In *Alabama Legislative Black Caucus v. Alabama* [2] the Supreme Court held 5-4 that when determining whether unconstitutional racial gerrymandering occurred—if race was a “predominant motivating factor” in creating districts—one-person-one-vote should be a background factor, not a factor balanced against the use of race. And Section 5 of the Voting Rights Act (VRA) does not require a covered jurisdiction to maintain a particular percent of minority voters in minority-majority districts. The Court sent this case back to the lower court to reconsider in light of its opinion.

In 2012 Alabama set two goals for state legislative redistricting. To comply with one-person-one-vote it sought to maintain districts with population deviations of less than one percent. To comply with Section 5 of the VRA it maintained the same percent of black voters in majority-minority districts. Section 5 requires that covered jurisdictions, like Alabama at the time, demonstrate that electoral changes not retrogress (undermine) minorities’ ability to elect a candidate of their choice. Complying with both goals was difficult because a number of majority-minority districts were underpopulated. In Senate District 26 about 16,000 voters were added—only 36 were white.

The Alabama Legislative Black Caucus sued Alabama claiming by adding more minority voters to majority-minority districts than were needed for minorities to elect a candidate of their choice Alabama engaged in unconstitutional racial gerrymandering. The Fourteenth Amendment’s Equal Protection Clause forbids the use of race as a predominant factor in district boundary drawing unless boundaries are narrowly tailored to achieve a compelling state interest. The lower court ruled in favor of Alabama 2-1 concluding race wasn’t a predominant factor and it even if it was Section 5 required maintaining the same percent of black voters in majority-minority districts.

Over the objection of a dissent written by Justice Scalia, the Court, in an opinion written by Justice Breyer, first concluded that the plaintiffs sufficiently pled district-specific racial gerrymandering claims and that the Alabama Democratic Conference had standing even though it did not provide to the district court a membership list showing it had members in every majority-minority district.

On the merits, the Court concluded that one-person-one-vote should not be weighed with other nonracial factors (like compactness, contiguity, incumbency protection, etc.) in determining whether the use of race predominates in redistricting. Instead “it is part of the redistricting background, taken as a given” because the predominance analysis is about “whether the legislature ‘placed’ race ‘above traditional districting considerations in determining which persons were placed in appropriately apportioned districts.’” If the equal population objective is put aside, “strong, perhaps overwhelming” evidence suggests race was the predominating factor in the drawing of Senate District 26.

The Court also rejected Alabama’s argument that Section 5 requires covered jurisdictions to maintain a particular percent of minority voters in majority-minority districts. Instead, Section 5 requires that a minority’s ability to elect a preferred candidate be maintained. The Court noted it would be hard to believe that reducing the percent of black voters from 70% to 65% would significantly impact black voters’ ability to elect the candidate of their choice. Finally, the Court stated legislatures need not guess what percent reduction might be retrogressive. Instead, they must have a “strong basis in
evidence” to support their race-based choices.

Writing for SCOTUSblog [3] Richard Hasen predicts that on remand a number of districts will be found to be racial gerrymanders. Alabama may be able to preempt that finding by “drawing new districts which are less racially conscious but still constitute a partisan gerrymander.” Following Shelby County v. Holder [4], legislatures can no longer claim that “Section 5 made us do it” but may still be able to make this claim under Section 2 of the VRA. But this case will make the claim harder to win.

By: 
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