Shaw v. Reno

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Vote: 5 (Kennedy, O'Connor, Rehnquist, Scalia, Thomas)   
  
4 (Blackmun, Souter, Stevens, White)

OPINION OF THE COURT: O'Connor   
  
Dissenting opinions: Blackmun, Souter, Stevens, White

**Facts**

As a result of the 1990 census, North Carolina gained one congressional seat, increasing its House membership to twelve and requiring the state legislature to redraw the state's congressional districts. Because of previous acts of racial discrimination, North Carolina fell under the provisions of the Voting Rights Act of 1965, which mandated that any redistricting plan adopted by the state legislature be submitted to the U.S. Justice Department or the District Court for the District of Columbia for approval. Such approval would be forthcoming only if the plan did not jeopardize minority representation.

North Carolina's initial reapportionment effort included one district purposefully constructed to have a majority of black voters. The Justice Department under the George H.W. Bush administration rejected this plan on the grounds that it gave blacks insufficient congressional representation. In response, the state legislature revised the plan in a way that created two districts (the First and the Twelfth) that would have a majority of black voters. The Justice Department accepted this revision.

The shapes of the two districts in question were quite controversial. The First District was somewhat hook-shaped, beginning in the northeastern part of the state and tapering down with fingerlike extensions almost to the South Carolina border. It included all or portions of twenty-eight counties. In the lower court record, the district was said to resemble a Rorschach ink-blot test, and the *Wall Street Journal* claimed the district looked like a "bug splattered on a windshield." The Twelfth District received even harsher criticism. It was 160 miles long and generally corresponded to the Interstate 85 corridor. One of the lower court judges described it as winding in a snakelike fashion through tobacco country, financial centers, and manufacturing areas until it gobbled up enough enclaves of black neighborhoods to create a majority-black district. At some points the district was no wider than Interstate 85, prompting one state legislator to remark that if "you drove down the interstate with both car doors open, you'd kill most of the people in the district." It spite of such criticisms, the redistricting accomplished its goal. In the 1992 elections voters in both districts selected black representatives. They were the first blacks to represent North Carolina, a state with a 20 percent black population, since 1901.

Ruth Shaw and four other white North Carolina voters filed suit against the U.S. attorney general and various North Carolina officials, claiming that race-based redistricting violated, among other provisions, the Fourteenth Amendment's Equal Protection Clause. A special three-judge district court dismissed the suit against both the attorney general and the state officials. Shaw appealed. Traditional civil rights groups--the NAACP Legal Defense Fund, Lawyers' Committee for Civil Rights Under Law, and the Mexican American Legal Defense Fund--submitted amicus curiae briefs in favor of the minority districts, and groups with long histories of opposition to quota programs--Washington Legal Foundation and the American Jewish Congress--argued against them. The Democratic National Committee maintained that the minority districts were constitutional, while the Republican National Committee argued that they were not.

**JUSTICE O'CONNOR delivered the opinion of the Court.**

This case involves two of the most complex and sensitive issues this Court has faced in recent years: the meaning of the constitutional "right" to vote, and the propriety of race-based state legislation designed to benefit members of historically disadvantaged racial minority groups.... Appellants allege that the revised plan, which contains district boundary lines of dramatically irregular shape, constitutes an unconstitutional racial gerrymander. The question before us is whether appellants have stated a cognizable claim.... Appellants contended that the General Assembly's revised reapportionment plan violated several provisions of the United States Constitution, including the Fourteenth Amendment. They alleged that the General Assembly deliberately "create[d] two Congressional Districts in which a majority of black voters was concentrated arbitrarily--without regard to any other considerations, such as compactness, contiguousness, geographical boundaries, or political subdivisions" with the purpose "to create Congressional Districts along racial lines" and to assure the election of two black representatives to Congress....

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society...." *Reynolds v. Sims* [1964]. For much of our Nation's history, that right sadly has been denied to many because of race. The Fifteenth Amendment, ratified in 1870 after a bloody Civil War, promised unequivocally that "[t]he right of citizens of the United States to vote" no longer would be "denied or abridged ... by any State on account of race, color, or previous condition of servitude."...

