actually across the whole country. Murray was the academic, you know the intellectual architect of the Civil Rights movement.

LAURA FLANDERS: In the early 20th century, Murray, queer, a Black woman, whom many today would call non-binary or trans, challenged her contemporaries to apply the 14th amendment's equal protection clause to cases of discrimination on the basis of gender or race. Laughed at the time, her arguments were eventually used in the litigation that overturned segregation. With implications for education, transportation, employment, voting, and even on the drafting of the Equal Rights Amendment or ERA. US democracy, Murray argued, required applying the constitution to real life in a way that considered not just the behaviors of individuals, but also the structures and rules of a society that effectively discriminate. A right to vote, Murray might say, isn't worth much, if because of gerrymandering that vote has no impact.

IRVING L. JOYNER: I'm a professor of law at North Carolina Central University School of Law but I'm a child of the Civil Rights Movement.

LAURA FLANDERS: Civil rights attorney Irving Joyner has been involved in over 30 years of litigation around voting rights. He helped argue *Thornburg v. Gingles*, which laid out the grounds on which gerrymandering could be challenged in North Carolina.

IRVING L. JOYNER: I grew up in Jim Crow segregation. Raised here in North Carolina where I experienced the worst of Jim Crow, and I have watched the struggle to confront Jim Crow and happily I've been eagerly engaged in those efforts since high school.

LAURA FLANDERS: The recent decision by the North Carolina Supreme Court doesn't come from nowhere. Joyner says it's a product of years of work to undermine the power of the African American vote. Can you trace for us the trajectory of African American voting rights in this state?

IRVING L. JOYNER: 1868 was a pivotal year in North Carolina. That was the beginning of Reconstruction and the beginning of a promise to newly enfranchised individuals of color in this, in this state, those who were formerly enslaved and those who were so-called free Africans who thought that the constitution and the cry for democracy meant them too. And they fought to get into, during Reconstruction, the ability to help govern the state. All of that came crashing down in 1898 in North Carolina where the overthrow or coup d'état in Wilmington resulted in the removal of African Americans from every elected position in the state of North Carolina. And the inability legally for African Americans to be able to register and vote. And that situation continued until 1968, even following the enactment of the 1965 Voting Rights Act. But in 1968 Henry Frye became the first African American to be elected to the North Carolina General Assembly, which was a big moment here in the state. But it was really after Gingles versus Thornburg that we had double digits in the number of African Americans who were elected in the state, and that number grew from 1982, right on up until 2010 where at that time you had in excess of 30 African Americans in the North Carolina General Assembly, and all of that came crashing down in 2010. With the election of Republicans to take control of the North Carolina General Assembly. And their first order of business was to attack the success that we had had in building up African American political power.

LAURA FLANDERS: And just to put a pin in it, 2010 was two years after a pretty significant election.

IRVING L. JOYNER: It was amazing. In 2008 we had the election of Barack Obama, the first African American, and only African American to be elected as the president. In North Carolina percentage wise, African Americans voted for the first time in history at a level that surpassed the voting percentage of whites in this state. And that was a glorious day to be able to look at those numbers, to see that the participation of African Americans had skyrocketed in this state. And then to turn around two years later, where that number plummeted. People were still celebrating the election of Barack Obama that allowed for this Republican upsurge to come in and take over in

North Carolina. And since that time we have been battling to fight to get our position back and to encourage our people to get back out and vote and participate because there are benefits in having your voice heard and being able to exercise that power within the political process.

LAURA FLANDERS: After the 2010 census Republicans redrew voting maps such that they were able to win a super majority in both chambers of the General Assembly and the governor's office. With that concentrated power, they advanced extremist bills that in many ways became models for other states. Such as Amendment 1, which outlawed marriage equality and the so-called bathroom bill, one of the first in the nation to put a target on trans rights. Serena Sebring of Blueprint North Carolina was active in opposition during those years.

SERENA SEBRING: When I think about what we're up against now I can draw a direct line back to 2012 and the question of whether our families as queer families were legitimate. Because what's at stake are a number of things that many people take for granted. Rights that folks take for granted. For example, the right to vote, which is currently being considered at our state legislature in a number of ways. Should we have literacy tests? Should people who are formerly incarcerated have the right to vote? So the stripping away, or at least the potential for stripping away of established rights for communities of color or communities that are marginalized in other ways feels very much consistent with the experience that I've had as an organizer in North Carolina since 2012. I have seen extremism grow in North Carolina over the time that I have been here. There's no question that if we look at what are some of the threats to democracy now? We see a whole new type of threat that comes from extremists that are focused on you know, any, anything from women's rights to LGBTQ people's rights to, you know, the, the kinds of impulses that led nine busloads of North Carolinians up to DC for the insurrection of 2021. The extremism in this state has grown across this time. There's not a check or a balance on the extremism that might come from a representative government because of gerrymandering.

LAURA FLANDERS: Checks and balances matter. That's why they were written into the Constitution. School groups like this learn all about why they're so important when they come to visit the capitol, like this one here in Raleigh, North Carolina.

The US Supreme Court currently has a chance to weigh in on the matter of who has authority over drawing election maps in a case out of North Carolina called *Moore v. Harper*. If *Moore v. Harper* is decided for the plaintiffs one branch would be stripped of all oversight, and tour guides like this one might have to change their script.

