Supplementary Material

Chapter 10: The Reagan Era—Democratic Rights/Voting/The Voting Rights Acts

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City of Mobile v. Bolden, 446 U.S. 55 (1980)

Wiley Bolden was an African-American who resided in Mobile, Alabama. Mobile had since 1911 been governed by three city commissioners who were elected in an at-large election. In that election, all city voters could cast their ballot for three persons, with the three candidates with the most votes obtaining office. One consequence of this election scheme was that, although more than one-third of city residents were African-Americans, no African-American had ever been elected to the city commission. In the mid-1970s, Bolden and other African-American residents of Mobile filed a class action lawsuit, asking the local federal district court to declare the at-large election scheme unconstitutional. The local federal judge agreed and issued an order requiring Mobile to adopt single-member election districts. The Court of Appeals for the Fifth Circuit sustained that ruling. City officials appealed to the Supreme Court of the United States. The United States submitted an amicus brief supporting the lawsuit against Mobile. The brief declared,

> *The election results themselves not only show discriminatory effect, but also are indicative of discriminatory purpose in maintaining these at-large schemes. Other evidence of such purpose in each case includes the long history of racial discrimination in Alabama in matters affecting the franchise, the evidence that the number of blacks likely to be elected is considered whenever any alternative districting scheme is introduced in the state legislature, and the unresponsiveness of both the city commission and the school board to the particularized interests of blacks.*

The Supreme Court by a 5–4 vote reversed the lower court decision mandating that the city adopt single-membered districts. Justice Stewart and three other justices claimed that Bolden did not prove the at-large system intentionally discriminated against persons of color. Justice Blackmun claimed that other remedies for intentional discrimination should have been considered. The dissenting four justices endorsed the holding of the lower courts. Mobile adopted an at-large system of representation at a time when almost all blacks were disenfranchised. Hence, no one could claim that system was intended to discriminate in 1911. Was that the reason why the plurality found no intentional discrimination? Why did the dissenters disagree? Under what conditions can electoral arrangements adopted for legitimate reasons be found to intentionally discriminate against a group of persons?

JUSTICE STEWART announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE REHNQUIST joined.

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Section 2 of the Voting Rights Act provides:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

[T]he language of § 2 no more than elaborates upon that of the Fifteenth Amendment, and the sparse legislative history of § 2 makes clear that it was intended to have an effect no different from that of the Fifteenth Amendment itself.

The Court's early decisions under the Fifteenth Amendment established that it imposes but one limitation on the powers of the States. It forbids them to discriminate against Negroes in matters having to do with voting. The Amendment's command and effect are wholly negative. "The Fifteenth Amendment does not confer the right of suffrage upon any one."

Our decisions, moreover, have made clear that action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose. . . .

. . . The Fifteenth Amendment does not entail the right to have Negro candidates elected. . . . That Amendment prohibits only purposefully discriminatory denial or abridgment by government of the freedom to vote "on account of race, color, or previous condition of servitude." Having found that Negroes in Mobile "register and vote without hindrance," the District Court and Court of Appeals were in error in believing that the appellants invaded the protection of that Amendment in the present case.

. . .

Despite repeated constitutional attacks upon multimember legislative districts, the Court has consistently held that they are not unconstitutional. We have recognized, however, that such legislative apportionments could violate the Fourteenth Amendment if their purpose were invidiously to minimize or cancel out the voting potential of racial or ethnic minorities.

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[I]t is clear that the evidence in the present case fell far short of showing that the appellants "conceived or operated [a] purposeful devic[e] to further racial . . . discrimination."

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. . . 'Discriminatory 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 upon an identifiable group." . . .

[T]he District Court's findings of fact, unquestioned on appeal, make clear that Negroes register and vote in Mobile "without hindrance," and that there are no official obstacles in the way of Negroes who wish to become candidates for election to the Commission. Indeed, it was undisputed that the only active "slating" organization in the city is comprised of Negroes. It may be that Negro candidates have been defeated but that fact alone does not work a constitutional deprivation. . . .

[T]he District Court relied in part on its finding that the persons who were elected to the Commission discriminated against Negroes in municipal employment and in dispensing public services. If that is the case, those discriminated against may be entitled to relief under the Constitution. . . . But evidence of discrimination by white officials in Mobile is relevant only as the most tenuous and circumstantial evidence of the constitutional invalidity of the electoral system under which they attained their offices.

[T]he District Court and the Court of Appeals supported their conclusion by drawing upon the substantial history of official racial discrimination in Alabama. But past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful. The ultimate question remains whether a discriminatory intent has been proved in a given case. More distant instances of official discrimination in other cases are of limited help in resolving that question.

