SUPREME COURT OF THE UNITED STATES

No. 92–357

RUTH O. SHAW, ET AL., APPELLANTS *v.* JANET RENO, ATTORNEY GENERAL, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

[June 28, 1993]

JUSTICE STEVENS, dissenting.

For the reasons stated by JUSTICE WHITE, the decision of the District Court should be affirmed. I add these comments to emphasize that the two critical facts in this case are undisputed: first, the shape of District 12 is so bizarre that it must have been drawn for the purpose of either advantaging or disadvantaging a cognizable group of voters; and, second, regardless of that shape, it *was* drawn for the purpose of facilitating the election of a second black representative from North Carolina.

These unarguable facts, which the Court devotes most of its opinion to proving, give rise to three constitutional questions: Does the Constitution impose a requirement of contiguity or compactness on how the States may draw their electoral districts? Does the Equal Protection Clause prevent a State from drawing district boundaries for the purpose of facilitating the election of a member of an identifiable group of voters? And, finally, if the answer to the second question is generally "No," should it be different when the favored group is defined by race? Since I have already written at length about these questions,[1] my negative answer to each can be briefly

[1]See *Cousins* v. *City Council of Chicago*, 466 F. 2d 830, 848–852 (CA7) (Stevens, J., dissenting), cert. denied, 409 U. S. 893 (1972); *Mobile* v. *Bolden*, 446 U. S. 55, 83–94 (1980) (STEVENS, J., concurring in judgment); *Karcher* v. *Daggett*, 462 U. S. 725, 744–765 (1983) (STEVENS, J., concurring); see also *Davis* v. *Bandemer*, 478 U. S. 109, 161–185 (1986) (Powell, J., joined by

explained.

STEVENS, J., concurring in part and dissenting in part).

The first question is easy. There is no independent constitutional requirement of compactness or contiguity, and the Court's opinion (despite its many references to the shape of District 12, see *ante*, at 3–4, 9, 10, 12–16) does not suggest otherwise. The existence of bizarre and uncouth district boundaries is powerful evidence of an ulterior purpose behind the shaping of those boundaries—usually a purpose to advantage the political party in control of the districting process. Such evidence will always be useful in cases that lack other evidence of invidious intent. In this case, however, we know what the legislators' purpose was: The North Carolina Legislature drew District 12 to include a majority of African-American voters. See *ante*, at 2–3, 17. Evidence of the district's shape is therefore convincing, but it is also cumulative, and, for our purposes, irrelevant.

As for the second question, I believe that the Equal Protection Clause is violated when the State creates the kind of uncouth district boundaries seen in *Karcher* v. *Daggett*, 462 U. S. 725 (1983), *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960), and this case, for the sole purpose of making it more difficult for members of a minority group to win an election.[2] The duty to govern impartially is abused when a group with

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[2]See *Karcher*, 462 U. S., at 748 (STEVENS, J., concurring) ("If they serve no purpose other than to favor one segment—whether racial, ethnic, religious, economic, or political—that may occupy a position of strength at a particular point in time, or to disadvantage a politically weak segment of the community, they violate the constitutional guarantee of equal protection"); *Davis* v. *Bandemer*, 478 U. S., at 178–183, and nn. 21–24 (Powell, J., joined by STEVENS, J., concurring in part and dissenting in part) (describing "grotesque gerrymandering" and "unusual shapes" drawn solely to deprive Democratic voters of electoral power).

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 particular a 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.[3]

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[3]The majority does not acknowledge that we *require* such a showing from plaintiffs who bring a vote dilution claim under §2 of the Voting Rights Act. Under the three-part test established by *Thornburg* v. *Gingles*, 478 U. S. 30, 50–51 (1986), a minority group must show that it could constitute the majority in a single-member district, "that it is politically cohesive," and "that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." At least the latter two of these three conditions depend on

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. See, *e.g.*, *ante*, at 7–9.[4] A contrary conclusion could only be described as perverse.

Accordingly, I respectfully dissent.

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proving that what the Court today brands as "impermissible racial stereotypes," *ante*, at 16, are true. Because *Gingles* involved North Carolina, which the Court admits has earlier established the existence of "pervasive racial bloc voting", *ante*, at 22, its citizens and legislators—as well as those from other states—will no doubt be confused by the Court's requirement of evidence in one type of case that the Constitution now prevents reliance on in another. The Court offers them no explanation of this paradox.

[4]The Court's opinion suggests that African-Americans may now be the only group to which it is unconstitutional to offer specific benefits from redistricting. Not very long ago, of course, it was argued that minority groups defined by race were the only groups the Equal Protection Clause *protected* in this context. See *Mobile* v. *Bolden*, 446 U. S. 55, 86–90, and nn. 6–10 (1980) (STEVENS, J., concurring in judgment).