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Texas House of Representatives

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Redistricting: Courts say try again before next census

The task of redistricting the state for the remaining congressional and legislative elections of the 1990s will face the Legislature when it convenes in January.

The state must revisit the redistricting that was begun shortly after the 1990 census and later found unconstitutional by the federal courts because of racial gerrymandering. Then, in its 2001 session, the Legislature must begin considering new districting plans, using the 2000 census, to carry the state into the first decade of the next millennium.

The 1997 redistricting plans will be drawn under U.S. Supreme Court guidelines governing racial gerrymandering and the Voting Rights Act. Legal analysts interpret the court majority as having said, in effect: Racial considerations must be subordinate to race-neutral districting principles such as compactness, community interest and political boundaries, unless overt, ongoing discrimination against minority voters is found.

1996 elections

Texas House and Senate. Temporary settlement plans will govern the November 1996 state House and Senate elections. The plans were adopted by a three-judge federal panel in Austin that found some districts had been unconstitutionally gerrymandered on the basis of the race of potential voters. But the Legislature is facing a court-ordered deadline to either ratify the court-approved legislative plans or redraw the districts for use until the 2002 election cycle.

U.S. House. Thirteen of the state's 30 seats in the U.S. House of Representatives will be filled in the 1996 elections using districts drawn by a federal court panel. A special November 5 congressional election, apparently the first in which party primary elections were voided and the election held without regard to primaries, was called after a federal court panel ruled that three districts used for the March primaries were unconstitutional. Twenty-eight counties and about one-third of the state's voters will be affected by the special election.

The special November 1996 congressional elections in the 13 districts became certain on September 4, 1996, when the U.S. Supreme Court denied appeals of an August 6 order from a Houston court panel. The Houston panel found, and the U.S. Supreme Court agreed, that three of the 30 congressional districts drawn by the Legislature in 1991 were unconstitutionall because they were racially gerrymandered. The appeal had been brought by Speaker James E. "Pete" Laney, six Democratic House members and the National Association for the Advancement of Colored People (NAACP).

Which political party controls the U.S. House of Representatives for the 105th Congress will be determined by the Texas runoffs on December 10 if neither party has a majority after November 5.

The Houston panel — 5th U.S. Circuit Judge Edith H. Jones and U.S. District Judges Melinda Harmon and David Hittner — used as the basis for its new map a plan submitted by defendants Speaker

Laney and Lt. Gov. Bob Bullock that would have changed nine districts. The court, however, amended 13 districts — seven in Harris County and six in Dallas and Tarrant counties — for the 1996 elections only. The court gave the Legislature until June 30, 1997, to redraw districts for the 1998 and 2000 election cycles.

Fifty-nine candidates had filed by the August 30 deadline for the 13 congressional seats: 24 Republicans, 21 Democrats, 2 Libertarians, 9 Independents, 2 U.S. Taxpayers Party and 1 Socialist Worker's Party. Candidates are identified by the affiliation they designated on their application form, or, if they made no designation, as independent. Candidates need not have any official affiliation with a party in order to designate it.

The Houston panel voided the March party primary elections and redrew the three districts and 10 adjoining districts. U.S. House members from the districts will be chosen by voters on November 5, coinciding with the presidential election, with runoff elections, if necessary, on December 10.

The 13 districts and the incumbent members of Congress from each, plus other data, are listed on page 6. The three districts found to have been gerrymandered on racial lines were districts 18, Shelia Jackson Lee, D-Houston; 29, Gene Green, D-Houston; and 30, Eddie Bernice Johnson, D-Dallas.

Harris and Dallas county election officials reportedly said the special election would not be too costly or troublesome to administer. Each county would have to pay for any runoff election, with 28 counties potentially affected in whole or part.

1996 election schedule

August 30 — last day to file to run in new districts

September 5 — secretary of state certifies names of candidates on ballot

November 5 — special election and general election

November 12 — governor canvases results of special election and orders runoff election, if necessary

December 10 — special election runoff, if necessary

Before...

Districts 18, 29 and 30

Candidates in the 13 affected congressional districts had to pay another filing fee or collect 500 registered voters' signatures in three weeks to file for the special election. Since the primary results in the districts were voided, the $2,500 filing fee primary candidates paid last spring was not refundable or transferable. Application of federal contribution limits to the new election or runoffs was resolved in a ruling by the Federal Election Commission (FEC) on September 20.

