# SUPREME COURT OF THE UNITED STATES

Nos. 94–631, 94–797 AND 94–929

ZELL MILLER, ET AL., APPELLANTS
94–631 *v.*
DAVIDA JOHNSON ET AL.

LUCIOUS ABRAMS, JR., ET AL., APPELLANTS
94–797 *v.*
DAVIDA JOHNSON ET AL.

UNITED STATES, APPELLANT
94–929 *v.*
DAVIDA JOHNSON ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

[June 29, 1995]

JUSTICE GINSBURG, with whom JUSTICES STEVENS and BREYER join, and with whom JUSTICE SOUTER joins except as to Part III–B, dissenting.

Legislative districting is highly political business. This Court has generally respected the competence of state legislatures to attend to the task. When race is the issue, however, we have recognized the need for judicial intervention to prevent dilution of minority voting strength. Generations of rank discrimination against African-Americans, as citizens and voters, account for that surveillance.

Two Terms ago, in *Shaw* v. *Reno*, 509 U. S. ___ (1993), this Court took up a claim "analytically distinct" from a vote dilution claim. *Id.*, at ___ (slip op., at 21). *Shaw* authorized judicial intervention in "extremely irregular" apportionments, *id.*, at ___ (slip op., at 10), in which the legislature cast aside traditional districting practices to consider race alone —in the *Shaw* case, to create a district in North Carolina in which African-Americans would compose a majority of the voters.

Today the Court expands the judicial role, announcing that federal courts are to undertake searching review of any district with contours "predominantly motivated" by race: "strict scrutiny" will be triggered not only when traditional districting practices are abandoned, but also when those practices are "subordinated to"—given less weight than—race. See *ante*, at 15. Applying this new "race-as-predominant-factor" standard, the Court invalidates Georgia's districting plan even though Georgia's Eleventh District, the focus of today's dispute, bears the imprint of familiar districting practices. Because I do not endorse the Court's new standard and would not upset Georgia's plan, I dissent.

At the outset, it may be useful to note points on which the Court does not divide. First, we agree that federalism and the slim judicial competence to draw district lines weigh heavily against judicial intervention in apportionment decisions; as a rule, the task should remain within the domain of state legislatures. See *ante*, at 14; *Reynolds* v. *Sims*, 377 U. S. 533, 586 (1964) ("[L]egislative reapportionment is primarily a matter for legislative consideration and determination . . . ."). Second, for most of our Nation's history, the franchise has not been enjoyed equally by black citizens and white voters. To redress past wrongs and to avert any recurrence of exclusion of blacks from political processes, federal courts now respond to Equal Protection Clause and Voting Rights Act complaints of state action that dilutes minority voting strength. See, *e.g.*, *Thornburg* v. *Gingles*, 478 U. S. 30 (1986); *White* v. *Regester*, 412 U. S. 755 (1973). Third, to meet statutory requirements, state legislatures must sometimes consider race as a factor highly relevant to the drawing of district lines. See Pildes & Niemi, Expressive Harms, "Bizarre Districts,"

and Voting Rights: Evaluating Election-District Appearances After *Shaw* v. *Reno*, 92 Mich. L. Rev. 483, 496 (1993) ("compliance with the [Voting Rights Act] and *Gingles* necessarily requires race-conscious districting"). Finally, state legislatures may recognize communities that have a particular racial or ethnic makeup, even in the absence of any compulsion to do so, in order to account for interests common to or shared by the persons grouped together. See *Shaw*, 509 U. S., at ___ (slip op., at 14) ("[W]hen members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes.").

Therefore, the fact that the Georgia General Assembly took account of race in drawing district lines—a fact not in dispute—does not render the State's plan invalid. To offend the Equal Protection Clause, all agree, the legislature had to do more than consider race. How much more, is the issue that divides the Court today.

"We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court." *Chapman* v. *Meier*, 420 U. S. 1, 27 (1975); see also *ante*, at 14. The Constitution itself allocates this responsibility to States. U. S. Const., Art. I, §2; *Growe* v. *Emison*, 507 U. S. ___, ___ (1993) (slip op., at 8).

