

Shaw v. Reno (1993)

Argued: April 20, 1993

Decided: June 28, 1993

Background

After the Civil War, the 13th, 14th, and 15th Amendments ended slavery, granted citizenship to formerly enslaved persons, and gave African-American men the right to vote. Soon thereafter, state governments, primarily in the south, institutionalized black codes and Jim Crow laws to prevent former slaves from voting. Poll taxes, literacy tests, and felon disenfranchisement were among the practices commonly used to suppress black voting.

In order to prevent states from suppressing the right of African-Americans and other minorities to vote, Congress passed the Voting Rights Act in 1965. This law prohibited voting rules that discriminated on the basis of race. The law also placed cities, counties, and states with a history of discriminatory practices in a special category. These jurisdictions had to request pre-clearance from the federal government before changing their voting rules and were required to prove that the proposed change did not limit a person's right to vote because of their race. The courts concluded that the Voting Rights Act, including this "pre-clearance" requirement, applied to the drawing of legislative district boundaries, which each state must do every 10 years to account for changing populations. While states generally can adopt their own criteria for districting—which typically include making districts that are reasonably compact and contiguous (where all parts of the district are connected to one another) and that align with existing geographical boundaries like cities or counties—they may not draw districts in a way that discriminates on the basis of race.

In *Thornburg v. Gingles* (1986), the Supreme Court ruled that if voting is racially polarized, and if a minority group is both large enough and geographically compact enough to make up a majority of the voters in a new district, then the Voting Rights Act requires the district to be drawn to comprise a majority of minority voters—i.e., to be drawn as a "majority-minority" district. The Court concluded that drawing majority-minority districts in such circumstances is necessary to give minority groups "the opportunity to elect their candidate of choice."

Facts

Between 1865 and 1993, the state of North Carolina elected only seven African-Americans to the U.S. House of Representatives. In 1990, none of the state's 11 members of Congress were black, while 20% of the state's population was. After the 1990 census, the state gained a 12th Congressional seat, and the state legislature tried to ensure the election of an African-American representative through the creation of a legislative district that would be majority African-American. Forty of North Carolina's counties were covered by the Voting Rights Act requirement that redistricting plans be pre-cleared by the federal government, so the state submitted its plans to the U.S. Department of Justice. The attorney general rejected the North Carolina state legislature's first

redistricting plan because it created only one majority-minority district. The Department of Justice said that a second majority-minority district could also be created.

The General Assembly (North Carolina's legislature) redrew the district lines to create a second majority-minority district, District 12. District 12 ran along Interstate 85 in snake-like fashion for 160 miles, breaking up several counties, towns, and districts to connect geographically separate areas densely populated by minority voters into a single district that, in some places, was only as wide as the highway. The attorney general did not object to this new districting plan. In 1992, Melvin Watt won the 12th district, becoming one of North Carolina's first two black members of Congress in the 20th century.

Five white voters filed a lawsuit against both state and federal officials in the U.S. District Court for the Eastern District of North Carolina. They argued that District 12 violated the 14th Amendment's Equal Protection Clause because it was motivated by racial discrimination and resulted in a district drawn almost entirely on racial lines, with the sole purpose of electing black Congressional representatives. The District Court dismissed the case, concluding that using race-based districting to benefit minority voters does not violate the Constitution. The voters appealed to the Supreme Court, which is required by law to hear most redistricting cases.

Issue

Did the North Carolina residents' claim that the 1990 redistricting plan discriminated on the basis of race raise a valid constitutional issue under the 14th Amendment's Equal Protection Clause?

Constitutional Amendments and Supreme Court Precedents

- **14th Amendment to the U.S. Constitution**

“Nor shall any state...deny to any person within its jurisdiction the equal protection of the laws.”

- **15th Amendment to the U.S. Constitution**

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”

- ***Gomillion v. Lighfoot* (1960)**

In 1957, the Alabama legislature decided to redraw the boundaries of the city of Tuskegee. While the city had long been shaped as a square, the legislature redrew it as “a strangely irregular twenty-eight-sided figure.” The result of this redistricting was to remove all but four or five of the city's 400 black voters from its boundaries, while removing no white voters or residents. The black voters sued, but the lower courts dismissed their case, concluding that courts have no power to interfere with how state legislatures draw district lines. The U.S. Supreme Court reversed. The Court found it difficult to explain the bizarrely shaped district as anything other than an effort to segregate black voters and deprive them of their right to

vote. The Court concluded that courts have the power under the 15th Amendment to invalidate districts that are drawn to abridge the right to vote on the basis of race.