The FEC ruled that the special election constituted a new general election and as such, a new campaign finance period would begin on August 6. Contributions made to candidates before August 6 were for a separate election and would not count toward the special election and possible runoff elections campaign finance limits, the FEC said. This includes the contribution limits of $1,000 per individual and $5,000 per political action committee for each election. However, the FEC ruled that contributions made in the nullified primary election *would* count towards the $25,000 maximum annual contribution limit for an individual contributor.

Legal analysts said the Texas case was the first in which a court annulled primary results and redrew districts. Federal courts ruling in cases involving North Carolina, Louisiana, Georgia and New York — all differing in details from the Texas case — allowed elections to be held this year using districts that had been found unconstitutional.

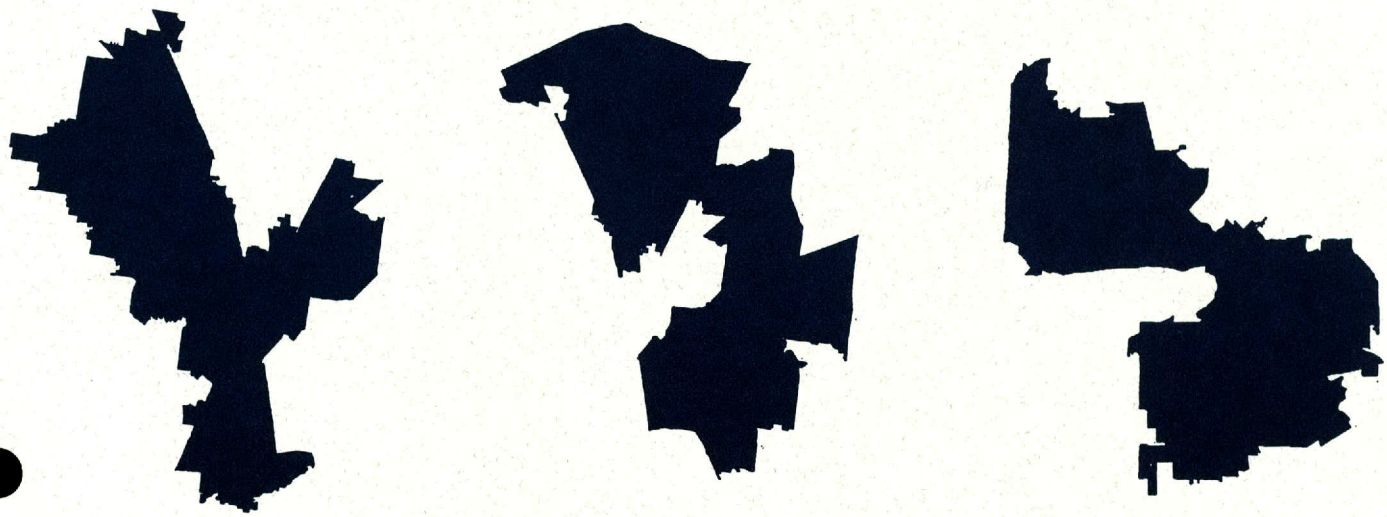
Texas House and Senate districts

In addition to drawing new congressional districts, the Legislature in 1997 will have to decide whether to ratify the temporary settlement plan for state House and Senate districts adopted by an Austin federal court panel in September 1995 or to redraw the districts.

In January 1995 the Texas House and Senate plans were challenged as being racially gerrymandered by nine plaintiffs, six of whom are also plaintiffs in the congressional case. A three-judge federal panel in Austin approved a temporary settlement plan agreed to by the state and the plaintiffs for the 1996 elections. Although the parties to the case agreed upon a permanent settlement plan earlier, the court did not approve the permanent plan because the claim of unconstitutionality had not been tried. The temporary plan changed 36 of the 150 House districts, affecting Harris, Dallas and Bexar counties, and eight of the 31 Senate Districts. (For more information, see House Research Organization Focus Number 74-16, *State, Congressional Redistricting Update*, October 6, 1995.)

The Austin panel adopted a temporary redistricting plan for 1996, saying the plaintiffs in *Thomas v. Bush* (No. A 95 CV 198 SS) had presented sufficient evidence of unconstitutionality in

... and after court redrafting



Districts 18, 29 and 30

certain districts during pretrial proceedings. The court panel said it was reluctant to approve a permanent settlement plan without a trial and final ruling, which it postponed pending the final outcome of the congressional case, *Bush v. Vera.* Under the proposed settlement plan both parties agreed to dismiss the case if the Legislature adopted the court-approved House and Senate districting plans. Other parties, could, however, challenge the plans.