"Districting inevitably has sharp political impact and inevitably political decisions must be made by those charged with the task." *White* v. *Weiser*, 412 U. S. 783, 795–796 (1973). District lines are drawn to accommodate a myriad of factors—geographic, economic, historical, and political—and state legislatures, as arenas of compromise and electoral accountability, are best positioned to mediate

competing claims; courts, with a mandate to adjudicate, are ill equipped for the task.

Federal courts have ventured into the political thicket of apportionment when necessary to secure to members of racial minorities equal voting rights—rights denied in many States, including Georgia, until not long ago.

The Fifteenth Amendment, ratified in 1870, declares that the right to vote "shall not be denied . . . by any State on account of race." That declaration, for generations, was often honored in the breach; it was greeted by a near century of "unremitting and ingenious defiance" in several States, including Georgia. *South Carolina* v. *Katzenbach*, 383 U. S. 301, 309 (1966). After a brief interlude of black suffrage enforced by federal troops but accompanied by rampant violence against blacks, Georgia held a constitutional convention in 1877. Its purpose, according to the convention's leader, was to "`fix it so that the people shall rule and the Negro shall never be heard from.'" McDonald et al., Georgia, in Quiet Revolution in the South 68 (C. Davidson & B. Grofman eds. 1994) (quoting Robert Toombs). In pursuit of this objective, Georgia enacted a cumulative poll tax, requiring voters to show they had paid past as well as current poll taxes; one historian described this tax as the "most effective bar to Negro suffrage ever devised." A. Stone, Studies in the American Race Problem 355 (1908).

In 1890, the Georgia General Assembly authorized "white primaries"; keeping blacks out of the Democratic primary effectively excluded them from Georgia's political life, for victory in the Democratic primary was tantamount to election. McDonald et al., *supra,* at 68–69. Early in this century, Georgia Governor Hoke Smith persuaded the legislature to pass the "Disenfranchisement Act of 1908"; true to

its title, this measure added various property, "good character," and literacy requirements that, as administered, served to keep blacks from voting. *Id.*, at 69; see also *Katzenbach*, 383 U. S., at 310 (tests of this order were "specifically designed to prevent Negroes from voting"). The result, as one commentator observed 25 years later, was an "`almost absolute exclusion of the Negro voice in state and federal elections.'" McDonald et al., *supra,* at 70 (quoting R. Wardlaw, Negro Suffrage in Georgia, 1867–1930, p. 69 (unpublished 1932)).

Faced with a political situation scarcely open to self-correction—disenfranchised blacks had no electoral influence, hence no muscle to lobby the legislature for change—the Court intervened. It invalidated white primaries, see *Smith* v. *Allwright*, 321 U. S. 649 (1944), and other burdens on minority voting. See, *e.g.*, *Schnell* v. *Davis*, 336 U. S. 933 (1949) *(per curiam)* (discriminatory application of voting tests); *Lane* v. *Wilson*, 307 U. S. 268 (1939) (procedural hurdles); *Guinn* v. *United States*, 238 U. S. 347 (1915) (grandfather clauses).

It was against this backdrop that the Court, construing the Equal Protection Clause, undertook to ensure that apportionment plans do not dilute minority voting strength. See, *e.g.*, *Rogers* v. *Lodge*, 458 U. S. 613, 617 (1982); *Regester*, 412 U. S., at 765; *Wright* v. *Rockefeller*, 376 U. S. 52, 57 (1964). By enacting the Voting Rights Act of 1965, Congress heightened federal judicial involvement in apportionment, and also fashioned a role for the Attorney General. Section 2 creates a federal right of action to challenge vote dilution. Section 5 requires States with a history of discrimination to preclear any changes in voting practices with either a federal court (a three-judge United States District Court for the District of Columbia) or the Attorney General.

