SUPREME COURT OF THE UNITED STATES

No. 91–2012

JACKIE HOLDER, ETC., ET AL., PETITIONERS *v.*
E. K. HALL, SR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[June 30, 1994]

Separate opinion of JUSTICE STEVENS, in which JUSTICE BLACKMUN, JUSTICE SOUTER, and JUSTICE GINSBURG join.

JUSTICE THOMAS has written a separate opinion proposing that the terms "standard, practice, or procedure" as used in the Voting Rights Act should henceforth be construed to refer only to practices that affect minority citizens' access to the ballot. Specifically, JUSTICE THOMAS would no longer interpret the Act to forbid practices that dilute minority voting strength. To the extent that his opinion advances policy arguments in favor of that interpretation of the statute, it should be addressed to Congress, which has ample power to amend the statute. To the extent that the opinion suggests that federal judges have an obligation to subscribe to the proposed narrow reading of statutory language, it is appropriate to supplement JUSTICE THOMAS' writing with a few words of history.

JUSTICE THOMAS notes that the first generation of Voting Rights Act cases focused on access to the ballot. *Ante*, at 3–4. By doing so, he suggests that the early pattern of enforcement is an indication of the original meaning of the statute. In this regard, it is important to note that the Court's first case addressing a voting practice other than access to the ballot arose under the Fifteenth Amendment. In *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960), the Court held that a change in the boundaries of the city of

Tuskegee, Alabama, violated the Fifteenth Amendment. In his opinion for the Court, Justice Frankfurter wrote:

> "The opposite conclusion urged upon us by respondents, would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions." *Id.*, at 345.
>
> "A statute which is alleged to have worked unconstitutional deprivations of petitioners' rights is not immune to attack simply because the mechanism employed by the legislature is a redefinition of municipal boundaries. According to the allegations here made, the Alabama Legislature has not merely redrawn the Tuskegee city limits with incidental inconvenience to the petitioners; it is more accurate to say that it has deprived the petitioners of the municipal franchise and consequent rights and to that end it has incidentally changed the city's boundaries. While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights." *Id.*, at 347.[1]

---

[1]In most of his opinion, JUSTICE THOMAS seems to use the phrase "access to the ballot" to refer to the voter's ability to cast a vote. In an attempt to characterize the *Gomillion* gerrymander as a practice that interfered with access to the ballot, however, he seems to take the position that the redrawing of the boundaries of a governmental unit is a practice that affects access to the ballot because some voters' ballots could not thereafter be cast for the same offices as before. See *ante*, at 31, n. 20. Under such reasoning the substitution of an appointive office for an elective office, see *Bunton* v. *Patterson,* decided with *Allen* v. *State Bd. of Elections,* 393 U. S. 544, 550–551 (1969), or a change in district boundaries that prevented voters from casting ballots for

Because *Gomillion* was decided only a few years before the Voting Rights Act of 1965 was passed, and because coverage under the Voting Rights Act is generally coextensive with or broader than coverage under the Fifteenth Amendment, see *Katzenbach* v. *Morgan*, 384 U. S. 641 (1966); *Mobile* v. *Bolden*, 446 U. S. 55, 60–61 (1980) (plurality opinion), it is surely not unreasonable to infer that Congress intended the Act to reach the kind of voting practice that was at issue in that case. Nevertheless, the text of the Act would also have supported the opposite inference, because the language of the Fifteenth Amendment would seem to forbid any denial or abridgment of the right to vote, whereas §§2 and 5 of the Voting Rights Act refer only to "voting qualification[s,] . . . prerequisite[s] to voting, . . . standard[s], practice[s], [and] procedure[s]."

During the years between 1965 and 1969 the question whether the Voting Rights Act should be narrowly construed to cover nothing more than impediments to access to the ballot was an unresolved issue. What JUSTICE THOMAS describes as "a fundamental shift in the focal point of the Act," *ante,* at 2, occurred in 1969 when the Court unequivocally rejected the narrow reading, relying heavily on a broad definition of the term "voting" as including "`all action necessary to make a vote effective.'" *Allen* v. *State Bd. of Elections*, 393 U. S. 544, 565–566.

Despite *Allen*'s purported deviation from the Act's true meaning, Congress one year later reenacted §5 without in any way changing the operative words. During the next five years, the Court consistently adhered to *Allen*, see *Perkins* v. *Matthews*, 400 U. S. 379 (1971); *Georgia* v. *United States*, 411 U. S. 526 (1973), and in 1975, Congress again reenacted §5

---

the re-election of their incumbent Congressional Representatives, would also be covered practices.

without change.