State representatives and senators have run under different redistricting maps each two-year election cycle since 1992. The Legislature's 1991 plan for the House and Senate was replaced by court-drawn districts for the 1992 election; in 1994 the electorate voted in districts drawn by the Legislature, and in 1996 legislators will be elected under the temporary settlement plan.

It remains unclear whether the 15 state senators who drew two-year terms ending in 1996 will be required to run again in 1998 if the Legislature adopts a revised Senate redistricting plan. The Austin court panel said Texas law does not require a new election for all 31 Senate seats under the court-ordered plan used in 1996. However, Attorney General Dan Morales indicated in opinion letter No. 95-046, on July 29, 1995, that under a *legislatively* enacted redistricting plan all senators must run again and redraw lots to stagger their four-year terms. Whether all 31 senators would have to run in 1998 if the Legislature in 1997 simply *ratifies* the 1996 court-ordered plan remains in question.

Congressional suit's origins

The congressional redistricting suit, *Vera v. Richards* (861 F. Supp. 1304, S.D. Tex. 1994), was filed in January 1994 by seven registered voters residing in four congressional districts in Houston and Dallas. A previous Republican Party claim that Texas congressional districts were politically gerrymandered to help incumbents and to discriminate against minority groups had been rejected in late 1991 by a federal panel in Austin. The *Vera* filing followed a key U.S. Supreme Court decision on racial gerrymandering, *Shaw v. Reno* (113 S. Ct. 2816), handed down in June 1993.

In August 1994 the three-judge Houston panel ruled that congressional Districts 18, 29 and 30 were "conceived for the purpose of providing 'safe' seats in Congress" for two African-American and one Hispanic representative, and were therefore unconstitutional racial gerrymanders. On June 13, 1996, the Supreme Court upheld the Houston panel's decision, now titled *Bush v. Vera* (116 S. Ct. 1941), and remanded the case to the panel.

Named as defendants were the governor, secretary of state, attorney general, lieutenant governor and speaker of the House. The court allowed the U.S. Justice Department, the NAACP Legal Defense and Educational Fund, Inc. and the League of United Latin American Citizens (LULAC) to intervene on the state's behalf. The court allowed the incumbent congressional members in the three districts found unconstitutional — Eddie Bernice Johnson, Gene Green and Sheila Jackson Lee — to intervene as friends of the court. The court denied intervenor status, which allows the right to appeal, to U.S. Reps. John Bryant, Martin Frost and Ken Bentsen on the state's side, and Joe Barton on the plaintiffs' side.

Supreme Court clears election. On September 4 the U.S. Supreme Court denied all requests to prevent the special election. Speaker Laney had asked that the lower court ruling be stayed pending the state's appeal to the U.S. Supreme Court. The speaker said the Legislature should have an opportunity to redraw the districts. He added that the panel's special election plan would be highly disruptive to the election process; failed to adhere to basic legislative districting principles, including incumbent protection; had excessive population variances; and imposed an open special election, with a possible runoff, fundamentally altering the state's election process.

The NAACP Legal Defense and Educational Fund, representing African-American defendants, and six members of Congress also asked the Supreme Court to stay the court-ordered plan. The Houston panel denied the request for a stay, and the congressional members' request to intervene, on August 30.

The court had given the parties until July 17 to arrive at a settlement plan, but no compromise had been reached. On July 22 the panel held a hearing to assess the differences between the parties and the potential impact of a special election and runoff election on the election process. Secretary of State Tony Garza said that by a conservative estimate new primaries in September with a possible runoff on November 5 would cost $3 million and would not fit the court's announced time line.

Speaker Laney and Lt. Gov. Bullock maintained throughout the proceedings that the 1996 elections should proceed using the current districts and the

Bush v. Vera Chronology

January 29, 1993
Texas congressional districts are challenged for racial gerrymandering in *Vera v. Richards*.

August 17, 1994
Vera v. Richards panel holds that three of the 30 Texas congressional districts are unconstitutionally gerrymandered.

September 2, 1994
Vera panel allows the November 1994 congressional elections to be held using lines drawn in 1991, calls for Legislature to draw new plan by March 15.

