Supplementary Material

Chapter 11: The Contemporary Era—Democratic Rights/Voting Rights/Majority-Minority Districts

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Easley v. Cromartie, 532 U.S. 234 (2001)

Easley v. Cromartie *was a successor case to* Shaw v. Reno *(1993), the case that ruled unconstitutional North Carolina's effort to create a second congressional district in which a majority of voters were African-Americans. North Carolina responded to that case by redrawing the boundaries of the contested Twelfth Congressional District. A majority of voters in the new Twelfth District were African-Americans, but the state legislature claimed that the predominant purpose of these boundaries was the legislative desire to create a safe Democratic district. Martin Cromartie and other North Carolina residents insisted the state was still using race to create congressional districts. They sued the government of North Carolina, initially James Hunt, but later Michael Easley. After a long tour through the federal court system, a federal district court eventually concluded that race was the predominant factor in the construction of the Twelfth District. North Carolina appealed to the Supreme Court of the United States. Both the Clinton administration and the American Civil Liberties Union filed amicus briefs supporting North Carolina. The brief for the Clinton administration declared,*

> *The crucial and uncontroverted fact is that in North Carolina African-Americans reliably vote overwhelmingly—90% or more—for Democratic candidates. Accordingly, any district that, like District 12, is drawn to concentrate reliable Democratic voters will tend as well to concentrate African-American voters.*

The Supreme Court by a 5–4 vote ruled that the North Carolina apportionment was constitutional. Justice Breyer's majority opinion held that the district court made a clear error when concluding that North Carolina was motivated by racial considerations rather than a desire to create a safe Democratic district. State legislators were interested in race, he claimed, only because African-American Democrats in North Carolina voted more reliably Democrat than white Democrats. Is this conclusion an evidentiary fact, or as Justice Thomas claims, a racial stereotype? After Easley v. Cromartie, *will any state legislature with a good lawyer be able to mask the use of race by claiming that the predominant factor in the apportionment was the desire to group together reliable Democrats. Do you think Justice Breyer, who dissented in every case finding a racial gerrymander, had any commitment to the* Shaw v. Reno *line of cases? What explains Justice O'Connor's decision to join the majority in both* Shaw *and* Easley*?*

JUSTICE BREYER delivered the opinion of the Court.

The issue in this case is evidentiary. We must determine whether there is adequate support for the District Court's key findings, particularly the ultimate finding that the legislature's motive was predominantly racial, not political. In making this determination, we are aware that, under Shaw I and later cases, the burden of proof on the plaintiffs (who attack the district) is a "demanding one." *Miller v. Johnson* (1995) (O'CONNOR, J., concurring). The Court has specified that those who claim that a legislature has improperly used race as a criterion, in order, for example, to create a majority-minority district, must show at a minimum that the "legislature subordinated traditional race-neutral districting principles . . . to racial considerations."

The Court also has made clear that the underlying districting decision is one that ordinarily falls within a legislature's sphere of competence. . . . Hence, the legislature "must have discretion to exercise the political judgment necessary to balance competing interests," and courts must "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." Caution is especially appropriate in this case, where the State has articulated a legitimate political explanation for its districting decision, and the voting population is one in which race and political affiliation are highly correlated. . . .

The critical District Court determination—the matter for which we remanded this litigation—consists of the finding that race rather than politics predominantly explains District 12's 1997 boundaries. . . .

[W]have given weight to the fact that the District Court was familiar with this litigation, heard the testimony of each witness, and considered all the evidence with care. Nonetheless, we cannot accept the District Court's findings as adequate for reasons which we shall spell out in detail. . . . and which we can summarize as follows:

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The District Court primarily based its "race, not politics," conclusion upon its finding that "the legislators excluded many heavily-Democratic precincts from District 12, even when those precincts immediately border the Twelfth and would have established a far more compact district." . . .

[T]he problem with this evidence is that it focuses upon party registration, not upon voting behavior. . . . [W]hite voters registered as Democrats "cross-over" to vote for a Republican candidate more often than do African-Americans, who register and vote Democratic between 95% and 97% of the time. . . . A legislature trying to secure a safe Democratic seat is interested in Democratic voting behavior. Hence, a legislature may, by placing reliable Democratic precincts within a district without regard to race, end up with a district containing more heavily African-American precincts, but the reasons would be political rather than racial.

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. . . The evidence taken together does not show that racial considerations predominated in the drawing of District 12's boundaries. That is because race in this case correlates closely with political behavior. The basic question is whether the legislature drew District 12's boundaries because of race rather than because of political behavior (coupled with traditional, nonracial districting considerations). It is not, as the dissent contends, whether a legislature may defend its districting decisions based on a "stereotype" about African-American voting behavior. And given the fact that the party attacking the legislature's decision bears the burden of proving that racial considerations are "dominant and controlling," given the "demanding" nature of that burden of proof, and given the sensitivity, the "extraordinary caution," that district courts must show to avoid treading upon legislative prerogatives, the attacking party has not successfully shown that race, rather than politics, predominantly accounts for the result. The record leaves us with the "definite and firm conviction," that the District Court erred in finding to the contrary. And we do not believe that providing appellees a further opportunity to make their "precinct swapping" arguments in the District Court could change this result.

We can put the matter more generally as follows: In a case such as this one where majority-minority districts (or the approximate equivalent) are at issue and where racial identification correlates highly with political affiliation, the party attacking the legislatively drawn boundaries must show at the least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles. That party must also show that those districting alternatives would have brought about significantly greater racial balance. Appellees failed to make any such showing here.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY join, dissenting.

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[T]he [district] court credited Dr. Weber's testimony that the districting decisions could not be explained by political motives. In the first instance, I, like the Court might well have concluded that District 12 was not significantly "safer" than several other districts in North Carolina merely because its Democratic reliability exceeded the optimum by only 3 percent. And I might have concluded that it would make political sense for incumbents to adopt a "the more reliable the better" policy in districting. However, I certainly cannot say that the court's inference from the facts was impermissible.

. . . It is not a defense that the legislature merely may have drawn the district based on the stereotype that blacks are reliable Democratic voters. . .

The only question that this Court should decide is whether the District Court's finding of racial predominance was clearly erroneous. In light of the direct evidence of racial motive and the inferences that may be drawn from the circumstantial evidence, I am satisfied that the District Court's finding was permissible, even if not compelled by the record.