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The Equal Protection Clause of the Fourteenth Amendment does not require proportional representation as an imperative of political organization. . . .

More than 100 years ago the Court unanimously held that "the Constitution of the United States does not confer the right of suffrage upon any one. . . ." It is for the States "to determine the conditions under which the right of suffrage may be exercised . . ., absent of course the discrimination which the Constitution condemns." It is true, as the dissenting opinion states, that the Equal Protection Clause confers a substantive right to participate in elections on an equal basis with other qualified voters. But this right to equal participation in the electoral process does not protect any "political group," however defined, from electoral defeat.

JUSTICE BLACKMUN, concurring in the result.

Assuming that proof of intent is a prerequisite to appellees' prevailing on their constitutional claim of vote dilution, I am inclined to agree with Justice WHITE that, in this case, "the findings of the District Court amply support an inference of purposeful discrimination." I concur in the Court's judgment of reversal, however, because I believe that the relief afforded appellees by the District Court was not commensurate with the sound exercise of judicial discretion.

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. . . I do not believe that, in order to remedy the unconstitutional vote dilution it found, it was necessary to convert Mobile's city government to a mayor-council system. In my view, the District Court at least should have considered alternative remedial orders that would have maintained some of the basic elements of the commission system Mobile long ago had selected-joint exercise of legislative and executive power, and citywide representation.

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JUSTICE STEVENS, concurring in the judgment.

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In my view, there is a fundamental distinction between state action that inhibits an individual's right to vote and state action that affects the political strength of various groups that compete for leadership in a democratically governed community. . . .

In the first category are practices such as poll taxes or literacy tests that deny individuals access to the ballot. . . . Such practices must be tested by the strictest of constitutional standards, whether challenged under the Fifteenth Amendment or under the Equal Protection Clause of the Fourteenth Amendment.

This case does not fit within the first category. The District Court found that black citizens in Mobile "register and vote without hindrance." Rather, this case draws into question a political structure that treats all individuals as equals but adversely affects the political strength of a racially identifiable group. Although I am satisfied that such a structure may be challenged under the Fifteenth Amendment as well as under the Equal Protection Clause of the Fourteenth Amendment, I believe that under either provision it must be judged by a standard that allows the political process to function effectively.

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[No case] decided by this Court establishes a constitutional right to proportional representation for racial minorities. . . . Whatever the proper standard for identifying an unconstitutional gerrymander may be, I have long been persuaded that it must apply equally to all forms of political gerrymandering-not just to racial gerrymandering.

. . .

A prediction based on a racial characteristic is not necessarily more reliable than a prediction based on some other group characteristic. Nor, since a legislator's ultimate purpose in making the prediction is political in character, is it necessarily more invidious or benign than a prediction based on other group characteristics. In the line-drawing process, racial, religious, ethnic, and economic gerrymanders are all species of political gerrymanders.

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My conclusion that the same standard should be applied to racial groups as is applied to other groups leads me also to conclude that the standard cannot condemn every adverse impact on one or more political groups without spawning more dilution litigation than the judiciary can manage. . . .

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In my view, the proper standard is suggested by three characteristics of the gerrymander condemned in [*Gomillion v. Lightfoot* (1960)]: (1) the 28-sided configuration was, in the Court's word, "uncouth," that is to say, it was manifestly not the product of a routine or a traditional political decision; (2) it had a significant adverse impact on a minority group; and (3) it was unsupported by any neutral justification and thus was either totally irrational or entirely motivated by a desire to curtail the political strength of the minority. These characteristics suggest that a proper test should focus on the objective effects of the political decision rather than the subjective motivation of the decisionmaker. In this case, if

the commission form of government in Mobile were extraordinary, or if it were nothing more than a vestige of history, with no greater justification than the grotesque figure in *Gomillion*, it would surely violate the Constitution. That conclusion would follow simply from its adverse impact on black voters plus the absence of any legitimate justification for the system, without reference to the subjective intent of the political body that has refused to alter it.

. . . The standard for testing the acceptability of such a decision must take into account the fact that the responsibility for drawing political boundaries is generally committed to the legislative process and that the process inevitably involves a series of compromises among different group interests. . . . The standard cannot, therefore, be so strict that any evidence of a purpose to disadvantage a bloc of voters will justify a finding of "invidious discrimination"; otherwise, the facts of political life would deny legislatures the right to perform the districting function. Accordingly, a political decision that is supported by valid and articulable justifications cannot be invalid simply because some participants in the decisionmaking process were motivated by a purpose to disadvantage a minority group.