October 1995
U.S. Supreme Court agrees to hear the Texas congressional case, now titled *Bush v. Vera*.

December 23, 1995
U. S. Supreme Court Justice Antonin Scalia stays order for Texas to redistrict by March 15.

June 13, 1996
U.S. Supreme Court upholds the lower court ruling declaring congressional districts 18, 29 and 30 unconstitutionally racially gerrymandered.

August 6, 1996
Houston court panel voids March primary elections and redraws 13 districts to be filled in a November 5 special election, with possible runoff elections on December 10.

August 22, 1996
Speaker Laney appeals the Houston panel's decision to the U.S. Supreme Court and asks the high court to stay the lower court decision.

September 4, 1996
The U.S. Supreme Court denies the Speaker's request for a stay.

June 30, 1997
Deadline for Legislature to redraw congressional districts

Legislature should be allowed to revise the districts during the 1997 regular session. The officials said that to do otherwise would be too disruptive to the election process, result in lower voter turnout and voter confusion and cause innumerable practical problems in holding the election and selection of candidates. The plaintiffs contended there was ample time to redraw the unconstitutional districts and hold new elections and that the court was obliged to order the unconstitutional lines changed for fear of doing material harm to the democratic process. Gov. George W. Bush and Secretary of State Garza, represented by Attorney General Dan Morales, said they preferred that the parties agree on a settlement plan. The governor also said that he had no intention of calling a special legislative session prior to the election to revise the districts.

Seventeen plans submitted. The Houston court panel received 17 plans on July 29, its deadline for interested parties to submit plans for the court to consider should they decide to adopt a court-ordered interim plan for the 1996 election. The plaintiffs presented four proposals to the court that would have affected between 10 and 17 districts. The legislative leadership submitted two plans. Speaker Laney's plan would have changed nine districts (four in Dallas and five in Houston). Lt. Gov. Bullock submitted two plans, one identical to Speaker Laney's and another that would have changed 12 districts. Bullock did not endorse either plan, saying he could not get a consensus among senators.

The court panel, using the redistricting facilities of the Texas Legislative Council, began drawing new maps on August 1. The court ordered an interim plan for the 1996 election cycle on August 6 and ordered the Legislature to complete work on a permanent plan by June 30, 1997.

Speaker Laney said the plan appeared "more intrusive than necessary," while Lt. Gov. Bullock said the plan seemed reasonable. House Redistricting Committee chairman Delwin Jones said lawmakers would likely draw districts very similar to those of the interim court plan and added that changes might also be made in West Texas to revise certain districts around Amarillo, Lubbock and Midland that are now split between two or more congressional districts.

Comparison of Current to Court-Ordered Districts (Minority and Partisan Composition)

Member	District	Current (C657)			Partisan (1994 Statewide)	Court-Ordered (C745)			Partisan (1994 Statewide)
			Black	Hispanic	Democrat/Republican		Black	Hispanic	Democrat/Republican
S. Johnson	3	TOTAL	4.4	6.0	33.8/66.2	TOTAL	7.4	8.3	34.3/65.7
		VAP	3.9	5.4		VAP	6.8	7.5	
Bryant	5		16.3	17.9	55.3/44.7		15.8	14.4	51.5/48.5
			15.3	15.3			14.5	12.4	
Barton	6		4.4	5.4	35.4/64.6		5.1	5.7	36.0/64.0
			4.0	4.9			4.6	5.1	
Archer	7		5.9	11.9	28.2/71.8		6.1	16.4	28.1/71.9
			5.3	10.9			5.4	14.6	
Fields	8		5.2	7.2	30.5/69.5		5.1	7.1	30.4/69.6
			4.7	6.5			4.6	6.4	
Stockman	9		21.7	9.4	53.5/46.5		21.7	9.4	53.5/46.5
			19.8	8.5			19.9	8.4	
Lee	18		50.9	15.3	72.7/27.3		44.7	23.4	73.5/26.5
			48.6	13.7			43.5	20.6	
DeLay	22		7.8	16.1	35.4/64.6		12.7	17.0	38.1/61.9
			7.5	14.4			11.8	15.3	
Frost	24		19.1	21.8	54.5/45.5		20.4	21.0	55.1/44.9
			17.9	18.8			19.0	18.0	
Bentsen	25		26.9	16.7	54.4/45.6		23.0	18.6	49.6/50.4
			24.9	14.9			21.3	16.4	
Armey	26		4.2	9.2	32.7/67.3		5.4	9.5	33.0/67.0
			3.9	8.2			5.1	8.5	
Green	29		10.2	60.6	64.2/35.8		15.4	45.1	59.2/40.8
			9.8	55.4			14.5	40.6	
E.B. Johnson	30		50.0	17.1	72.2/27.8		44.5	18.4	69.4/30.6
			47.1	15.1			42.4	16.1	

Source: Senate Committee of the Whole on Legislative and Congressional Redistricting

Note: VAP refers to voting age population.

