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 KENNEDY delivered the opinion of the Court.

The constitutionality of Georgia's congressional redistricting plan is at issue here. In *Shaw* v. *Reno,* 509 U. S. ___ (1993), we held that a plaintiff states a claim under the Equal Protection Clause by alleging that a state redistricting plan, on its face, has no rational explanation save as an effort to separate voters on the basis of race. The question we now decide is whether Georgia's new Eleventh District gives rise to a valid equal protection claim under the principles announced in *Shaw*, and, if so, whether it can be sustained nonetheless as narrowly tailored to serve a compelling governmental interest.

The Equal Protection Clause of the Fourteenth

Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U. S. Const., Amdt. 14, §1. Its central mandate is racial neutrality in governmental decisionmaking. See, *e.g.*, *Loving* v. *Virginia*, 388 U. S. 1, 11 (1967); *McLaughlin* v. *Florida*, 379 U. S. 184, 191–192 (1964); see also *Brown* v. *Board of Education*, 347 U. S. 483 (1954). Though application of this imperative raises difficult questions, the basic principle is straightforward: "Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination. . . . This perception of racial and ethnic distinctions is rooted in our Nation's constitutional and demographic history." *Regents of Univ. of California* v. *Bakke*, 438 U. S. 265, 291 (1978) (opinion of Powell, J.). This rule obtains with equal force regardless of "the race of those burdened or benefited by a particular classification." *Richmond* v. *J. A. Croson Co.,* 488 U. S. 469, 494 (1989) (plurality opinion) (citations omitted); *id.,* at 520 (SCALIA, J., concurring in judgment) ("I agree . . . with JUSTICE O'CONNOR's conclusion that strict scrutiny must be applied to all governmental classification by race"); see also *Adarand Constructors, Inc.* v. *Pena*, ___ U. S. ___, ___ (1995) (*slip op.*, at 21); *Bakke*, *supra*, at 289–291 (opinion of Powell, J.). Laws classifying citizens on the basis of race cannot be upheld unless they are narrowly tailored to achieving a compelling state interest. See, *e.g., Adarand, supra,* at ___ (*slip op.*, at 29); *Croson*, *supra*, at 494 (plurality opinion); *Wygant* v. *Jackson Bd. of Ed.*, 476 U. S. 267, 274, 280, and n. 6 (1986) (plurality opinion).

In *Shaw* v. *Reno, supra,* we recognized that these equal protection principles govern a State's drawing of congressional districts, though, as our cautious approach there discloses, application of these principles to electoral districting is a most delicate task. Our analysis began from the premise that "[l]aws that explicitly distinguish between individuals on racial grounds fall within the core of [the Equal

Protection Clause's] prohibition." *Id.,* at ___ (slip op., at 10). This prohibition extends not just to explicit racial classifications, but also to laws neutral on their face but "`unexplainable on grounds other than race.'" *Id.,* at ___ (slip op., at 12) (quoting *Arlington Heights* v. *Metropolitan Housing Development Corp*., 429 U. S. 252, 266 (1977)). Applying this basic Equal Protection analysis in the voting rights context, we held that "redistricting legislation that is so bizarre on its face that it is `unexplainable on grounds other than race,' . . . demands the same close scrutiny that we give other state laws that classify citizens by race." 509 U. S., at ___ (slip op., at 12) (quoting *Arlington Heights*, *supra*, at 266).

This case requires us to apply the principles articulated in *Shaw* to the most recent congressional redistricting plan enacted by the State of Georgia.

In 1965, the Attorney General designated Georgia a covered jurisdiction under §4(b) of the Voting Rights Act, 79 Stat. 438, as amended, 42 U. S. C. §1973b(b) (Act). 30 Fed. Reg. 9897 (1965); see 28 CFR pt. 51, App.; see also *City of Rome* v. *United States*, 446 U. S. 156, 161 (1980). In consequence, §5 of the Act requires Georgia to obtain either administrative preclearance by the Attorney General or approval by the United States District Court for the District of Columbia of any change in a "standard, practice, or procedure with respect to voting" made after November 1, 1964. 42 U. S. C. §1973c. The preclearance mechanism applies to congressional redistricting plans, see, *e.g.*, *Beer* v. *United States*, 425 U. S. 130, 133 (1976), and requires that the proposed change "not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U. S. C. §1973c. "[T]he purpose of §5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer*, *supra*, at 141.

Between 1980 and 1990, one of Georgia's 10 congressional districts was a majority-black district, that is, a majority of the district's voters were black. The 1990 Decennial Census indicated that Georgia's population of 6,478,216 persons, 27% of whom are black, entitled it to an additional eleventh congressional seat, App. 9, prompting Georgia's General Assembly to redraw the State's congressional districts. Both the House and the Senate adopted redistricting guidelines which, among other things, required single-member districts of equal population,

contiguous geography, nondilution of minority voting strength, fidelity to precinct lines where possible, and compliance with §§2 and 5 of the Act, 42 U. S. C. §§1973, 1973c. See App. 11–12. Only after these requirements were met did the guidelines permit drafters to consider other ends, such as maintaining the integrity of political subdivisions, preserving the core of existing districts, and avoiding contests between incumbents. *Id.*, at 12.