When, in the late seventies, some parties advocated a narrow reading of the Act, the Court pointed to these Congressional reenactments as solid evidence that *Allen*, even if not correctly decided in 1969, would now be clearly correct. In *United States* v. *Sheffield Bd. of Comm'rs,* 435 U. S. 110, 132–133 (1978), the Court noted:

> "In 1970, Congress was clearly fully aware of this Court's interpretation of §5 as reaching voter changes other than those affecting the registration process and plainly contemplated that the Act would continue to be so construed. See, *e.g.*, Hearings on H. R. 4249 et al. before Subcommittee No. 5 of the House Committee on the Judiciary, 91st Cong., 1st Sess., 1, 4, 18, 83, 130–131, 133, 147–149, 154–155, 182–184, 402–454 (1969); Hearings on S. 818 et al. before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 91st Cong., 1st and 2d Sess., 48, 195–196, 369–370, 397–398, 426–427, 469 (1970) . . . .
>
> "The congressional history is even clearer with respect to the 1975 extension . . . ."[2]

---

[2]See also *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U. S. 144, 157–59 (1977) (opinion of White, J.): "In *Allen* v. *State Board of Elections*[, 393 U. S. 544 (1969)] . . . we held that a change from district to at-large voting for county supervisors had to be submitted for federal approval under §5, because of the potential for a `dilution' of minority voting power which could `nullify [its] ability to elect the candidate of [its] choice. . . .' 393 U. S., at 569. When it renewed the Voting Rights Act in 1970 and again in 1975, Congress was well aware of the application of §5 to redistricting. In its 1970 extension, Congress relied on findings by the United States Commission on Civil Rights that the newly gained voting strength of minorities was in danger of being diluted by

As the Court in that case also noted, when Congress reenacts a statute with knowledge of its prior interpretation, that interpretation is binding on the Court.

> "Whatever one might think of the other arguments advanced, the legislative background of the 1975 re-enactment is conclusive of the question before us. When a Congress that re-enacts a statute voices its approval of an administrative or other interpretation thereof, Congress is treated as having adopted that interpretation, and this Court is bound thereby. See, *e.g.*, *Don E. Williams Co.* v. *Commissioner*, 429 U. S. 569, 576–577 (1977); *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 414 n. 8 (1975); H. Hart & A. Sacks, The Legal Process: Basic Problems in the Making and Application of Law 1404 (tent. ed. 1958); cf. *Zenith Radio Corp.* v. *Hazeltine Research*, 401 U. S. 321, 336 n. 7 (1971); *Girouard* v. *United States*, 328 U. S. 61, 69–70 (1946). *Don E. Williams Co.* v. *Commissioner, supra*, is instructive. As here, there had been a longstanding administrative interpretation of a statute when Congress re-enacted it, and there, as here, the legislative history of the re-enactment showed that Congress agreed with that interpretation, leading this Court

---

redistricting plans that divided minority communities among predominantly white districts. In 1975, Congress was unmistakably cognizant of this new phase in the effort to eliminate voting discrimination. Former Attorney General Katzenbach testified that §5 `has had its broadest impact . . . in the areas of redistricting and reapportionment,' and the Senate and House Reports recommending extension of the Act referred specifically to the Attorney General's role in screening redistricting plans to protect the opportunities for nonwhites to be elected to public office" (footnotes omitted).

to conclude that Congress had ratified it. 429 U. S., at 574–577." *Id.,* at 134–135.

If the 1970 and 1975 reenactments had left any doubt as to congressional intent, that doubt would be set aside by the 1982 amendments to §2. Between 1975 and 1982, the Court continued to interpret the Voting Rights Act in the broad manner set out by *Allen*. See *City of Rome* v. *United States*, 446 U. S. 156 (1980); *Dougherty County Bd. of Ed.* v. *White*, 439 U. S. 32 (1978); *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U. S. 144 (1977); *City of Richmond* v. *United States*, 422 U. S. 358 (1975). In *Mobile* v. *Bolden*, 446 U. S. 55 (1980), a plurality of this Court concluded that violations of both the Voting Rights Act and the Fifteenth Amendment required discriminatory purpose. The case involved a claim that at-large voting diluted minority voting strength. In his opinion for the plurality in *Bolden*, Justice Stewart expressly relied upon *Gomillion* v. *Lightfoot*'s holding "that allegations of a racially motivated gerrymander of municipal boundaries stated a claim under the Fifteenth Amendment." 446 U. S., at 62; see also *id*., at 85–86 (STEVENS, J., concurring in judgment). The only reason *Gomillion* did not control the outcome in *Bolden* was that an "invidious purpose" had been alleged in the earlier case but not in *Bolden*. 446 U. S., at 63.[3] The congressional response to *Bolden* is familiar history. In the 1982 amendment to §2 of the Voting Rights

