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SUPREME COURT OF THE UNITED STATES

Syllabus

VOINOVICH, GOVERNOR OF OHIO, ET AL. v. QUILTER, SPEAKER PRO TEMPORE OF OHIO HOUSE OF REPRESENTATIVES, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO

No. 91-1618. Argued December 8, 1992—Decided March 2,
1993

Pursuant to the Ohio Constitution's requirement that electoral districts for the state legislature be reapportioned every 10 years, appellant James Tilling drafted and the state apportionment board adopted in 1991 an apportionment plan that created several districts in which a majority of the population is a member of a specific minority group. Appellees, Democratic board members who voted against the plan and others, filed suit in the District Court, asking that the plan be invalidated on the grounds that it violated §2 of the Voting Rights Act of 1965 and the Fourteenth and Fifteenth Amendments. A three-judge district court ordered the board to reconsider the plan, holding that §2 of the Voting Rights Act prohibits the wholesale creation of majority-minority districts unless necessary to remedy a §2 violation; the board, it held, had failed to show such a violation. The District Court reaffirmed that holding when it reviewed the board's revised 1992 plan, rejecting appellants' argument that it should not have invalidated the 1991 plan without finding that, under the totality of the circumstances, the plan diluted minority voting strength. In addition, the court held that the board had violated the Fifteenth Amendment by applying the remedy of creating majority-minority districts intentionally and for the purpose of political advantage. It further held that the plan violated the Fourteenth Amendment by departing from the requirement that all districts be of nearly equal population.

Held:

1. The plan does not violate §2 of the Voting Rights Act. Pp. 5-11.

(a) Appellees raise an "influence-dilution" claim. They contend that, by packing black voters in a few districts with a disproportionately large black voter population, the plan deprived them of a larger number of districts in which they would have been an influential minority capable of electing their candidates of choice with the help of cross-over votes from white voters. While this Court has not decided whether such a claim is viable under §2, the Court assumes for the purpose of resolving this case that appellees have stated a cognizable §2 claim. Pp. 5-7.

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(b) Plaintiffs can prevail on a §2 dilution claim only if they show that, under the totality of the circumstances, the State's apportionment scheme has the effect of diminishing or abridging the voting strength of the protected class. The District Court erred in holding that §2 prohibits the creation of majority-minority districts unless such districts are necessary to remedy a statutory violation, since §2 contains no *per se* prohibitions against any particular type of district. Instead, it focuses exclusively on the consequences of apportionment. The court also mistakenly placed the burden of justifying apportionment on Ohio by requiring appellants to justify the creation of majority-minority districts. Section 2(b) places at least the initial burden of proving an apportionment's invalidity on the plaintiff's shoulders. Although the *federal courts* may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law, that prohibition does not extend to the States. The federal courts are barred from intervening in state apportionment in the absence of such a violation precisely because it is the domain of the States and not the federal courts to conduct apportionment in the first place. Pp. 8-10.

(c) The District Court, had it applied the three-part vote-dilution test of *Thornburg v. Gingles*, 478 U. S. 30, 50-51, would have rejected appellees' §2 claim on the ground that appellees failed to demonstrate *Gingles*' third precondition—sufficient white majority bloc voting to frustrate the election of the minority group's candidate of choice. The court specifically found, and appellees agree, that Ohio does not suffer from racially polarized voting. Pp. 10-11.

2. The District Court's holding that the board violated the Fifteenth Amendment by intentionally diluting minority voting strength for political reasons is clearly erroneous. Tilling's preference for federal over state law when he believed the two in conflict does not raise an inference of intentional discrimination; it demonstrates obedience to the Supremacy Clause. Nor does the fact that Tilling, a Republican, possessed Democratic documents speculating about possible discriminatory strategies Tilling might use demonstrate that Tilling in fact had such a discriminatory strategy. Nothing in the record indicates that Tilling relied on those documents in preparing the plan. Indeed, the record indicates that Tilling and the board relied on sources, such as the National Association for the Advancement of Colored People, Ohio Conference of Branches, that were wholly unlikely to engage in or tolerate intentional discrimination against black voters. This Court expresses no view on the relationship between the Fifteenth

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Amendment and race-conscious redistricting; it concludes only that the finding of intentional discrimination was clear error. Pp. 11-13.

3. The District Court erred in holding that the plan violated the Fourteenth Amendment requirement that electoral districts be of nearly equal population. When the court found that the maximum total deviation from ideal district size exceeded 10%, appellees established a prima facie case of discrimination and appellants were required to justify the deviation. They attempted to do so, arguing that the deviation resulted from Ohio's constitutional policy in favor of preserving county boundaries. However, the District Court mistakenly held that total deviations in excess of 10% cannot be justified by a policy of preserving political subdivision boundaries. On remand, the court should consider whether the deviations from ideal district size are justified using the analysis employed in *Brown v. Thomson*, 462 U. S. 835, 843-846, and *Mahan v. Howell*, 410 U. S. 315, 325-330, which requires the court to determine whether the plan could reasonably be said to advance the State's policy, and, if it could, whether the resulting population disparities exceed constitutional limits. Pp. 13-14.

Reversed and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court.