These Court decisions and congressional directions significantly reduced voting discrimination against

minorities. In the 1972 election, Georgia gained its first black Member of Congress since Reconstruction, and the 1981 apportionment created the State's first majority-minority district.[1] This voting district, however, was not gained easily. Georgia created it only after the United States District Court for the District of Columbia refused to preclear a predecessor apportionment plan that included no such district—an omission due in part to the influence of Joe Mack Wilson, then Chairman of the Georgia House Reapportionment Committee. As Wilson put it only 14 years ago, "`I don't want to draw nigger districts.'" *Busbee* v. *Smith*, 549 F. Supp. 494, 501 (DC 1982).

Before *Shaw* v. *Reno*, 509 U. S. ___ (1993), this Court invoked the Equal Protection Clause to justify intervention in the quintessentially political task of legislative districting in two circumstances: to enforce the one-person-one-vote requirement, see *Reynolds* v. *Sims*, 377 U. S. 533 (1964); and to prevent dilution of a minority group's voting strength. See *Regester*, 412 U. S., at 765; *Wright*, 376 U. S., at 57.[2]

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[1]Georgia's population is approximately 27 percent black. *Johnson* v. *Miller*, 864 F. Supp. 1354, 1385 (SD Ga. 1994).

[2]In the vote dilution category, *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960), was a pathmarker. There, the City of Tuskegee redrew its boundaries to exclude black voters. This apportionment was unconstitutional not simply because it was motivated by race, but notably because it had a dilutive effect: it disenfranchised Tuskegee's black community. See *id.*, at 341 ("The essential inevitable effect of this redefinition of Tuskegee's boundaries is to remove from the city all save only four or five of its 400 Negro voters while not removing a single white voter or resident. The result of the Act is to deprive the Negro

In *Shaw*, the Court recognized a third basis for an equal protection challenge to a State's apportionment plan. The Court wrote cautiously, emphasizing that judicial intervention is exceptional: "[S]trict [judicial] scrutiny" is in order, the Court declared, if a district 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." 509 U. S., at ___ (slip op., at 10).

"[E]xtrem[e] irregular[ity]" was evident in *Shaw*, the Court explained, setting out this description of the North Carolina voting district under examination:

> "It is approximately 160 miles long and, for much of its length, no wider than the I-85 corridor. It winds in snake-like fashion through tobacco country, financial centers, and manufacturing areas until it gobbles in enough enclaves of black neighborhoods. Northbound and southbound drivers on I-85 sometimes find themselves in separate districts in one county, only to `trade' districts when they enter the next county. Of the 10 counties through which District 12 passes, five are cut into three different districts; even towns are divided. At one point the district remains contiguous only because it intersects at a single point with two other districts before crossing over them. One state legislator has remarked that `"[i]f you drove down the interstate with both car doors open, you'd kill most of the people in the district."' Washington Post, Apr. 20, 1993, p. A4. The district even has inspired poetry: `Ask not for whom the line is drawn; it is drawn to avoid thee.' Grofman, Would Vince Lombardi Have Been Right If He Had Said: `When It Comes to Redistricting, Race Isn't Everything, It's the *Only* Thing'?, 14

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petitioners discriminatorily of the benefits of residence in Tuskegee, including, *inter alia*, the right to vote in municipal elections.").

> Cardozo L. Rev. 1237, 1261, n. 96 (1993) (internal quotation marks omitted)." *Shaw*, 509 U. S., at ___ (slip op., at 3–4) (some citations and internal quotation marks omitted).

The problem in *Shaw* was not the plan architects' consideration of race as relevant in redistricting. Rather, in the Court's estimation, it was the virtual exclusion of other factors from the calculus. Traditional districting practices were cast aside, the Court concluded, with race alone steering placement of district lines.

The record before us does not show that race similarly overwhelmed traditional districting practices in Georgia. Although the Georgia General Assembly prominently considered race in shaping the Eleventh District, race did not crowd out all other factors, as the Court found it did in North Carolina's delineation of the *Shaw* district.