A special session opened in August 1991, and the General Assembly submitted a congressional redistricting plan to the Attorney General for preclearance on October 1, 1991. The legislature's plan contained two majority-minority districts, the Fifth and Eleventh, and an additional district, the Second, in which blacks comprised just over 35% of the voting age population. Despite the plan's increase in the number of majority-black districts from one to two and the absence of any evidence of an intent to discriminate against minority voters, 864 F. Supp. 1354, 1363, and n. 7 (SD Ga. 1994), the Department of Justice refused preclearance on January 21, 1992. App. 99–107. The Department's objection letter noted a concern that Georgia had created only two majority-minority districts, and that the proposed plan did not "recognize" certain minority populations by placing them in a majority-black district. *Id.,* at 105, 105–106.

The General Assembly returned to the drawing board. A new plan was enacted and submitted for preclearance. This second attempt assigned the black population in Central Georgia's Baldwin County to the Eleventh District and increased the black populations in the Eleventh, Fifth and Second Districts. The Justice Department refused preclearance again, relying on alternative plans proposing three majority-minority districts. *Id.,* 120–126. One of the alternative schemes relied on by the Department was the so-called "max-black" plan, 864

F. Supp., at 1360, 1362–1363, drafted by the American Civil Liberties Union (ACLU) for the General Assembly's black caucus. The key to the ACLU's plan was the "Macon/Savannah trade." The dense black population in the Macon region would be transferred from the Eleventh District to the Second, converting the Second into a majority-black district, and the Eleventh District's loss in black population would be offset by extending the Eleventh to include the black populations in Savannah. *Id.*, at 1365–1366. Pointing to the General Assembly's refusal to enact the Macon/Savannah swap into law, the Justice Department concluded that Georgia had "failed to explain adequately" its failure to create a third majority-minority district. App. 125. The State did not seek a declaratory judgment from the District Court for the District of Columbia. 864 F. Supp., at 1366, n. 11.

Twice spurned, the General Assembly set out to create three majority-minority districts to gain preclearance. *Id.*, at 1366. Using the ACLU's "max-black" plan as its benchmark, *id.*, at 1366–1367, the General Assembly enacted a plan that

> "bore all the signs of [the Justice Department's] involvement: The black population of Meriwether County was gouged out of the Third District and attached to the Second District by the narrowest of land bridges; Effingham and Chatham Counties were split to make way for the Savannah extension, which itself split the City of Savannah; and the plan as a whole split 26 counties, 23 more than the existing congressional districts." *Id.*, at 1367; see Appendix A (attached).

The new plan also enacted the Macon/Savannah swap necessary to create a third majority-black district. The Eleventh District lost the black population of Macon, but picked up Savannah, thereby connecting the black neighborhoods of metropolitan Atlanta and the poor black populace of coastal Chatham County,

though 260 miles apart in distance and worlds apart in culture. In short, the social, political and economic makeup of the Eleventh District tells a tale of disparity, not community. See *id.,* at 1376–1377, 1389–1390; Plaintiff's Exh. No. 85, pp. 10–27 (report of Timothy G. O'Rourke, Ph.D.). As the attached appendices attest,

> "[t]he populations of the Eleventh are centered around four discrete, widely spaced urban centers that have absolutely nothing to do with each other, and stretch the district hundreds of miles across rural counties and narrow swamp corridors." 864 F. Supp., at 1389 (footnote omitted).
>
> "The dense population centers of the approved Eleventh District were all majority-black, all at the periphery of the district, and in the case of Atlanta, Augusta and Savannah, all tied to a sparsely populated rural core by even less populated land bridges. Extending from Atlanta to the Atlantic, the Eleventh covered 6,784.2 square miles, splitting eight counties and five municipalities along the way." *Id.*, at 1367 (footnote omitted).

The Almanac of American Politics has this to say about the Eleventh District: "Geographically, it is a monstrosity, stretching from Atlanta to Savannah. Its core is the plantation country in the center of the state, lightly populated, but heavily black. It links by narrow corridors the black neighborhoods in Augusta, Savannah and southern DeKalb County." M. Barone & G. Ujifusa, Almanac of American Politics 356 (1994). Georgia's plan included three majority-black districts, though, and received Justice Department preclearance on April 2, 1992. Plaintiff's Exh. No. 6; see 864 F. Supp., at 1367.

Elections were held under the new congressional redistricting plan on November 4, 1992, and black candidates were elected to Congress from all three

majority-black districts. *Id.*, at 1369. On January 13, 1994, appellees, five white voters from the Eleventh District, filed this action against various state officials (Miller Appellants) in the United States District Court for the Southern District of Georgia. *Id.*, at 1369, 1370. As residents of the challenged Eleventh District, all appellees had standing. See *United States* v. *Hays*, ___ U. S. ___, ___ (1995) (slip op., at 8). Their suit alleged that Georgia's Eleventh District was a racial gerrymander and so a violation of the Equal Protection Clause as interpreted in *Shaw* v. *Reno*. A three-judge court was convened pursuant to 28 U. S. C. §2284, and the United States and a number of Georgia residents intervened in support of the defendant-state officials.