[3] The idea that the Court in *Bolden* cast doubt on whether the Voting Rights Act reached diluting practices is flatly refuted by another decision handed down the very same day as the *Bolden* decision. In *City of Rome* v. *United States*, 446 U. S. 156, 186–187 (1980), the Court held that §5 required preclearance of annexations potentially diluting minority voting strength. Even the dissenters did not suggest that vote dilution claims were now questionable.

Act, Congress substituted a "results" test for an intent requirement. Pub. L. 97–205 §3, 96 Stat. 134; see 42 U. S. C. §1973. It is crystal clear that Congress intended the 1982 amendment to cover non-access claims like those in *Bolden* and *Gomillion*.[4]

JUSTICE THOMAS' narrow interpretation of the words "voting qualification . . . standard, practice, or procedure," if adopted, would require us to overrule *Allen* and the cases that have adhered to its reading of the critical statutory language. The radical character of that suggested interpretation is illustrated by the following passage from an opinion decided only nine years after *Allen*:

> "The Court's decisions over the past 10 years have given § 5 the broad scope suggested by the language of the Act. We first construed it in *Allen* v. *State Board of Elections*, [393 U. S. 544 (1969)]. There our examination of the Act's objectives and original legislative history led us to interpret § 5 to give it `the broadest possible scope,' 393 U. S., at 567, and to require prior federal scrutiny of `any state enactment which altered the election law in a covered State in even a minor way.' *Id.*, at 566. In so construing § 5, we unanimously rejected—as the plain terms of

[4]We recently confirmed that interpretation of the 1982 Amendment, stating: "Moreover, there is no question that the terms `standard, practice, or procedure' are broad enough to encompass the use of multimember districts to minimize a racial minority's ability to influence the outcome of an election covered by §2." *Chisom* v. *Roemer*, 501 U. S. 380, 390 (1991). Though disagreeing with the Court's holding that the statute covered judicial elections, even the dissenters in that case agreed that the amended §2 "extends to vote dilution claims for the elections of representatives. . . ." *Id.*, at 405.

> the Act would themselves have seemingly required—the argument of an appellee that § 5 should apply only to enactments affecting who may register to vote. 393 U. S., at 564. Our decisions have required federal preclearance of laws changing the location of polling places, see *Perkins* v. *Matthews*, 400 U. S. 379 (1971), laws adopting at-large systems of election, *ibid.*; *Fairley* v. *Patterson* (decided with *Allen, supra*); laws providing for the appointment of previously elected officials, *Bunton* v. *Patterson* (decided with *Allen*, *supra*); laws regulating candidacy, *Whitley* v. *Williams* (decided with *Allen, supra*); laws changing voting procedures, *Allen, supra*; annexations, *City of Richmond* v. *United States*, 422 U. S. 358 (1975); *City of Petersburg* v. *United States*, 410 U. S. 962 (1973), summarily aff'g 354 F. Supp. 1021 (DC 1972); *Perkins* v. *Matthews, supra*; and reapportionment and redistricting, *Beer* v. *United States*, 425 U. S. 130 (1976); *Georgia* v. *United States*, 411 U. S. 526 (1973); see *United Jewish Organizations* v. *Carey*, 430 U. S. 144 (1977). In each case, federal scrutiny of the proposed change was required because the change had the potential to deny or dilute the rights conferred by § 4(a).” *United States* v. *Sheffield Bd. of Comm'rs*, 435 U. S., at 122–123 (footnote omitted).