In contrast to the snake-like North Carolina district inspected in *Shaw*, Georgia's Eleventh District is hardly "bizarre," "extremely irregular," or "irrational on its face." *Id.,* at ___, ___, ___ (slip op., at 10, 12, 26). Instead, the Eleventh District's design reflects significant consideration of "traditional districting factors (such as keeping political subdivisions intact) and the usual political process of compromise and trades for a variety of nonracial reasons." 864 F. Supp. 1354, 1397, n. 5 (SD Ga. 1994) (Edmondson, J., dissenting); cf. *ante*, at 16 ("geometric shape of the Eleventh District may not seem bizarre on its face"). The District covers a core area in central and eastern Georgia, and its total land area of 6,780 square miles is about average for the State. Defendant's Exh. 177, p. 4.[3] The border of the Elev-

[3]Georgia's First, Second, and Eighth Districts each have a total area of over 10,100 square miles. 864 F. Supp.

enth District runs 1,184 miles, in line with Georgia's Second District, which has a 1,243-mile border, and the State's Eighth District, with a border running 1,155 miles. See 864 F. Supp., at 1396 (Edmondson, J., dissenting).[4]

Nor does the Eleventh District disrespect the boundaries of political subdivisions. Of the 22 counties in the District, 14 are intact and 8 are divided. See Joint Exh. 17. That puts the Eleventh District at about the state average in divided counties. By contrast, of the Sixth District's 5 counties, none are intact, *ibid.*, and of the Fourth District's 4 counties, just 1 is intact. *Ibid.*[5] Seventy-one percent of the Eleventh District's boundaries track the borders of political subdivisions. See 864 F. Supp., at 1396 (Edmondson, J., dissenting). Of the State's 11 districts, 5 score worse than the Eleventh

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1354, 1396 (SD Ga. 1994) (Edmondson, J., dissenting).

[4]Although the Eleventh District comes within 58 miles of crossing the entire State, this is not unusual in Georgia: the Ninth District spans the State's entire northern border, and the First, Second, and Eighth Districts begin at the Florida border and stretch north to almost the middle of the State. See 864 F. Supp., at 1396 (Edmondson, J., dissenting). In the 1980's, Georgia's Eighth District extended even farther, in an irregular pattern from the southeast border with Florida to nearly the Atlanta suburbs. See App. 80.

[5]The First District has 20 intact counties and parts of 2 others. The Second District has 23 intact counties and parts of 12 others. The Third District has 8 intact counties and parts of 8 others. The Fifth District is composed of parts of 4 counties. The Seventh District has 10 intact counties and part of 1 county. The Eighth District has 22 intact counties and parts of 10 others. The Ninth District has 19 intact counties and part of 1 other. The Tenth District has 16 intact counties and parts of 3 others. See Joint Exh. 17.

District on this criterion, and 5 score better. See Defendant's Exh. 177, p. 4.[6] Eighty-three percent of the Eleventh District's geographic area is composed of intact counties, above average for the State's congressional districts. 864 F. Supp., at 1396 (Edmondson, J., dissenting).[7] And notably, the Eleventh District's boundaries largely follow precinct lines.[8]

Evidence at trial similarly shows that considerations other than race went into determining the Eleventh District's boundaries. For a "political reason"—to accommodate the request of an incumbent State Senator regarding the placement of the precinct in which his son lived—the DeKalb County portion of the Eleventh District was drawn to include a particular (largely white) precinct. 2 Tr. 187, 202. The corridor through Effingham County was substantially narrowed at the request of a (white) State Representative. 2 Tr.

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[6]The Sixth District scores lowest, with just 45 percent of its boundaries following political subdivision lines. The Ninth District rates highest, with 91 percent. Defendant's Exh. 177, p. 3.

[7]On this measure, only 3 districts—the First, Seventh, and Ninth—rate higher than the Eleventh District. Excluding the Fifth and Sixth Districts, which contain no intact counties, the scores range from about 30 percent for the Fourth District to 97 percent for the Seventh District. Defendant's Exh. 177, p. 4.

[8]The Court turns the significance of this fact on its head by stating: "`While the boundaries of the Eleventh do indeed follow many precinct lines, this is because Ms. Meggers designed the Eleventh District along racial lines, and race data was most accessible to her at the precinct level.'" *Ante*, at 18 (quoting 864 F. Supp., at 1384). To this curious comment, one can only demur. Yes, Georgia's plan considered race, but by following precinct lines, it did so in an altogether proper way, *i.e.*, without disregarding traditional districting practices.