A majority of the District Court panel agreed that the Eleventh District was invalid under *Shaw*, with one judge dissenting. 864 F. Supp. 1354 (SD Ga. 1994). After sharp criticism of the Justice Department for its use of partisan advocates in its dealings with state officials and for its close cooperation with the ACLU's vigorous advocacy of minority district maximization, the majority turned to a careful interpretation of our opinion in *Shaw*. It read *Shaw* to require strict scrutiny whenever race is the "overriding, predominant force" in the redistricting process. *Id.*, at 1372 (emphasis omitted). Citing much evidence of the legislature's purpose and intent in creating the final plan, as well as the irregular shape of the District (in particular several appendages drawn for the obvious purpose of putting black populations into the District), the court found that race was the overriding and predominant force in the districting determination. *Id.*, at 1378. The court proceeded to apply strict scrutiny. Though rejecting proportional representation as a compelling interest, it was willing to assume that compliance with the Voting Rights Act would be a compelling interest. *Id.*, at 1381–1382. As to the latter, however, the court

found that the Act did not require three majority-black districts, and that Georgia's plan for that reason was not narrowly tailored to the goal of complying with the Act. *Id.*, at 1392–1393.

Appellants filed notices of appeal and requested a stay of the District Court's judgment, which we granted pending the filing and disposition of the appeals in this case, *Miller* v. *Johnson,* 512 U. S. ___ (1994). We later noted probable jurisdiction. 513 U. S. ___ (1995); see 28 U. S. C. §1253.

Finding that the "evidence of the General Assembly's intent to racially gerrymander the Eleventh District is overwhelming, and practically stipulated by the parties involved," the District Court held that race was the predominant, overriding factor in drawing the Eleventh District. 864 F. Supp., at 1374; see *id.*, at 1374–1378. Appellants do not take issue with the court's factual finding of this racial motivation. Rather, they contend that evidence of a legislature's deliberate classification of voters on the basis of race cannot alone suffice to state a claim under *Shaw*. They argue that, regardless of the legislature's purposes, a plaintiff must demonstrate that a district's shape is so bizarre that it is unexplainable other than on the basis of race, and that appellees failed to make that showing here. Appellants' conception of the constitutional violation misapprehends our holding in *Shaw* and the Equal Protection precedent upon which *Shaw* relied.

Shaw recognized a claim "analytically distinct" from a vote dilution claim. 509 U. S., at ___ (slip op., at 21); see *id.*, at ___ (slip op., at 18). Whereas a vote dilution claim alleges that the State has enacted a particular voting scheme as a purposeful device "to minimize or cancel out the voting potential of racial or ethnic minorities," *Mobile* v. *Bolden*, 446 U. S. 55,

66 (1980) (citing cases), an action disadvantaging voters of a particular race, the essence of the equal protection claim recognized in *Shaw* is that the State has used race as a basis for separating voters into districts. Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, *New Orleans City Park Improvement Assn*. v. *Detiege*, 358 U. S. 54 (1958) *(per curiam),* buses, *Gayle* v. *Browder*, 352 U. S. 903 (1956) *(per curiam),* golf courses, *Holmes* v. *Atlanta*, 350 U. S. 879 (1955) *(per curiam),* beaches, *Mayor and City Council of Baltimore* v. *Dawson*, 350 U. S. 877 (1955) *(per curiam),* and schools, *Brown*, *supra*, so did we recognize in *Shaw* that it may not separate its citizens into different voting districts on the basis of race. The idea is a simple one: "At the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens `as individuals, not "as simply components of a racial, religious, sexual or national class."'" *Metro Broadcasting, Inc.* v. *FCC*, 497 U. S. 547, 602 (1990) (O'CONNOR, J., dissenting) (quoting *Arizona Governing Comm. for Tax Deferred Annuity and Deferred Compensation Plans* v. *Norris*, 463 U. S. 1073, 1083 (1983)); cf. *Northeastern Fla. Chapter, Associated Gen. Contractors of America* v. *Jacksonville*, 508 U. S. ___, ___ (1993) (slip op., at 9) ("`injury in fact'" was "denial of equal treatment . . . not the ultimate inability to obtain the benefit"). When the State assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, "think alike, share the same political interests, and will prefer the same candidates at the polls." *Shaw*, *supra*, at ___ (slip op., at 16); see *Metro Broadcasting, supra*, at 636 (KENNEDY, J., dissenting). Race-based assignments "embody stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—

according to a criterion barred to the Government by history and the Constitution." *Metro Broadcasting*, *supra*, at 604 (O'CONNOR, J., dissenting) (citation omitted); see *Powers* v. *Ohio*, 499 U. S. 400, 410 (1991) ("Race cannot be a proxy for determining juror bias or competence"); *Palmore* v. *Sidoti*, 466 U. S. 429, 432 (1984) ("Classifying persons according to their race is more likely to reflect racial prejudice than legitimate public concerns; the race, not the person, dictates the category"). They also cause society serious harm. As we concluded in *Shaw:*

> "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." *Shaw*, *supra*, at ___ (slip op., at 26).