What the Houston court said about the '96 special election

The three federal judges in Houston who decided on how Texas was to handle the November 1996 congressional election said the decision to order an interim court redistricting plan was required by the unusual nature of the Texas case.

The court said its decision was "shaped by the extreme facts of this case urging a prompt constitutional remedy." The court said judicial precedent demanded action to insure that elections are not held in unconstitutional districts except in the "unusual case" in which new districting would disrupt the election cycle.

"There is virtually no disagreement among the parties or *amici* [persons not parties to the suit whom the court allowed to participate] that it is possible for the Court to redraw the boundaries of congressional districts 18, 29 and 30 and adjoining districts on an expedited basis so that the new districts can be employed in the November 1996 elections," the court wrote. The state had had ample opportunity to draw new districts since the June 13 Supreme Court ruling, but the governor had "definitely not decided to call a special session," and legislative leaders were "uninterested in and would be inconvenienced by the holding of a special session . . . " said the court.

The court reviewed the evidence on the impact the new elections would have on the electoral process, minority voters and candidates and concluded that defendants' objections were not sufficient to warrant holding another general election in districts found unconstitutional. The court noted that elections had already been held in the unconstitutional districts in two previous election cycles, 1992 and 1994.

The court said it has "endeavored in good faith to fulfill its obligations" and that the new districts "have been drawn with an eye for maintaining their compactness and contiguity." Further, the new districts, which are "modeled from the Bullock/Laney proposed plans (plan C725) for Dallas and Harris counties, attempt to affect surrounding congressional districts to the minimum possible degree." The court said it "refused to redistrict at the census block level," and "will view skeptically any final districting plan submitted by the state legislature that descends to districting at the census block level."

Responding to objections made by defendants that special elections in 13 districts would cause voter "fatigue" and confusion and discourage and reduce voter participation, the court said:

> Anytime changes are made in the election process, some risk of voter confusion or fatigue exists. What these objections ignore, however, is that the special elections will be conducted in tandem with the November 1996 presidential election, in which voter turnout is usually at historically high levels. There is no reason to think that voters will decline to participate at the polls in November because of special elections; in fact, they need only visit their usual polling places to vote for President or the Gramm-Morales U.S. Senate race and read the simple additional instructions for voting in the open congressional primary. Indeed, as some experts for the plaintiffs noted, the existence of more compact congressional districts ought to increase voter participation.

In agreeing with defendants who said that the voters will need to be educated about the special election ballot and straight ticket voting, the court said:

This is a minor complication for the vast majority of voters in the urban areas affected by the interim plan, as they will already be confronted

(For additional information on the Houston panel's August 1994 ruling, see House Research Organization Session Focus No. 74-16,* Texas Redistricting Cases Considered, *March 13, 1995.)

with literally dozens of electoral races in November. Unlike the objectors, however, who paternalistically believe that the voters are not capable of understanding this ballot configuration, we find that the educational process will not be so difficult. The voters can easily be informed that the straight-ticket level does not reach the special election.

The court described as "overwrought" the defendants' concerns that runoff elections would be necessary in December, discouraging voter turnout, and the voters' choices in March will be upended by the special elections. The court noted that an expert witness for the plaintiffs had predicted that the incumbent members of congress would probably win majorities in the November elections in reconfigured "minority" districts. The incumbents and their challengers all remain viabile candidates in the new districts, the court said. Consequently, it is misleading to suggest that voiding the voters' March primary choices had "disenfranchised" the voters.

The court's response to defendants' claim that reconfiguring 13 districts rearranged nearly one-third of Texas voters was to say that "this is an inevitable consequence of the magnitude and brazenness of the gerrymandering in which the Legislature engaged."