189–190, 212–214. In Chatham County, the District was trimmed to exclude a heavily black community in Garden City because a State Representative wanted to keep the city intact inside the neighboring First District. 2 Tr. 218–219. The Savannah extension was configured by "the narrowest means possible" to avoid splitting the city of Port Wentworth. 4 Tr. 172–174, 175–178, 181–183.

Georgia's Eleventh District, in sum, is not an outlier district shaped without reference to familiar districting techniques. Tellingly, the District that the Court's decision today unsettles is not among those on a statistically calculated list of the 28 most bizarre districts in the United States, a study prepared in the wake of our decision in *Shaw*. See Pildes & Niemi, 92 Mich. L. Rev., at 565.

The Court suggests that it was not Georgia's legislature, but the U. S. Department of Justice, that effectively drew the lines, and that Department officers did so with nothing but race in mind. Yet the "Max-Black" plan advanced by the Attorney General was not the plan passed by the Georgia General Assembly.[9] See 864 F. Supp., at 1396–1397, n. 5 (Edmondson, J., dissenting) ("The Max-Black plan did influence to some degree the shape of the ultimate Eleventh District . . . . [But] the actual Eleventh is *not* identical to the Max-Black plan. The Eleventh, to my eye, is significantly different in shape in many ways. These differences show . . . consideration of other matters beyond race . . . .").[10]

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[9]Appendices A, B, and C to this opinion depict, respectively, the proposed Eleventh District under the "Max-Black" plan, Georgia's current congressional districts, and the district in controversy in *Shaw*.

[10]Indeed, a "key" feature, *ante*, at 5, of the "Max-Black" plan—placing parts of Savannah in the Eleventh District—

And although the Attorney General refused preclearance to the first two plans approved by Georgia's legislature, the State was not thereby disarmed; Georgia could have demanded relief from the Department's objections by instituting a civil action in the United States District Court for the District of Columbia, with ultimate review in this Court. Instead of pursuing that avenue, the State chose to adopt the plan here in controversy—a plan the State forcefully defends before us. We should respect Georgia's choice by taking its position on brief as genuine.

Along with attention to size, shape, and political subdivisions, the Court recognizes as an appropriate districting principle, "respect for . . . communities defined by actual shared interests." *Ante*, at 15. The Court finds no community here, however, because a report in the record showed "fractured political, social, and economic interests within the Eleventh District's black population." *Ante*, at 18.

But ethnicity itself can tie people together, as volumes of social science literature have documented —even people with divergent economic interests. For this reason, ethnicity is a significant force in political life. As stated in a classic study of ethnicity in one city of immigrants:

> "[M]any elements—history, family and feeling, interest, formal organizational life—operate to keep much of New York life channeled within the bounds of the ethnic group. . . .
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> ". . . The political realm . . . is least willing to consider [ethnicity] a purely private affair. . . .
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> "[P]olitical life itself emphasizes the ethnic

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first figured in a proposal adopted by Georgia's Senate even before the Attorney General suggested this course. 864 F. Supp., at 1394, n. 1 (Edmondson, J., dissenting).

> character of the city, with its balanced tickets and its special appeals . . . .” N. Glazer & D. Moynihan, Beyond the Melting Pot 19–20 (1963).

See also, *e.g.*, E. Litt, Beyond Pluralism: Ethnic Politics in America 2 (1970) (“[E]thnic forces play a surprisingly persistent role in our politics.”); Ethnic Group Politics, Preface ix (H. Bailey & E. Katz eds. 1969) (“[E]thnic identifications do exist and . . . one cannot really understand the American political process without giving special attention to racial, religious and national minorities.”).