But it soon became apparent that guaranteeing equal access to the polls would not suffice to root out other racially discriminatory voting practices. Drawing on the "one person, one vote" principle, this Court recognized that "[t]he right to vote can be affected by a *dilution* of voting power as well as by an absolute prohibition on casting a ballot." *Allen v. State Board of Elections* (1969) (emphasis added). Where members of a racial minority group vote as a cohesive unit, practices such as multimember or at-large electoral systems can reduce or nullify minority voters' ability, as a group, "to elect the candidate of their choice."... Accordingly, the Court held that such schemes violate the Fourteenth Amendment when they are adopted with a discriminatory purpose and have the effect of diluting minority voting strength. See, e.g., *Rogers v. Lodge* (1982); *White v. Regester* (1973). Congress, too, responded to the problem of vote dilution. In 1982, it amended section 2 of the Voting Rights Act to prohibit legislation that *results* in the dilution of a minority group's voting strength, regardless of the legislature's intent....

It is against this background that we confront the questions presented here. In our view, the District Court properly dismissed appellants' claims against the federal appellees. Our focus is on appellants' claim that the State engaged in unconstitutional racial gerrymandering. That argument strikes a powerful historical chord: It is unsettling how closely the North Carolina plan resembles the most egregious racial gerrymanders of the past. An understanding of the nature of appellants' claim is critical to our resolution of the case. In their complaint, appellants did not claim that the General Assembly's reapportionment plan unconstitutionally "diluted" white voting strength. They did not even claim to be white. Rather, appellants' complaint alleged that the deliberate segregation of voters into separate districts on the basis of race violated their constitutional right to participate in a "color-blind" electoral process....

Despite their invocation of the ideal of a "color-blind" Constitution, see *Plessy v. Ferguson* (1896) (Harlan, J., dissenting), appellants appear to concede that race-conscious redistricting is not always unconstitutional.... That concession is wise: This Court never has held that race-conscious state decisionmaking is impermissible in *all* circumstances. What appellants object to is redistricting legislation that is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles and without sufficiently compelling justification. For the reasons that follow, we conclude that appellants have stated a claim upon which relief can be granted under the Equal Protection Clause....

The Equal Protection Clause provides that "[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws."... Its central purpose is to prevent the States from purposefully discriminating between individuals on the basis of race. *Washington v. Davis* (1976). Laws that explicitly distinguish between individuals on racial grounds fall within the core of that prohibition....

Classifications of citizens on the basis of race "are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi v. United States* (1943). They threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility....

These principles apply not only to legislation that contains explicit racial distinctions, but also to those "rare" statutes that, although race-neutral, are, on their face, "unexplainable on grounds other than race." *Arlington Heights v. Metropolitan Housing Development Corp.* (1977). As we explained in [ *Personnel Administrator of Massachusetts v.] Feeney* [1979]:

*"A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.... This rule applies as well to a classification that is ostensibly neutral but is an obvious pretext for racial discrimination."...*

Appellants contend that redistricting legislation that is so bizarre on its face that it is "unexplainable on grounds other than race," *Arlington Heights*, demands the same close scrutiny that we give other state laws that classify citizens by race. Our voting rights precedents support that conclusion....

... [W]e believe that reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group--regardless of their age, education, economic status, or the community in which the live--think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible racial stereotypes.... By perpetuating such notions, a racial gerrymander may exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract.

The message that such districting sends to elected representatives is equally pernicious. When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole. This is altogether antithetical to our system of representative democracy. As Justice Douglas explained in his dissent in *Wright v. Rockefeller* nearly 30 years ago:

*"Here the individual is important, not his race, his creed, or his color. The principle of equality is at war with the notion that District A must be represented by a Negro, as it is with the notion that District B must be represented by a Caucasian, District C by a Jew, District D by a Catholic, and so on.... That system, by whatever name it is called, is a divisive force in a community, emphasizing differences between candidates and voters that are irrelevant in the constitutional sense....*

*"When racial or religious lines are drawn by the State, the multiracial, multireligious communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan. Since that system is at war with the democratic ideal, it should find no footing here."...*

For these reasons, we conclude that a plaintiff challenging a reapportionment statute under the Equal Protection Clause may state a claim by alleging that the legislation, though race-neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification. It is unnecessary for us to decide whether or how a reapportionment plan that, on its face, can be explained in nonracial terms successfully could be challenged. Thus, we express no view as to whether "the intentional creation of majority-minority districts, without more" always gives rise to an equal protection claim.... We hold only that, on the facts of this case, plaintiffs have stated a claim sufficient to defeat the state appellees' motion to dismiss....

Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin. Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters--a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire. It is for these reasons that race-based districting by our state legislatures demands close judicial scrutiny.