The *Allen* interpretation of the Act has also been followed in a host of cases decided in later years, among them *Houston Lawyers' Assn.* v. *Attorney General of Texas*, 501 U. S. 419 (1991); *Pleasant Grove* v. *United States*, 479 U. S. 462 (1987); *Thornburg* v. *Gingles*, 478 U. S. 30 (1986); *Port Arthur* v. *United States*, 459 U. S. 159 (1982); *City of Rome* v. *United States*, 446 U. S. 156 (1980); *Dougherty County Bd. of Ed.* v. *White*, 439 U. S. 32 (1978). In addition, JUSTICE THOMAS' interpretation would call into

question the numerous other cases since 1978 that have assumed the broad coverage of the Voting Rights Act that JUSTICE THOMAS would now have us reject. *Chisom* v. *Roemer*, 501 U. S. 380 (1991); *Clark* v. *Roemer*, 500 U. S. 646 (1991); *McCain* v. *Lybrand*, 465 U. S. 236 (1984); *Hawthorn* v. *Lovorn*, 457 U. S. 255 (1982); *Blanding* v. *DuBose*, 454 U. S. 393 (1982); *McDaniel* v. *Sanchez*, 452 U. S. 130 (1981); *Berry* v. *Doles*, 438 U. S. 190 (1978); see also *Presley* v. *Etowah County Comm'n*, 502 U. S. ___ (1992); *Voinovich* v. *Quilter*, 507 U. S. ___ (1993); *Growe* v. *Emison*, 507 U. S. ___ (1993); *Lockhart* v. *United States*, 460 U. S. 125 (1983).

The large number of decisions that we would have to overrule or reconsider, as well as the congressional reenactments discussed above, suggests that JUSTICE THOMAS' radical reinterpretation of the Voting Rights Act is barred by the well-established principle that *stare decisis* has special force in the statutory arena. *Ankenbrandt* v. *Richards*, 504 U. S. ___, ___ (1992); *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 171–172 (1989); *Illinois Brick Co.* v. *Illinois*, 431 U. S. 720, 736–737 (1977).

JUSTICE THOMAS attempts to minimize the radical implications of his interpretation of the phrase "voting qualification . . . standard, practice, or procedure" by noting that this case involves only the interpretation of §2 of the Voting Rights Act. Section 5, he hints, might be interpreted differently. Even limiting the reinterpretation to §2 cases, however, would require overruling a sizable number of this Court's precedents. *Houston Lawyers' Assn.* v. *Attorney General of Texas,* 501 U. S. 419 (1991); *Chisom* v. *Roemer*, 501 U. S. 380 (1991); *Thornburg* v. *Gingles*, 478 U. S. 30 (1986); see also *Voinovich* v. *Quilter*, 507 U. S. ___ (1993); *Growe* v. *Emison*, 507 U. S. ___ (1993). In addition, a distinction between §2 and §5 is difficult to square with the language of the statute. Sections 2 and 5 contain exactly the same words:

"voting qualification . . . standard, practice, or procedure." If anything, the wording of §5 is narrower, because it adds the limiting phrase "with respect to voting" after the word "procedure." Moreover, when Congress amended the Voting Rights Act in 1982 in response to *Bolden*, it amended §2. As noted above, in those amendments Congress clearly endorsed the application of the Voting Rights Act to vote dilution claims. While a distinction between §2 and §5 might be supportable on policy grounds, it is an odd distinction for devotees of "plain language" interpretation.

Throughout his opinion, JUSTICE THOMAS argues that this case is an exception to *stare decisis*, because *Allen* and its progeny have "immersed the federal courts in a hopeless project of weighing questions of political theory." *Ante,* at 1. There is no question that the Voting Rights Act has required the courts to resolve difficult questions, but that is no reason to deviate from an interpretation that Congress has thrice approved. Statutes frequently require courts to make policy judgments. The Sherman Act, for example, requires courts to delve deeply into the theory of economic organization. Similarly, Title VII of the Civil Rights Act has required the courts to formulate a theory of equal opportunity. Our work would certainly be much easier if every case could be resolved by consulting a dictionary, but when Congress has legislated in general terms, judges may not invoke judicial modesty to avoid difficult questions.

When a statute has been authoritatively, repeatedly, and consistently construed for more than a quarter century, and when Congress has reenacted and extended the statute several times with full awareness of that construction, judges have an especially clear obligation to obey settled law.

Whether JUSTICE THOMAS is correct that the Court's settled construction of the Voting Rights Act has been "a disastrous misadventure," *ante,* at 2, should not affect the decision in this case. It is therefore inappropriate for me to comment on the portions of his opinion that are best described as an argument that the statute be repealed or amended in important respects.