To accommodate the reality of ethnic bonds, legislatures have long drawn voting districts along ethnic lines. Our Nation's cities are full of districts identified by their ethnic character—Chinese, Irish, Italian, Jewish, Polish, Russian, for example. See, *e.g.*, S. Erie, Rainbow's End: Irish-Americans and the Dilemmas of Urban Machine Politics, 1840–1985, p. 91 (1988) (describing Jersey City's “Horseshoe district” as “lumping most of the city's Irish together”); Coveted Landmarks Add a Twist to Redistricting Task, L. A. Times, Sept. 10, 1991, pp. A1, A24 (“In San Francisco in 1961, . . . an Irish Catholic [State Assembly member] `wanted his district drawn following [Catholic] parish lines so all the parishes where he went to baptisms, weddings and funerals would be in his district' . . . .”); Stone, Goode: Bad and Indifferent, Washington Monthly, July-August 1986, pp. 27, 28 (discussing “The Law of Ethnic Loyalty— . . . a universal law of politics,” and identifying “predominantly Italian wards of South Philadelphia,” a “Jewish Los Angeles district,” and a “Polish district in Chicago”). The creation of ethnic districts reflecting felt identity is not ordinarily viewed as offensive or demeaning to those included in the delineation.

To separate permissible and impermissible use of

race in legislative apportionment, the Court orders strict scrutiny for districting plans "predominantly motivated" by race. No longer can a State avoid judicial oversight by giving—as in this case—genuine and measurable consideration to traditional districting practices. Instead, a federal case can be mounted whenever plaintiffs plausibly allege that other factors carried less weight than race. This invitation to litigate against the State seems to me neither necessary nor proper.

The Court derives its test from diverse opinions on the relevance of race in contexts distinctly unlike apportionment. See *ante*, at 9–10.[11] The controlling

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[11]I would follow precedent directly on point. In *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U. S. 144 (1977) *(UJO),* even though the State "deliberately used race in a purposeful manner" to create majority-minority districts, *id.*, at 165 (opinion of White, J., joined by REHNQUIST and STEVENS, JJ.), seven of eight Justices participating voted to uphold the State's plan without subjecting it to strict scrutiny. Five Justices specifically agreed that the intentional creation of majority-minority districts does not give rise to an equal protection claim, absent proof that the districting diluted the majority's voting strength. See *ibid.* (opinion of White, J., joined by REHNQUIST and STEVENS, JJ.); *id.*, at 179–180 (Stewart, J., concurring in judgment, joined by Powell, J.).

Nor is *UJO* best understood as a vote dilution case. Petitioners' claim in *UJO* was that the State had "violated the Fourteenth and Fifteenth Amendments by *deliberately revising its reapportionment plan along racial lines*." 430 U. S., at 155 (opinion of White, J., joined by Brennan, Blackmun, and STEVENS, JJ.) (emphasis added). Petitioners themselves stated: "`Our argument is . . . that the history of the area demonstrates that there could be—and in fact was—*no reason other than race* to divide the community

idea, the Court says, is "`the simple command [at the heart of the Constitution's guarantee of equal protection] that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class.'" See *ante*, at 9 (quoting *Metro Broadcasting, Inc.* v. *FCC*, 497 U. S. 547, 602 (1990) (O'CONNOR, J. dissenting)) (some internal quotation marks omitted). But cf. *Strauder* v. *West Virginia*, 100 U. S. 303, 307 (1880) (pervading purpose of post-Civil War Amendments was to bar discrimination against once-enslaved race).

In adopting districting plans, however, States do not treat people as individuals. Apportionment schemes, by their very nature, assemble people in groups. States do not assign voters to districts based on merit or achievement, standards States might use in hiring employees or engaging contractors. Rather, legislators classify voters in groups—by economic, geographical, political, or social characteristics—and then "reconcile the competing claims of [these] groups." *Davis* v. *Bandemer*, 478 U. S. 109, 147 (1986) (O'CONNOR, J., concurring in judgment).

That ethnicity defines some of these groups is a political reality. See *supra*, at 12–13. Until now, no

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at this time.'" *Id.*, at 154, n. 14 (quoting Brief for Petitioners, O. T. 1976, No. 75–104, p. 6, n. 6) (emphasis in Brief for Petitioners).