Our observation in *Shaw* of the consequences of racial stereotyping was not meant to suggest that a district must be bizarre on its face before there is a constitutional violation. Nor was our conclusion in *Shaw* that in certain instances a district's appearance (or, to be more precise, its appearance in combination with certain demographic evidence) can give rise to an equal protection claim, 509 U. S., at ___ (slip op., at 17), a holding that bizarreness was a threshold showing, as appellants believe it to be. Our circumspect approach and narrow holding in *Shaw* did not erect an artificial rule barring accepted equal protection analysis in other redistricting cases. Shape is relevant not because bizarreness is a necessary element of the constitutional wrong or a threshold requirement of proof, but because it may be persuasive circumstantial evidence that race for

its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines. The logical implication, as courts applying *Shaw* have recognized, is that parties may rely on evidence other than bizarreness to establish race-based districting. See *Shaw* v. *Hunt*, 861 F. Supp. 408, 431 (EDNC 1994); *Hays* v. *Louisiana,* 839 F. Supp. 1188, 1195 (WD La. 1993), *vacated*, 512 U. S. ___ (1994); but see *DeWitt* v. *Wilson*, 856 F. Supp. 1409, 1413 (ED Cal. 1994).

Our reasoning in *Shaw* compels this conclusion. We recognized in *Shaw* that, outside the districting context, statutes are subject to strict scrutiny under the Equal Protection Clause not just when they contain express racial classifications, but also when, though race neutral on their face, they are motivated by a racial purpose or object. 509 U. S. , at ___ (slip op., at 12). In the rare case, where the effect of government action is a pattern "`unexplainable on grounds other than race,'" *ibid.* (quoting *Arlington Heights*, 429 U. S., at 266), "[t]he evidentiary inquiry is . . . relatively easy." *Arlington Heights*, *supra*, at 266 (footnote omitted). As early as *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886), the Court recognized that a laundry permit ordinance was administered in a deliberate way to exclude all Chinese from the laundry business; and in *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960), the Court concluded that the redrawing of Tuskegee, Alabama's municipal boundaries left no doubt that the plan was designed to exclude blacks. Even in those cases, however, it was the presumed racial purpose of state action, not its stark manifestation, that was the constitutional violation. Patterns of discrimination as conspicuous as these are rare, and are not a necessary predicate to a violation of the Equal Protection Clause. Cf. *Arlington Heights, supra*, at 266, n. 14. In the absence of a pattern as stark as those in *Yick Wo* or *Gomillion*, "impact alone is not determinative, and the Court

must look to other evidence" of race-based decisionmaking. *Arlington Heights*, *supra*, at 266 (footnotes omitted).

Shaw applied these same principles to redistricting. "In some exceptional cases, a reapportionment plan may be so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to `segregat[e] . . . voters' on the basis of race." *Shaw*, *supra,* at ___ (slip op., at 15) (quoting *Gomillion*, *supra*, at 341). In other cases, where the district is not so bizarre on its face that it discloses a racial design, the proof will be more "difficul[t]." *Ibid.* Although it was not necessary in *Shaw* to consider further the proof required in these more difficult cases, the logical import of our reasoning is that evidence other than a district's bizarre shape can be used to support the claim.

Appellants and some of their *amici* argue that the Equal Protection Clause's general proscription on race-based decisionmaking does not obtain in the districting context because redistricting by definition involves racial considerations. Underlying their argument are the very stereotypical assumptions the Equal Protection Clause forbids. It is true that redistricting in most cases will implicate a political calculus in which various interests compete for recognition, but it does not follow from this that individuals of the same race share a single political interest. The view that they do is "based on the demeaning notion that members of the defined racial groups ascribe to certain `minority views' that must be different from those of other citizens," *Metro Broadcasting,* 497 U. S., at 636 (KENNEDY, J., dissenting), the precise use of race as a proxy the Constitution prohibits. Nor can the argument that districting cases are excepted from standard equal protection precepts be resuscitated by *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey,* 430 U. S. 144 (1977), where the Court addressed a claim

that New York violated the Constitution by splitting a Hasidic Jewish community in order to include additional majority-minority districts. As we explained in *Shaw*, a majority of the Justices in *UJO* construed the complaint as stating a vote dilution claim, so their analysis does not apply to a claim that the State has separated voters on the basis of race. 509 U. S., at ___ (slip op., at 20). To the extent any of the opinions in that "highly fractured decision," *id.*, at ___ (slip op., at 19), can be interpreted as suggesting that a State's assignment of voters on the basis of race would be subject to anything but our strictest scrutiny, those views ought not be deemed controlling.

In sum, we make clear that parties alleging that a State has assigned voters on the basis of race are neither confined in their proof to evidence regarding the district's geometry and makeup nor required to make a threshold showing of bizarreness. Today's case requires us further to consider the requirements of the proof necessary to sustain this equal protection challenge.