HILARY HARRIS KLEIN: In public comments in 2021, North Carolinians across this state from all sides of the political spectrum resoundingly rejected gerrymandering. They told the legislature we do not want any more gerrymandering. And that's because they suffered, suffered a lot in the last cycle. There were three different congressional maps in the last, you know, decade from 2010 to 2020 alone. Several litigations and voters are tired of that. They want consistency in representation. They want to know who their elected representatives are and accountability to those, for those elected representatives. North Carolinians do not want this gerrymandering. And I think that's an important point because what the legislatures are trying to do here is not the people's business, it is their own political entrenchment.

LAURA FLANDERS: Angela Thorpe is the executive director of the Pauli Murray Center for History and Social Justice.

ANGELA M. THORPE: Pauli was raised in the Jim Crow South in Durham, North Carolina. Pauli's family was affected by racial terror, violence in a myriad of ways. Pauli describes even as a child the night terrors that her grandmother would have because of her past experiences being harassed by members of the Ku Klux Klan in Orange County, North Carolina. And so this is certainly a reality. But in addition, Pauli was raised with what she describes as a great deal of racial pride, right? She came from a strong people, a dignified people. We know Pauli was queer, had a long time loving relationship with a partner who was a woman, but again self-described as a he/she personality. Sought hormone therapy, had a lot of questions and curiosity about their own gender, and their own gender identity. But we also know that Pauli was a critical advocate for women, for Black women, Black working class women and was a thought leader and a legal scholar around women's rights, and so, again you're going to hear me use, she, they interchangeably.

LAURA FLANDERS: Rejected by the University of North Carolina in 1938, because as an African American they did not receive enough education in high school, Murray went on to graduate first of her class and the only woman in her year at Howard Law School. Rejected by Harvard because of her gender, Murray went on to become the first African American to receive a doctorate from Yale Law School. In their most powerful poem "Dark Testament" Murray wrote that "Hope is a crushed stalk between clenched fingers, a song in a weary throat. Give me a song of hope," she wrote "and a world where I can sing it. A song of kindness and a country where I can live it." "The US South," Murray wrote, "is the testing ground for US democracy."

HILARY HARRIS KLEIN: I think Murray really taught us that we have to bring life to the language in our foundational documents. They made promises of equal protection. They made promises to

the people of this country, and it is our job to bring life to that and to have those words meet the challenges of the day. That's what Murray did in thinking very creatively about how equal protections could be used to combat sex and race-based discrimination. And I think we have to continue that fight.

ANGELA M. THORPE: I think Pauli Murray would be incredibly concerned with the ways in which legislatures in states across the US are working to strip people, particularly Black people, of their voting rights. I think Pauli would be incredibly challenged with what we're seeing around Black people's access to the polls, and so again, I think Pauli would have a mix of emotions but likely a great deal of concern.

JOSH STEIN: We have an unfortunate history in North Carolina. There's no denying, in fact we have to stare at it head on so that we're aware of what has happened to ensure that we are not pursuing that path at all. I mean, we had the grandfather clauses, we had poll taxes, we had literacy tests. All of these things were tools by white people in power to keep Black people from participating fully. But as recently as the last decade, the US Supreme Court majority concluded that we had engaged in racial gerrymandering here in North Carolina. Discrimination that penalized people for being Black. That is wrong. But in North Carolina, party and race are so closely aligned that if you allow partisan gerrymandering inevitably you are discriminating against Black voters, and that's offensive. You know, we've had this incredible, healthy, long-term democracy, but because we've had things in the past, there's never a guarantee for the future. The past does not guarantee future success. Future success is determined by you and me and every person in this state and our commitment to doing everything we can now to reinvigorate our democracy. And that's a job on all of us.

SERENA SEBRING: Pauli Murray is an inspiration and a hero in Durham. I mean, I think many of us are so excited to come to Durham and learn that there was a visionary like Pauli Murray. Who before it was sexy, before many of us had even understood her name, could speak to a kind of governance and a kind of community participation in it that we are still working towards.

JOSH STEIN: North Carolina is rich with people that we can look to who made an impact, made a difference in the direction of our state, but also the whole country. And I, I'm blessed that I'm related to one of them, my father Adam, but he and his law partners Julius Chambers, James Ferguson. But there are other civil rights leaders, Pauli Murray who was fighting, not only the fight on race, but on gender and sexuality. And so they faced a much tougher fight, honestly I think than we do because it's hard to remember, but I mean, my dad's law office was firebombed, burned to the

ground, Chamber's car was bombed twice, you know people were killed. And we have to take inspiration from those folks and know that they were able to persevere through bleak times and tough political times where, you know, those in power didn't want to give it up, but they went and grabbed what was fair and right. And we have to keep moving forward.

IRVING L. JOYNER: Success breeds forgetfulness. You get used to the success and you forget the underpinnings, those things necessary to get you into that position in the first place. And we have to restore that notion and begin to help people to understand that a democracy is something in which all of the people are able to participate.

SERENA SEBRING: We are willing to put in the elbow grease and the ground game to address the problems at the local level, to look deeply into a hundred counties and to say it's not just Raleigh, it's not just Charlotte, it's not even just Durham that matters. But it is Columbus County, it is Pasquotank County. It is all of the people of North Carolina who must be welcomed into a democracy if it is to be what it says it is.

LAURA FLANDERS: North Carolina has played a critical role in this country's struggle for equal rights. Some people here have learned a lot about how to suppress other people's votes. But this state has also been home to visionaries like Pauli Murray, who figured out how to use the law to expand people's rights. Is democracy on a precipice right now? People would say so. And the time is ripe for some broad Murray-esque thinking about democracy. Till the next time, stay kind, stay curious, and thanks for joining me for "The Laura Flanders Show" in North Carolina, I'm Laura.

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