

SUMMARY OF ARGUMENT

The district court abused its equitable powers in completely redrawing the congressional map of Georgia. The powers of the federal courts must be adequate to the task of fashioning remedies for violations, but those powers are limited. Any remedy must be related to the conditions that are found to offend the Constitution.

In the area of redistricting, deference by federal courts to state policy choices is especially compelling. That is true because the states have primary responsibility for apportionment. Then a district court must act in the legislature's stead, it must accomplish its task circumspectly, and in a manner that is free from any taint of arbitrariness or discrimination.

The district court ignored the state's traditional interest in preserving the core of existing districts. It completely relocated the Eleventh District and placed it in the northeast Atlanta corridor because it felt that was a better location for the district. The court also drastically reconfigured other districts, including the Third, the Eighth, and the Tenth.

The court's plan moved incumbents and pitted them against each other in a number of districts in disregard for the state's traditional policy of avoiding contests between incumbents. Two of the three dislocated incumbents were black, and only these two were placed in new districts with other incumbents.

The court's plan shifted nearly a third of the state's population into new districts. Least-change plans proposed by the parties and amici showed that it was possible to draw far less disruptive plans that at the same time cured the constitutional defects in the prior plan.

The court eliminated two of the three majority black districts in the existing plan, despite its acknowledgment of the legislature's decision to create a second majority black district after the 1990 census. The court's justification for refusing to draw a second majority black district was that Georgia's minority population was not geographically compact. The legislature, however, in enacting its first plan was of the view that the black population was sufficiently compact to constitute a majority in a second congressional district.

Proposed remedial plans were also submitted by the parties and amici which showed that a compact second majority black district can be drawn in Georgia while adhering to the state's traditional districting principles.

As long as a state does not subordinate traditional redistricting principles to race, it may intentionally create majority-minority districts, and may otherwise take race into consideration, without being subjected to strict scrutiny.

The court's plan violates Section 2 of the Voting Rights Act. Blacks in Georgia are geographically compact. As appears from various plans submitted to the district court, it is clearly possible to draw two reasonably compact majority black congressional districts in the state.

Blacks are also politically cohesive, while their preferred candidates are usually defeated by whites voting as a bloc. As the lower court found, a district containing approximately 55% of black registered voters was necessary to avoid dilution of minority voting strength.

The district court's plan is retrogressive in violation of Section 5. The court's plan reduced the number of majority black districts from the levels in the third legislative plan (which had three of eleven) and the first legislative plan (which had two of eleven), to only one of eleven in a state that is 27% black. Minorities admittedly have fewer electoral opportunities under the court ordered plan than under any of these pre-existing plans.

The court used the 1982 plan as a benchmark for measuring retrogression. The 1982 plan was not only malapportioned but contained ten districts while the 1992 plan contains eleven. The ten seat 1982 plan by definition cannot serve as a reasonable benchmark by which to evaluate the court's eleven seat plan. The most appropriate benchmarks for determining retrogression are either the state's initial eleven seat plan containing two majority black districts, or the state's policy and goal of creating two majority black districts. Using either of these benchmarks, the court ordered plan would violate the retrogression standard of Section 5.

The court's plan does not comply with one person, one vote. Congressional redistricting is held to even stricter standards than legislative redistricting. The total deviation among districts in the district court's plan is 0.35%. Plans with lower overall deviations were submitted to the court by the United States (0.19%) and by appellants (0.29 %). Other district courts have had no difficulty in drafting or approving plans with zero deviations.