Federal court review of districting legislation represents a serious intrusion on the most vital of local functions. It is well settled that "reapportionment is primarily the duty and responsibility of the State." *Chapman* v. *Meier*, 420 U. S. 1, 27 (1975); see, *e.g.*, *Voinovich* v. *Quilter*, 507 U. S. ___, ___–___ (1993) (slip op., at 8–9); *Growe* v. *Emison,* 507 U. S. ___, ___ (1993) (slip op., at 8). Electoral districting is a most difficult subject for legislatures, and so the States must have discretion to exercise the political judgment necessary to balance competing interests. Although race-based decisionmaking is inherently suspect, *e.g., Adarand,* ___ U. S., at ___, (slip op. at 15) (citing *Bakke,* 438 U. S., at 291 (opinion of Powell, J.)), until a claimant makes a showing sufficient to

support that allegation the good faith of a state legislature must be presumed, see *Bakke*, *supra*, at 318–319 (opinion of Powell, J.). The courts, in assessing the sufficiency of a challenge to a districting plan, must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus. Redistricting legislatures will, for example, almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process. *Shaw*, *supra,* at ___ (slip op., at 14); see *Personnel Administrator of Mass.* v. *Feeney*, 442 U. S. 256, 279 (1979) ("`[D]iscriminatory' purpose' . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part `because of,' not merely `in spite of,' its adverse effects") (footnotes and citation omitted). The distinction between being aware of racial considerations and being motivated by them may be difficult to make. This evidentiary difficulty, together with the sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a state has drawn district lines on the basis of race. The plaintiff's burden is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district. To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations. Where these or other race-neutral

considerations are the basis for redistricting legislation, and are not subordinated to race, a state can "defeat a claim that a district has been gerrymandered on racial lines." *Shaw*, *supra*, at 2827. These principles inform the plaintiff's burden of proof at trial. Of course, courts must also recognize these principles, and the intrusive potential of judicial intervention into the legislative realm, when assessing under the Federal Rules of Civil Procedure the adequacy of a plaintiff's showing at the various stages of litigation and determining whether to permit discovery or trial to proceed. See, *e.g.*, Fed. Rules Civ. Proc. 12(b) & (e), 26(b)(2), 56; see also *Celotex Corp.* v. *Catrett*, 477 U. S. 317, 327 (1986).

In our view, the District Court applied the correct analysis, and its finding that race was the predominant factor motivating the drawing of the Eleventh District was not clearly erroneous. The court found it was "exceedingly obvious" from the shape of the Eleventh District, together with the relevant racial demographics, that the drawing of narrow land bridges to incorporate within the District outlying appendages containing nearly 80% of the district's total black population was a deliberate attempt to bring black populations into the district. 864 F. Supp., at 1375; see *id.*, at 1374–1376. Although by comparison with other districts the geometric shape of the Eleventh District may not seem bizarre on its face, when its shape is considered in conjunction with its racial and population densities, the story of racial gerrymandering seen by the District Court becomes much clearer. See Appendix B (attached); see also App. 133. Although this evidence is quite compelling, we need not determine whether it was, standing alone, sufficient to establish a *Shaw* claim that the Eleventh District is unexplainable other than by race. The District Court had before it considerable additional evidence showing that the General Assembly was motivated by

a predominant, overriding desire to assign black populations to the Eleventh District and thereby permit the creation of a third majority-black district in the Second. 864 F. Supp., at 1372, 1378.

The court found that "it became obvious," both from the Justice Department's objection letters and the three preclearance rounds in general, "that [the Justice Department] would accept nothing less than abject surrender to its maximization agenda." *Id.*, at 1366, n. 11; see *id.*, at 1360–1367; see also *Arlington Heights*, 429 U. S., at 267 ("historical background of the decision is one evidentiary source"). It further found that the General Assembly acquiesced and as a consequence was driven by its overriding desire to comply with the Department's maximization demands. The court supported its conclusion not just with the testimony of Linda Meggers, the operator of "Herschel," Georgia's reapportionment computer, and "probably the most knowledgeable person available on the subject of Georgian redistricting," 864 F. Supp., at 1361, 1363, n. 6, 1366, but also with the State's own concessions. The State admitted that it "`would not have added those portions of Effingham and Chatham Counties that are now in the [far southeastern extension of the] present Eleventh Congressional District but for the need to include additional black population in that district to offset the loss of black population caused by the shift of predominantly black portions of Bibb County in the Second Congressional District which occurred in response to the Department of Justice's March 20th, 1992, objection letter.'" *Id.*, at 1377. It conceded further that "[t]o the extent that precincts in the Eleventh Congressional District are split, a substantial reason for their being split was the objective of increasing the black population of that district." *Ibid*. And in its brief to this Court, the State concedes that "[i]t is undisputed that Georgia's eleventh is the product of a desire by the General Assembly to create

a majority black district." Brief for Miller Appellants 30. Hence the trial court had little difficulty concluding that the Justice Department "spent months demanding purely race-based revisions to Georgia's redistricting plans, and that Georgia spent months attempting to comply." 864 F. Supp., at 1377. On this record, we fail to see how the District Court could have reached any conclusion other than that race was the predominant factor in drawing Georgia's Eleventh District; and in any event we conclude the court's finding is not clearly erroneous. Compare *Wright* v. *Rockefeller*, 376 U. S. 52, 56–57 (1964) (evidence presented "conflicting inferences" and therefore "failed to prove that the New York Legislature was either motivated by racial considerations or in fact drew the districts on racial lines").