In this case, the Attorney General suggested that North Carolina could have created a reasonably compact second majority-minority district in the south-central to southeastern part of the State. We express no view as to whether appellants successfully could have challenged such a district under the Fourteenth Amendment. We also do not decide whether appellants' complaint stated a claim under constitutional provisions other than the Fourteenth Amendment. Today we hold only that appellants have stated a claim under the Equal Protection Clause by alleging that the North Carolina General Assembly adopted a reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race, and that the separation lacks sufficient justification. If the allegation of racial gerrymandering remains uncontradicted, the District Court further must determine whether the North Carolina plan is narrowly tailored to further a compelling governmental interest. Accordingly, we reverse the judgment of the District Court and remand the case for further proceedings consistent with this opinion.

*It is so ordered*.

**JUSTICE WHITE with whom JUSTICE BLACKMUN and JUSTICE STEVENS join, dissenting.**

The facts of this case mirror those presented in *United Jewish Organizations of Williamsburgh, Inc. v. Carey* (1977) ( *UJO*), where the Court rejected a claim that creation of a majority-minority district violated the Constitution, either as a *per se* matter or in light of the circumstances leading to the creation of such a district. Of particular relevance, five of the Justices reasoned that members of the white majority could not plausibly argue that their influence over the political process had been unfairly canceled (opinion of WHITE, J., joined by REHNQUIST and STEVENS, J.J.), or that such had been the State's intent (STEWART, J., POWELL, J., concurring in judgment). Accordingly, they held that plaintiffs were not entitled to relief under the Constitution's Equal Protection Clause. On the same reasoning, I would affirm the District Court's dismissal of appellants' claim in this instance.

The Court today chooses not to overrule, but rather to sidestep, *UJO*. It does so by glossing over the striking similarities, focusing on surface differences, most notably the (admittedly unusual) shape of the newly created districtand imagining an entirely new cause of action. Because the holding is limited to such anomalous circumstances, it perhaps will not substantially hamper a State's legitimate efforts to redistrict in favor of racial minorities. Nonetheless, the notion that North Carolina's plan, under which whites remain a voting majority in a disproportionate number of congressional districts, and pursuant to which the State has sent its first black representatives since Reconstruction to the United States Congress, might have violated appellants' constitutional rights is both a fiction and a departure from settled equal protection principles. Seeing no good reason to engage in either, I dissent....

**JUSTICE STEVENS, dissenting.**

... I believe that the Equal Protection Clause is violated when the State creates the kind of uncouth district boundaries seen in *Karcher v. Daggett* (1983), *Gomillion v. Lightfoot*)(1960), and this case, for the sole purpose of making it more difficult for members of a minority group to win an election. The duty to govern impartially is abused when a group with power over the electoral process defines electoral boundaries solely to enhance its own political strength at the expense of any weaker group. That duty, however, is not violated when the majority acts to facilitate the election of a member of a group that lacks such power because it remains underrepresented in the state legislature - whether that group is defined by political affiliation, by common economic interests, or by religious, ethnic, or racial characteristics. The difference between constitutional and unconstitutional gerrymanders has nothing to do with whether they are based on assumptions about the groups they affect, but whether their purpose is to enhance the power of the group in control of the districting process at the expense of any minority group, and thereby to strengthen the unequal distribution of electoral power. When an assumption that people in a particular minority group (whether they are defined by the political party, religion, ethnic group, or race to which they belong) will vote in a particular way is used to benefit that group, no constitutional violation occurs. Politicians have always relied on assumptions that people in particular groups are likely to vote in a particular way when they draw new district lines, and I cannot believe that anything in today's opinion will stop them from doing so in the future.

Finally, we must ask whether otherwise permissible redistricting to benefit an underrepresented minority group becomes impermissible when the minority group is defined by its race. The Court today answers this question in the affirmative, and its answer is wrong. If it is permissible to draw boundaries to provide adequate representation for rural voters, for union members, for Hasidic Jews, for Polish Americans, or for Republicans, it necessarily follows that it is permissible to do the same thing for members of the very minority group whose history in the United States gave birth to the Equal Protection Clause.... A contrary conclusion could only be described as perverse.

Accordingly, I respectfully dissent.