Though much like the claim in *Shaw*, the *UJO* claim failed because the *UJO* district adhered to traditional districting practices. See 430 U. S., at 168 (opinion of White, J., joined by REHNQUIST and STEVENS, JJ.) ("[W]e think it . . . permissible for a State, *employing sound districting principles such as compactness and population equality*, . . . [to] creat[e] districts that will afford fair representation to the members of those racial groups who are sufficiently numerous *and whose residential patterns afford the opportunity of creating districts* in which they will be in the majority.") (emphasis added).

constitutional infirmity has been seen in districting Irish or Italian voters together, for example, so long as the delineation does not abandon familiar apportionment practices. See *supra*, at 8–11. If Chinese-Americans and Russian-Americans may seek and secure group recognition in the delineation of voting districts, then African-Americans should not be dissimilarly treated. Otherwise, in the name of equal protection, we would shut out "the very minority group whose history in the United States gave birth to the Equal Protection Clause." See *Shaw*, 509 U. S., at ___ (slip op., at 4) (STEVENS, J., dissenting).[12]

Under the Court's approach, judicial review of the same intensity, *i.e.*, strict scrutiny, is in order once it is determined that an apportionment is predominantly motivated by race. It matters not at all, in this new regime, whether the apportionment dilutes or enhances minority voting strength. As very recently observed, however, "[t]here is no moral or constitutional equivalence between a policy that is designed to perpetuate a caste system and one that seeks to eradicate racial subordination." *Adarand Constructors, Inc.* v. *Peña, ante,* at ___ (slip op., at 2) (STEVENS, J., dissenting).

Special circumstances justify vigilant judicial inspection to protect minority voters—circumstances that do not apply to majority voters. A history of exclusion from state politics left racial minorities

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[12]Race-conscious practices a State may elect to pursue, of course, are not as limited as those it may be required to pursue. See *Voinovich* v. *Quilter*, 507 U. S. ___, ___ (1993) (slip op., at __) ("[F]ederal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law. But that does not mean that the State's powers are similarly limited. Quite the opposite is true . . . .") (citation omitted).

without clout to extract provisions for fair representation in the lawmaking forum. See *supra*, at 4–6. The equal protection rights of minority voters thus could have remained unrealized absent the Judiciary's close surveillance. Cf. *United States* v. *Carolene Products Co.*, 304 U. S. 144, 153, n. 4 (1938) (referring to the "more searching judicial inquiry" that may properly attend classifications adversely affecting "discrete and insular minorities"). The majority, by definition, encounters no such blockage. White voters in Georgia do not lack means to exert strong pressure on their state legislators. The force of their numbers is itself a powerful determiner of what the legislature will do that does not coincide with perceived majority interests.

State legislatures like Georgia's today operate under federal constraints imposed by the Voting Rights Act—constraints justified by history and designed by Congress to make once-subordinated people free and equal citizens. But these federal constraints do not leave majority voters in need of extraordinary judicial solicitude. The Attorney General, who administers the Voting Rights Act's preclearance requirements, is herself a political actor. She has a duty to enforce the law Congress passed, and she is no doubt aware of the political cost of venturing too far to the detriment of majority voters. Majority voters, furthermore, can press the State to seek judicial review if the Attorney General refuses to preclear a plan that the voters favor. Finally, the Act is itself a political measure, subject to modification in the political process.

The Court's disposition renders redistricting perilous work for state legislatures. Statutory mandates and political realities may require States to consider race when drawing district lines. See *supra*, at 2–3. But today's decision is a counterforce; it opens the way

for federal litigation if "traditional . . . districting principles" arguably were accorded less weight than race. See *ante*, at 15. Genuine attention to traditional districting practices and avoidance of bizarre configurations seemed, under *Shaw*, to provide a safe harbor. See 509 U. S., at ___ (slip op., at 15) ("[T]raditional districting principles such as compactness, contiguity, and respect for political subdivisions . . . are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines."). In view of today's decision, that is no longer the case.

Only after litigation—under either the Voting Rights Act, the Court's new *Miller* standard, or both—will States now be assured that plans conscious of race are safe. Federal judges in large numbers may be drawn into the fray. This enlargement of the judicial role is unwarranted. The reapportionment plan that resulted from Georgia's political process merited this Court's approbation, not its condemnation. Accordingly, I dissent.

[MAPS FOLLOW THIS PAGE]