In light of its well-supported finding, the District Court was justified in rejecting the various alternative explanations offered for the District. Although a legislature's compliance with "traditional districting principles such as compactness, contiguity, and respect for political subdivisions" may well suffice to refute a claim of racial gerrymandering, *Shaw*, 509 U. S., at ___ (slip op., at 15), appellants cannot make such a refutation where, as here, those factors were subordinated to racial objectives. Georgia's Attorney General objected to the Justice Department's demand for three majority-black districts on the ground that to do so the State would have to "violate all reasonable standards of compactness and contiguity." App. 118. This statement from a state official is powerful evidence that the legislature subordinated traditional districting principles to race when it ultimately enacted a plan creating three majority-black districts, and justified the District Court's finding that "every [objective districting] factor that could realistically be subordinated to racial tinkering in fact suffered that fate." 864 F. Supp., at 1384; see *id.*, at 1364, n. 8; *id*., at 1375 ("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").

Nor can the State's districting legislation be rescued by mere recitation of purported communities of interest. The evidence was compelling "that there are no tangible `communities of interest' spanning the hundreds of miles of the Eleventh District." *Id.,* at 1389–1390. A comprehensive report demonstrated the fractured political, social, and economic interests within the Eleventh District's black population. See Plaintiff's Exh. No. 85, pp. 10–27 (report of Timothy G. O'Rourke, Ph.D.). It is apparent that it was not alleged shared interests but rather the object of maximizing the District's black population and obtaining Justice Department approval that in fact explained the General Assembly's actions. 864 F. Supp., at 1366, 1378, 1380. A State is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests. "[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." *Shaw*, *supra*, at ___ (slip op., at 14). But where the State assumes from a group of voters' race that they "think alike, share the same political interests, and will prefer the same candidates at the polls," it engages in racial stereotyping at odds with equal protection mandates. *Id.*, at ___ (slip op., at 16); cf. *Powers* v. *Ohio*, 499 U. S., at 410 ("We may not accept as a defense to racial discrimination the very stereotype the law condemns").

Race was, as the District Court found, the predominant, overriding factor explaining the General Assembly's decision to attach to the Eleventh District various appendages containing dense majority-black

populations. 864 F. Supp., at 1372, 1378. As a result, Georgia's congressional redistricting plan cannot be upheld unless it satisfies strict scrutiny, our most rigorous and exacting standard of constitutional review.

To satisfy strict scrutiny, the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest. *Shaw*, *supra*, at ___ (slip op., at 21–26); see also *Croson*, 488 U. S., at 494 (plurality opinion); *Wygant*, 476 U. S., at 274, 280, and n. 6 (plurality opinion); cf. *Adarand*, ___ U. S., at ___ (slip op., at 29). There is a "significant state interest in eradicating the effects of past racial discrimination." *Shaw*, *supra*, at ___ (slip op., at 25). The State does not argue, however, that it created the Eleventh District to remedy past discrimination, and with good reason: there is little doubt that the State's true interest in designing the Eleventh District was creating a third majority-black district to satisfy the Justice Department's preclearance demands. 864 F. Supp., at 1378 ("the only interest the General Assembly had in mind when drafting the current congressional plan was satisfying [the Justice Department's] preclearance requirements"); *id.*, at 1366; compare *Wygant*, *supra*, at 277 (plurality opinion) (under strict scrutiny, state must have convincing evidence that remedial action is necessary before implementing affirmative action), with *Heller* v. *Doe*, 509 U. S. ___, ___ (1993) (slip op., at 6) (under rational basis review, legislature need not "`actually articulate at any time the purpose or rationale supporting its classification'") (quoting *Nordlinger* v. *Hahn*, 505 U. S. 1, 15 (1992)). Whether or not in some cases compliance with the Voting Rights Act, standing alone, can provide a compelling interest independent of any interest in remedying past discrimination, it cannot do so here. As we suggested

in *Shaw*, compliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws. See 509 U. S., at ___ (slip op., at 23–24). The congressional plan challenged here was not required by the Voting Rights Act under a correct reading of the statute.

The Justice Department refused to preclear both of Georgia's first two submitted redistricting plans. The District Court found that the Justice Department had adopted a "black-maximization" policy under §5, and that it was clear from its objection letters that the Department would not grant preclearance until the State made the "Macon/Savannah trade" and created a third majority-black district. 864 F. Supp., at 1366, 1380. It is, therefore, safe to say that the congressional plan enacted in the end was required in order to obtain preclearance. It does not follow, however, that the plan was required by the substantive provisions of the Voting Rights Act.