The court said that the concerns by defendants that the new districts will "particularly disadvantage minority voters, whom the 'representatives' of their interests describe as easily confused, readily discouraged from understanding the requirements of balloting, not well informed about voting procedures or precinct locations, and not sufficiently enthusiastic to participate in December runoff elections" is "not persuasive." The court said that if there is some voter confusion, it will affect all voters, not just minorities, and that because "few voters are being transferred into new VDTs," [voter tabulation districts, i.e., precincts] there is little concern that minority voters will go to the wrong polling places. The court said that it has drawn the three districts "to include large numbers of minority voters," and therefore the concern that minority electoral choices will not be reflected in the election outcomes is unfounded. The court added that "the fact than an Hispanic, Victor Morales, is running for the U.S. Senate, will undoubtedly draw Hispanic voters to the polls in November."

Congressional incumbents had urged the court to leave the districts as they were for the 1996 elections because the incumbents had "already invested money and resources in the November elections; that campaign strategies and advertising expenditure decisions have been made; that they may encounter problems with the Federal Election Commission regulations; and that they would have difficulty raising money on a short time schedule." But the court said it was "difficult to consider the incumbents' position compelling," and "that incumbents are entitled to little deference in the process of redistricting."

The court also said "incumbents enjoy inestimable advantages in fundraising, maintaining name recognition, and in running on their records." The court discounted the concerns regarding the federal election laws because the "purported election specialist that identified potential FEC complications arising from the Court's plan," in a legislative submission "has been heavily involved in Democratic politics, and the plaintiffs questioned the truth of some of his statements."

The court said that "the candidates will have nearly four weeks to qualify for the November elections and three months to campaign," which "is similar to the typical post-Labor Day focus of most political campaigns."

The court said that it drew the plan "without respect to partisan impact" and "has not evaluated the partisan impact of its actions," contrary to congressional incumbents' assertions that the court's plan will have a partisan impact on the election. The court concluded by saying, "the relatively limited nature of the Court's remedial efforts, in comparison with the remaining "ugliness" of many of Texas's congressional districts, continues to provide incumbents a decided advantage over challengers in November special elections."

What the Supreme Court said about racial gerrymandering

Race was the predominant factor in how three Texas congressional districts were drawn, leaving the districts subject to "strict scrutiny" by the courts, according to a plurality opinion by the U.S. Supreme Court.

The plurality opinion in *Bush v. Vera* (116 S. Ct. 1941(1996)) by Justice Sandra Day O'Connor and joined by Chief Justice William H. Rehnquist and Justice Anthony Kennedy, held that the districts were unconstitutional, reasoning that the intention to create majority-minority districts is cause enough to invoke strict scrutiny. Justices Antonin Scalia and Clarence Thomas concurred, but could not agree entirely with the plurality opinion because it left open the possibility that a district could take race into account and still be constitutional. Two dissenting opinions written by Justices John Paul Stevens and David Souter were joined by Justices Ruth Bader Ginsburg and Stephen G. Breyer.

The plurality opinion found "that the State substantially neglected traditional districting criteria such as compactness, that it was committed from the outset to creating majority-minority districts, and that it manipulated district lines to exploit unprecedentedly detailed racial data . . .'' But, because the court conceded that the state had mixed motives, including incumbent protection, for drawing the lines, each of the districts had to be scrutinized. On close examination the plurality found the district lines were *not* narrowly tailored to further the compelling state interests presented by the state of complying with sec. 2 of the Voting Rights Act, remedying past and present racial discrimination and not weakening the position of minorities in existing districts.

In determining the dominance of race in drawing the three districts, the plurality opinion explored "general findings and evidence regarding the redistricting plan's respect for traditional districting principles, the legislators' expressed motivations, and the methods used in the redistricting process." The court plurality agreed with the lower court finding that "generally, Texas has not intentionally disregarded traditional districting criteria." The state had argued that the districts could not be unconstitutional because the state does not and never has used traditional redistricting principles to draw districts.

The opinion also noted that a study ranked the Texas 1991 redistricting plan among the worst in the country and the three districts in question among the "28 least regular congressional districts nationwide." The opinion upheld the district court finding of "substantial direct evidence of the legislature's racial motivations," and as proof of racial motivation, the opinion recounts that the state admitted that the three districts were purposely created to enhance the opportunity to elect minority members of congress. As further evidence of racial motivation, the opinion describes how the Texas redistricting program contained racial data at the block-by-block level, whereas other data, such as party registration and past voting statistics, were only available at the level of voter tabulation districts (which approximate election precincts).