**JUSTICE SOUTER, dissenting.**

Today, the Court recognizes a new cause of action under which a State's electoral redistricting plan that includes a configuration "so bizarre" that it "rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race [without] sufficient justification" ... will be subjected to strict scrutiny. In my view there is no justification for the Court's determination to depart from our prior decisions by carving out this narrow group of cases for strict scrutiny in place of the review customarily applied in cases dealing with discrimination in electoral districting on the basis of race. Until today, the Court has analyzed equal protection claims involving race in electoral districting differently from equal protection claims involving other forms of governmental conduct, and before turning to the different regimes of analysis it will be useful to set out the relevant respects in which such districting differs from the characteristic circumstances in which a State might otherwise consciously consider race. Unlike other contexts in which we have addressed the State's conscious use of race, see, e.g., *Richmond v. J.A. Croson Co.* (1989) (city contracting); *Wygant v. Jackson Bd. of Ed*. (1986) (teacher layoffs), electoral districting calls for decisions that nearly always require some consideration of race for legitimate reasons where there is a racially mixed population. As long as members of racial groups have the commonality of interest implicit in our ability to talk about concepts like <"minority voting strength," and "dilution of minority votes," cf. *Thornburg v. Gingles* (1986), and as long as racial bloc voting takes place, legislators will have to take race into account in order to avoid dilution of minority voting strength in the districting plans they adopt. One need look no further than the Voting Rights Act to understand that this may be required, and we have held that race may constitutionally be taken into account in order to comply with that Act....

A second distinction between districting and most other governmental decisions in which race has figured is that those other decisions using racial criteria characteristically occur in circumstances in which the use of race to the advantage of one person is necessarily at the obvious expense of a member of a different race. Thus, for example, awarding government contracts on a racial basis excludes certain firms from competition on racial grounds.... And when race is used to supplant seniority in layoffs, someone is laid off who would not be otherwise.... The same principle pertains in nondistricting aspects of voting law, where race-based discrimination places the disfavored voters at the disadvantage of exclusion from the franchise without any alternative benefit....

In districting, by contrast, the mere placement of an individual in one district instead of another denies no one a right or benefit provided to others. All citizens may register, vote, and be represented. In whatever district, the individual voter has a right to vote in each election, and the election will result in the voter's representation. As we have held, one's constitutional rights are not violated merely because the candidate one supports loses the election or because a group (including a racial group) to which one belongs winds up with a representative from outside that group.... It is true, of course, that one's vote may be more or less effective depending on the interests of the other individuals who are in one's district, and our cases recognize the reality that members of the same race often have shared interests. "Dilution" thus refers to the effects of districting decisions not on an individual's political power viewed in isolation, but on the political power of a group.... This is the reason that the placement of given voters in a given district, even on the basis of race, does not, without more, diminish the effectiveness of the individual as a voter....

There is thus no theoretical inconsistency in having two distinct approaches to equal protection analysis, one for cases of electoral districting and one for most other types of state governmental decisions. Nor, because of the distinctions between the two categories, is there any risk that Fourteenth Amendment districting law as such will be taken to imply anything for purposes of general Fourteenth Amendment scrutiny about "benign" racial discrimination, or about group entitlement as distinct from individual protection, or about the appropriateness of strict or other heightened scrutiny.

The Court appears to accept this, and it does not purport to disturb the law of vote dilution in any way.... Instead, the Court creates a new "analytically distinct" cause of action, the principal element of which is that a districting plan be "so bizarre on its face" ... or "irrational on its face," ... or "extremely irregular on its face," ... that it "rationally cannot be understood as anything other than an effort to segregate citizens into separate voting districts on the basis of race without sufficient justification."... Pleading such an element, the Court holds, suffices without a further allegation of harm, to state a claim upon which relief can be granted under the Fourteenth Amendment....

It may be that the terms for pleading this cause of action will be met so rarely that this case will wind up an aberration. The shape of the district at issue in this case is indeed so bizarre that few other examples are ever likely to carry the unequivocal implication of impermissible use of race that the Court finds here. It may therefore be that few electoral districting cases are ever likely to employ the strict scrutiny the Court holds to be applicable on remand if appellants' allegations are "not contradicted."...

Nonetheless, in those cases where this cause of action is sufficiently pleaded, the State will have to justify its decision to consider race as being required by a compelling state interest, and its use of race as narrowly tailored to that interest. Meanwhile, in other districting cases, specific consequential harm will still need to be pleaded and proven, in the absence of which the use of race may be invalidated only if it is shown to serve no legitimate state purpose....

The Court offers no adequate justification for treating the narrow category of bizarrely shaped district claims differently from other districting claims. The only justification I can imagine would be the preservation of "sound districting principles," ... such as compactness and contiguity. But ... we have held that such principles are not constitutionally required, with the consequence that their absence cannot justify the distinct constitutional regime put in place by the Court today. Since there is no justification for the departure here from the principles that continue to govern electoral districting cases generally in accordance with our prior decisions, I would not respond to the seeming egregiousness of the redistricting now before us by untethering the concept of racial gerrymander in such a case from the concept of harm exemplified by dilution. In the absence of an allegation of such harm, I would affirm the judgment of the District Court. I respectfully dissent.