We do not accept the contention that the State has a compelling interest in complying with whatever preclearance mandates the Justice Department issues. When a state governmental entity seeks to justify race-based remedies to cure the effects of past discrimination, we do not accept the government's mere assertion that the remedial action is required. Rather, we insist on a strong basis in evidence of the harm being remedied. See, *e.g.*, *Shaw*, *supra*, at ___ (slip op., at 26); *Croson*, *supra*, at 500–501; *Wygant*, *supra*, at 276–277 (plurality opinion). "The history of racial classifications in this country suggests that blind judicial deference to legislative or executive pronouncements of necessity has no place in equal protection analysis." *Croson*, *supra*, at 501. Our presumptive skepticism of all racial classifications, see *Adarand*, *supra*, at ___ (slip op., at 21), prohibits us as well from accepting on its face the Justice

Department's conclusion that racial districting is necessary under the Voting Rights Act. Where a State relies on the Department's determination that race-based districting is necessary to comply with the Voting Rights Act, the judiciary retains an independent obligation in adjudicating consequent equal protection challenges to ensure that the State's actions are narrowly tailored to achieve a compelling interest. See *Shaw*, *supra*, at ___–___ (slip op., at 23–24). Were we to accept the Justice Department's objection itself as a compelling interest adequate to insulate racial districting from constitutional review, we would be surrendering to the Executive Branch our role in enforcing the constitutional limits on race-based official action. We may not do so. See, *e.g.*, *United States* v. *Nixon*, 418 U. S. 683, 704 (1974) (judicial power cannot be shared with Executive Branch); *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is"); cf. *Baker* v. *Carr*, 369 U. S. 186, 211 (1962) (Supreme Court is "ultimate interpreter of the Constitution"); *Cooper* v. *Aaron*, 358 U. S. 1, 18 (1958) ("permanent and indispensable feature of our constitutional system" is that "the federal judiciary is supreme in the exposition of the law of the Constitution").

For the same reasons, we think it inappropriate for a court engaged in constitutional scrutiny to accord deference to the Justice Department's interpretation of the Act. Although we have deferred to the Department's interpretation in certain statutory cases, see, *e.g.*, *Presley* v. *Etowah County Comm'n*, 502 U. S. 491, 508–509 (1992) and cases cited therein, we have rejected agency interpretations to which we would otherwise defer where they raise serious constitutional questions. *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Buildidng & Construction Trades Council*, 485 U. S. 568, 574–575 (1988). When the Justice Department's interpretation of the Act

compels race-based districting, it by definition raises a serious constitutional question, see, *e.g.*, *Bakke*, 438 U. S., at 291 (opinion of Powell, J.) ("Racial and ethnic distinctions of any sort are inherently supect" under the Equal Protection Clause), and should not receive deference.

Georgia's drawing of the Eleventh District was not required under the Act because there was no reasonable basis to believe that Georgia's earlier enacted plans violated §5. Wherever a plan is "ameliorative," a term we have used to describe plans increasing the number of majority-minority districts, it "cannot violate §5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution." *Beer,* 425 U. S., at 141. Georgia's first and second proposed plans increased the number of majority-black districts from 1 out of 10 (10%) to 2 out of 11 (18.18%). These plans were "ameliorative" and could not have violated §5's non-retrogression principle. *Ibid.* Acknowledging as much, see Brief for United States 29; 864 F. Supp., at 1384–1385, the United States now relies on the fact that the Justice Department may object to a state proposal either on the ground that it has a prohibited purpose or a prohibited effect, see, *e.g., Pleasant Grove* v. *United States*, 479 U. S. 462, 469 (1987). The Government justifies its preclearance objections on the ground that the submitted plans violated §5's purpose element. The key to the Government's position, which is plain from its objection letters if not from its briefs to this Court, compare App. 105–106, 124–125 with Brief for United States 31–33, is and always has been that Georgia failed to proffer a nondiscriminatory purpose for its refusal in the first two submissions to take the steps necessary to create a third majority-minority district.

The Government's position is insupportable. "[A]meliorative changes, even if they fall short of

what might be accomplished in terms of increasing minority representation, cannot be found to violate section 5 unless they so discriminate on the basis of race or color as to violate the Constitution." Days, Section 5 and the Role of the Justice Department, in B. Grofman & C. Davidson, Controversies in Minority Voting 56 (1992). Although it is true we have held that the State has the burden to prove a nondiscriminatory purpose under §5, *e.g., Pleasant Grove, supra,* at 469, Georgia's Attorney General provided a detailed explanation for the State's initial decision not to enact the max-black plan, see App. 117–119. The District Court accepted this explanation, 864 F. Supp., at 1365, and found an absence of any discriminatory intent, *id.*, at 1363, and n. 7. The State's policy of adhering to other districting principles instead of creating as many majority-minority districts as possible does not support an inference that the plan "so discriminates on the basis of race or color as to violate the Constitution," *Beer*, *supra*, at 141; see *Mobile* v. *Bolden*, 446 U. S. 55 (1980) (plurality opinion), and thus cannot provide any basis under §5 for the Justice Department's objection.