The decision to retain the commission form of government in Mobile, Ala., is such a decision. I am persuaded that some support for its retention comes, directly or indirectly, from members of the white majority who are motivated by a desire to make it more difficult for members of the black minority to serve in positions of responsibility in city government. I deplore that motivation and wish that neither it nor any other irrational prejudice played any part in our political processes. But I do not believe otherwise legitimate political choices can be invalidated simply because an irrational or invidious purpose played some part in the decisionmaking process.

As Justice STEWART points out, Mobile's basic election system is the same as that followed by literally thousands of municipalities and other governmental units throughout the Nation. . . .

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I believe we must accept the choice to retain Mobile's commission form of government as constitutionally permissible even though that choice may well be the product of mixed motivation, some of which is invidious. For these reasons I concur in the judgment of reversal.

JUSTICE WHITE, dissenting.

. . . Both the District Court and the Court of Appeals properly found that an invidious discriminatory purpose could be inferred from the totality of facts in this case. The Court's cryptic rejection of their conclusions ignores the principles that an invidious discriminatory purpose can be inferred from objective factors . . . and that the trial courts are in a special position to make such intensely local appraisals.

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. . . Scrupulously adhering to our admonition that "[t]he plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question," the District Court conducted a detailed factual inquiry into the openness of the candidate selection process to blacks. The court noted that "Mobile blacks were subjected to massive official and private racial discrimination until the Voting Rights Act of 1965" and that "[t]he pervasive effects of past discrimination still substantially affec[t] black political participation.". . . Despite the fact that Negroes constitute more than 35% of the population of Mobile, no Negro has ever been elected to the Mobile City Commission. The plaintiffs introduced extensive evidence of severe racial polarization in voting patterns during the 1960's and 1970's with "white voting for white and black for black if a white is opposed to a black," resulting in the defeat of the black candidate or, if two whites are running, the defeat of the white candidate most identified with blacks. . . . Based on the foregoing evidence, the District Court found "that the structure of the at-large election of city commissioners combined with strong racial polarization of Mobile's electorate continues to effectively discourage qualified black citizens from seeking office or being elected thereby denying blacks equal access to the slating or candidate selection process."

The District Court also reviewed extensive evidence that the City Commissioners elected under the at-large system have not been responsive to the needs of the Negro community. The court found that

city officials have been unresponsive to the interests of Mobile Negroes in municipal employment, appointments to boards and committees, and the provision of municipal services in part because of "the political fear of a white backlash vote when black citizens' needs are at stake."

. . . After noting that "whenever a redistricting bill of any type is proposed by a county delegation member, a major concern has centered around how many, if any, blacks would be elected," the District Court concluded that there was "a present purpose to dilute the black vote . . . resulting from intentional state legislative inaction . . . "Based on an "exhaustive analysis of the evidence in the record," the court held that "[t]he plaintiffs have met the burden cast in *White v. Regester* (1973) and *Whitcomb v. Chavis* (1971)," and that "the multi-member at-large election of Mobile City Commissioners . . . results in an unconstitutional dilution of black voting strength."

. . .

The plurality apparently bases th[eir] conclusion on the fact that there are no official obstacles barring Negroes from registering, voting, and running for office, coupled with its conclusion that none of the factors relied upon by the courts below would alone be sufficient to support an inference of purposeful discrimination. The absence of official obstacles to registration, voting, and running for office heretofore has never been deemed to insulate an electoral system from attack under the Fourteenth and Fifteenth Amendments. [E]ven though Mobile's Negro community may register and vote without hindrance, the system of at-large election of City Commissioners may violate the Fourteenth and Fifteenth Amendments if it is used purposefully to exclude Negroes from the political process.

. . . The plurality states that the "fact [that Negro candidates have been defeated] alone does not work a constitutional deprivation," that evidence of the unresponsiveness of elected officials "is relevant only as the most tenuous and circumstantial evidence," that "the substantial history of official racial discrimination . . . [is] of limited help," and that the features of the electoral system that enhance the disadvantages faced by a voting minority "are far from proof that the at-large electoral scheme represents purposeful discrimination." By viewing each of the factors relied upon below in isolation, and ignoring the fact that racial bloc voting at the polls makes it impossible to elect a black commissioner under the at-large system, the plurality rejects the "totality of the circumstances" approach . . . and leaves the courts below adrift on uncharted seas with respect to how to proceed on remand.

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