The court said Districts 18, 29 and 30 were not narrowly tailored to serve a compelling state interest and cannot be justified in terms of complying with the results test of sec. 2 of the Voting Rights Act. That section prohibits dilution of the voting strength of members of a minority group. The court said a district drawn to satisfy sec. 2 cannot subordinate traditional districting principles to race more than is reasonably necessary. The noncompactness and bizarre shapes of the districts are primarily attributable to racial, not political, considerations, the court said.

The plurality found that the lower court panel was correct in concluding that race-motivated gerrymandering predominated in Dallas' District 30 (now held by Eddie Bernice Johnson). The court rejected the state's argument that the district's bizarre shape was attributed to preserving communities of interest since the evidence supporting the state position was not generally available to the Legislature before the district was drawn. Also, race was a larger factor in differentiating the district from surrounding areas, and racial gerrymandering has a greater influence on the district's lines than politically motivated gerrymandering, the court said. The court said that "despite the strong correlation between race and political affiliation, the maps reveal that political considerations were subordinated to racial classifications in the drawing of many of the most extreme and bizarre district lines."

Interlocking Houston districts were drawn with race in mind, the court found.

The plurality concluded that Houston's interlocking Districts 18 (Sheila Jackson Lee) and 29 (Gene Green), were drawn primarily with race in mind. It discounted the state's argument that the bizarre district lines were a function of incumbency protection. "Not only are the shapes of the districts bizarre; they also exhibit utter disregard of city limits, local election precincts and voter tabulation district lines," the opinion read. And, although the plurality agreed that the shape of the Houston districts were affected by the rivalry between then-state Sen. Green and then-state Rep. Roman Martinez, "such influences were overwhelmed in the determination of the districts' bizarre shapes by the State's efforts to maximize racial divisions."

In an unusual move, Justice O'Connor wrote a concurring opinion to her own decision. She stated outright that compliance with sec. 2 of the Voting Rights Act is a compelling state interest. Sec. 2 prohibits use of voting qualifications or prerequisites to voting or use of any practice that denies or abridges the right of any citizens to vote on account of race, color or language.

Sec. 2 is violated if, considering the "totality of the circumstances," protected groups have less opportunity than other members of the electorate to participate in the political process and to elect candidates of their choice. The U.S. Supreme Court, in its 1986 decision *Thornburg v. Gingles* (478 U.S. 30) established a three-part test that plaintiffs must meet when claiming vote dilution:

√ the protected minority group must be sufficiently large and geographically compact to constitute a majority in a single-member district;

√ the group must politically cohesive; and

√ the Anglo majority must have voted in a bloc to defeat the minority-preferred candidates in most elections.

Justice O'Connor said that race still can be used as a factor in drawing district lines, but it cannot subordinate other legitimate considerations.

The court has discussed racial gerrymandering in opinions on redistricting in other states. Also on June 13 the court ruled, by 5-4, that a North Carolina congressional district had been drawn primarily using racial considerations. In *Shaw v. Hunt* ((116 S. Ct. 1894) Chief Justice Rehnquist wrote that the lack of compactness in the 160-mile-long district showed it was not narrowly tailored to achieve the state's compelling interests, which include eradicating the effects of past discrimination and complying with sec. 2 and sec. 5 of the Voting Rights Act.

Cases from Georgia and North Carolina also provide clues for new plans.

Shaw v. Hunt was the most recent appeal of the 1993 *Shaw v. Reno* decision (113 S. Ct. 2816), in which the court first held that drawing bizarrely shaped districts to concentrate dispersed racial minorities is unconstitutional racial gerrymandering unless narrowly tailored to further a compelling governmental interest. *Shaw v. Reno* was remanded to the district court, which found the districts to be narrowly tailored to serve North Carolina's compelling interest in complying with the Voting Rights Act and eradicating the effects of discrimination that had kept the state without a black representative in Congress between 1901 and 1992.

Ruling in a Georgia congressional redistricting case, *Miller v. Johnson* (115 S. Ct. 2475), the Supreme Court held in June 1995 that districts drawn primarily for racial reasons are unconstitutional and that the shape of the district is not the deciding factor. The court said a claim of racial gerrymandering can be sustained with evidence other than a district's bizarre shape.

The court outlined the proof needed to show that a district is racially gerrymandered. The court said that a plaintiff must show that race was the "predominate factor motivating the legislature's decision to place a significant number of voters within or without a particular district" and 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 interest, to racial considerations."

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