– ***United Jewish Organizations of Williamsburgh, Inc. v. Carey (1977)***

A Hasidic Jewish community in New York was divided into two districts as a result of a reapportionment plan that reorganized several districts to achieve a minimum nonwhite representation of 65% in each district. The U.S. Supreme Court upheld the plan, holding that considering race when drawing districts does not necessarily violate the 14th or 15th Amendments. Although New York deliberately increased nonwhite majorities, the Court concluded that this use of racial criteria was permissible because there was no “fencing out” of the white population in the county from participating in the election processes, and whites were not subsequently underrepresented relative to their representation of the population.

Arguments for Shaw (petitioner)

- The Constitution is “color-blind,” meaning it prohibits using race as the basis for how to draw districts. This redistricting plan is the opposite of color-blind and amounts to unconstitutional discrimination on the basis of race.
- The snake-like shape of District 12 makes it neither compact nor truly contiguous, which are the traditional criteria for district maps. The legislature’s obvious disregard for these criteria confirms that its sole purpose was to create a seat to represent a particular racial group.
- In *Gomillion v. Lighfoot* (1960), the Court held that dividing voters into districts on the basis of their race is impermissible racial segregation. That does not change just because race is used to advance the interests of a minority group rather than limit them.
- Drawing districts on the basis of race advances the stereotype that black voters will only vote for a black candidate and white voters for a white candidate. Minority voters have different views and interests, and do not necessarily have a single, unified “candidate of choice.”

Arguments for Reno (respondent)

- The courts have ruled that the use of race in redistricting is permissible and might even be more important than traditional districting features such as contiguousness and compactness, as long as the configurations are not too extreme. Oddly shaped districts are sometimes necessary if states are to elect representatives who are reflective of the people of the state.
- The Voting Rights Act of 1965 encourages the creation of districts with majorities of black, Hispanic, and other minority voters, especially where there has been voting discrimination in the past.
- In *Gomillion v. Lighfoot* (1960), the Court held that districts can’t be drawn to discriminate against minorities. But that does not mean that race can’t be used to draw districts that advance the interests of minorities.

- In *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, the Court approved “racial redistricting where appropriate to avoid abridging the right to vote on account of race.” Though whites had lost one legislative seat as a result of redistricting, the Court found that their constitutional rights were not violated because they were not deprived of effective representation or the right to vote.

Decision

In a 5–4 decision, the U.S. Supreme Court decided in favor of Shaw, and sent the case back to the lower court to be reheard. Justice O’Connor authored the majority decision, which was joined by Chief Justice Rehnquist and Justices Scalia, Kennedy, and Thomas. Justices White, Blackmun, Stevens, and Souter dissented.

Majority

Justice O’Connor detailed the troublesome history of racial gerrymandering and explained how North Carolina District 12 was similar in many ways to past districts that had been held unconstitutional, like the bizarrely shaped district in *Gomillion*. The justices said that classifications of citizens predominantly on the basis of race are undesirable in a free society and conflict with the American political value of equality.

The majority said that any redistricting plan that includes people in one district who are geographically disparate and share little in common with one another but their skin color, bears a strong resemblance to racial segregation. They wrote that racial classifications of any sort promotes the belief that individuals should be judged by the color of their skin. They also said that drawing districts to advance the perceived interests of one racial group may lead elected officials to see their obligation as representing only members of that group, rather than their constituency as a whole. The justices concluded that 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.”

The Court was tasked with deciding the grounds on which voters could challenge voting districts as racial gerrymanders. They decided that if a redistricting plan cannot rationally be understood as anything other than an effort to divide voters based on their race, voters may challenge such a district under the Equal Protection Clause. Therefore, the case was sent back to the lower court to determine if the North Carolina plan could be justified in terms other than race.

Dissents

In a series of separate dissents, the dissenters argued that consideration of race in the districting process is inevitable, and that it does not violate the Constitution unless the party challenging a district shows that the district was drawn in a way that deprives a racial group of an equal opportunity to participate in the political process. Some of the dissenters also argued that there are legitimate reasons to consider race because people of the same race share interests and often vote

together, and that race-conscious gerrymandering only violates the Equal Protection Clause if the purpose of those drawing the boundaries is to enhance the power of the group in control of the process, at the expense of minority voters.