Instead of grounding its objections on evidence of a discriminatory purpose, it would appear the Government was driven by its policy of maximizing majority-black districts. Although the Government now disavows having had that policy, see Brief for United States 35, and seems to concede its impropriety, see Tr. of Oral Arg. 32–33, the District Court's well-documented factual finding was that the Department did adopt a maximization policy and followed it in objecting to Georgia's first two plans.[1]

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[1]See 864 F. Supp. 1354, 1361 (SD Ga. 1994) (quoting Rep. Tyrone Brooks, who recalled on the Assembly Floor that "the Attorney General . . . specifically told the states covered by the Act that wherever possible, you must draw

One of the two Department of Justice line attorneys overseeing the Georgia preclearance process himself disclosed that "what we did and what I did specifically was to take a . . . map of the State of Georgia shaded for race, shaded by minority concentration, and overlay the districts that were drawn by the State of Georgia and see how well those lines adequately reflected black voting strength." 864 F. Supp., at 1362, n. 4. In utilizing §5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the statute beyond what Congress intended and we have upheld.

Section 5 was directed at preventing a particular set of invidious practices which had the effect of "undo[ing] or defeat[ing] the rights recently won by nonwhite voters." H. R. Rep. No. 91–397, p. 8 (1969). As we explained in *Beer* v. *United States*,

"`Section 5 was a response to a common practice

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majority black districts, wherever possible"); *id.*, at 1362–1363, and n. 4 (citing 3 Tr. 23–24: Assistant Attorney General answering "Yes" to question whether "the Justice Department did take the position in a number of these cases, that if alternative plans demonstrated that more minority districts could be drawn than the state was proposing to draw . . . that did, in fact, violate Section 2 of the Voting Rights Act?"); *id.*, at 1365–1366; *id.*, at 1366, n. 11 ("[I]t became obvious that [the Justice Department] would accept nothing less than abject surrender to its maximization agenda"); *id.*, at 1368 ("[i]t apparently did not occur to [the Justice Department] that increased `recognition' of minority voting strength, while perhaps admirable, is properly tempered with other districting considerations"); *id.*, at 1382–1383 (expressing doubts as to the constitutionality of [the Justice Department's] "`maximization' policy"); *id.*, at 1383, n. 35 (citing other courts that have "criticize[d] [the Justice Department's] maximization propensities").

> in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down. That practice had been possible because each new law remained in effect until the Justice Department or private plaintiffs were able to sustain the burden of proving that the new law, too, was discriminatory. . . . Congress therefore decided, as the Supreme Court held it could, "to shift the advantage of time and inertia from the perpetrators of the evil to its victim," by "freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory."'" 425 U. S., at 140 (quoting H. R. Rep. No. 94–196, pp. 57–58 (1975) (footnotes omitted)).

Based on this historical understanding, we recognized in *Beer* that "the purpose of §5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." 425 U. S., at 141. The Justice Department's maximization policy seems quite far removed from this purpose. We are especially reluctant to conclude that §5 justifies that policy given the serious constitutional concerns it raises. In *South Carolina* v. *Katzenbach*, 383 U. S. 301 (1966), we upheld §5 as a necessary and constitutional response to some states' "extraordinary stratagem[s] of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees." *Id.,* at 335 (footnote omitted); see also *City of Rome* v. *United States*, 446 U. S. 156, 173–183 (1980). But our belief in *Katzenbach* that the federalism costs exacted by §5 preclearance could be justified by those extraordinary circumstances does not mean they can be justified in the circumstances of this case. And the Justice

Department's implicit command that States engage in presumptively unconstitutional race-based districting brings the Voting Rights Act, once upheld as a proper exercise of Congress' authority under §2 of the Fifteenth Amendment, *Katzenbach*, *supra*, at 327, 337, into tension with the Fourteenth Amendment. As we recalled in *Katzenbach* itself, Congress' exercise of its Fifteenth Amendment authority even when otherwise proper still must "`consist with the letter and spirit of the constitution.'" 383 U. S., at 326 (quoting *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (1819)). We need not, however, resolve these troubling and difficult constitutional questions today. There is no indication Congress intended such a far-reaching application of §5, so we reject the Justice Department's interpretation of the statute and avoid the constitutional problems that interpretation raises. See, *e.g.*, *DeBartolo Corp.* v. *Florida Gulf Coast Trades Council*, 485 U. S., at 575.

The Voting Rights Act, and its grant of authority to the federal courts to uncover official efforts to abridge minorities' right to vote, has been of vital importance in eradicating invidious discrimination from the electoral process and enhancing the legitimacy of our political institutions. Only if our political system and our society cleanse themselves of that discrimination will all members of the polity share an equal opportunity to gain public office regardless of race. As a Nation we share both the obligation and the aspiration of working toward this end. The end is neither assured nor well served, however, by carving electorates into racial blocs. "If our society is to continue to progress as a multiracial democracy, it must recognize that the automatic invocation of race stereotypes retards that progress and causes continued hurt and injury." *Edmondson* v. *Leesville Concrete Co.*, 500 U. S. 614, 630–631

(1991). It takes a shortsighted and unauthorized view of the Voting Rights Act to invoke that statute, which has played a decisive role in redressing some of our worst forms of discrimination, to demand the very racial stereotyping the Fourteenth Amendment forbids.

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The judgment of the District Court is affirmed, and the case is remanded for further proceedings consistent with this decision.

It is so ordered.

[MAPS FOLLOW THIS PAGE]