Washington and Lee Journal of Civil Rights and Social Justice

Volume 1 | Issue 1 Article 11

Spring 4-1-1995

HOLDER v. HALL 114 S.Ct. 2581 (1994) United States Supreme Court

HOLDER v. HALL
114 S.Ct. 2581 (1994)
United States Supreme Court

FACTS

Since its creation in 1912, Bleckley County, Georgia, has been governed by a single county commissioner. The commissioner, who has always been white, holds all executive and legislative authority. Bleckley County is twenty per cent black. In 1985, the state legislature authorized the county to adopt, if it wished, a multimember commission form consisting of five members elected from single member districts. This plan was defeated by voters although they had previously approved of a five-member district plan for the county school board. Respondents, six black registered voters from the county and the local chapter of the National Association for the Advancement of Colored People, sued the county commissioner and the board of elections alleging that the single commissioner form of county government violated the Fourteenth[1] and Fifteenth[2] Amendments and section two of the Voting Rights Act of 1965 (the Act).[3]

The district court[4] held for the defendants, concluding that the plaintiffs had not shown intent as required by the Fourteenth and Fifteenth Amendments and that they had not proven a violation of the Voting Rights Act. The district court applied the test set out in *Thornburg v. Gingles*[5] and held that the plaintiffs met the compactness prong of the test but failed to show that their minority group was politically cohesive or that whites usually voted as a bloc. The court of appeals[6] reversed, concluding that the respondents had met the second and third prongs of the *Gingles* test. Because of the statutory ruling, the court of appeals did not consider the district court's ruling on the constitutional claim.

HOLDING

The United States Supreme Court, in a five to four decision, held that the size of a governing body cannot be challenged under section two of the Voting Rights Act.[7] The case was remanded to the district court to hear black residents' arguments that the single commissioner government violates their constitutional rights to equal protection under the law.[8]

ANALYSIS/APPLICATION

In a plurality opinion, joined in toto only by Chief Justice Rehnquist, and joined in part by Justice O'Connor, Justice Kennedy stated that to determine whether vote dilution prohibited by section two of the Voting Rights Act has occurred, a benchmark is required to determine the amount of dilution.[9] Hence, a vote dilution suit challenging the size of a governmental body is problematic because there "is no principled reason why one size should be picked over another for comparison."[10] With no objective standard, it is impossible to evaluate whether vote dilution has occurred, even when the *Gingles* totality of circumstances preconditions are met.[11]

---

[1] Section 1 of the Fourteenth Amendment states:
"No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life , liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1.

[2] Section 1 of the Fifteenth Amendment states that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on the account of race, color, or previous servitude." U.S. Const. amend. XV, § 1.

[3] Section 2 of the Voting Rights Act states in part:
"[N]o voting qualifications or prerequisites to voting, or standard, practice or procedure shall be imposed or applied by any state or political subdivision in a manner which results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color . . . ." 42 U.S.C. § 1973 (1982).

[4] *Hall v. Holder*, 757 F.Supp. 1560 (M.D. Ga. 1991).

[5] 478 U.S. 30 (1986) (requiring that "the minority group . . . is sufficiently large and geographically compact to constitute a majority in a single-member district, that the majority group "votes sufficiently as a bloc to enable it - in the absence of special circumstance . . . usually to defeat the minority's preferred candidate").

[6] *Holder v. Hall*, 955 F.2d 1563 (11th Cir. 1992).

[7] *Holder v. Hall*, 114 S.Ct. 2581, 2587 (1994).

[8] *Id.*

[9] *Id.* at 2585.

[10] *Id.*

[11] *Id.*

The respondents argued that, since the size of a governing body may not, pursuant to section five[12] of the Voting Rights Act, be changed in covered jurisdictions without preclearance, size may be an element of a dilution challenge. But Justice Kennedy and Chief Justice Rehnquist answered that section two and section five of the Voting Rights Act are different in scope.[13] Section five addresses changes in existing voting procedures and bars those that are retrogressive as measured against an existing practice.[14] A voting practice that must be precleared under section five can not necessarily be challenged in a section two dilution suit, because in a section five suit, a benchmark exists by definition.[15]

Writing separately, Justice O'Connor disagreed that section two and section five are different in scope, but asserted that a suit challenging the size of a governing body cannot be maintained under section two because there can never be an objective alternative benchmark for comparison.[16] "In a dilution challenge to the size of a governing authority, choosing the alternative for comparison — a hypothetical larger (or smaller) governing authority — is extremely problematic. The wide range of possibilities makes the choice inherently standardless."[17] For that reason, Justice O'Connor would not allow any vote dilution suit which challenges the size of a governmental body.

Justice Thomas, in a concurring opinion joined by Justice Scalia, completely foreclosed the possibility of any kind of vote dilution suit being brought under section two, because vote dilution is not a "standard, practice, or procedure" within the terms of section two.[18]

Justice Thomas argued that the language of the Voting Rights Act has been misinterpreted by the Court in previous cases. Neither size of a governing body nor allegedly dilutive election methods are a 'standard, practice, or procedure' within the terms of the Act, because "those terms reach only state enactments that limit citizens' access to the ballot."[19] Thus, Justice Thomas argued for a "systematic reassessment of section two jurisprudence."[20]

According to Justice Thomas, the Voting Rights Act of 1965, originally designed to ensure blacks the right to register and vote, has been converted into a device for regulating political power among racial and ethnic groups, and indeed for proportional representation in contradiction to the plain terms of the Act.[21] In Justice Thomas's view, it is not the business of the courts to choose political theories of representation. The Act serves only to ensure blacks the vote, not to ensure their political power, "in a majoritarian system, numerical minorities lose elections."[22] In sum, Justice Thomas concluded that prior group vote dilution jurisprudence is repugnant to the Court and is not in fact covered by section two of the Voting Rights Act.[23]

The dissent[24] argued that it is well settled that the size of a governing body is a "standard, practice or procedure" under section two of the Voting Rights Act and that "by all objective measures, the proposed five-member Bleckley County Commission [authorized by the state legislature] presents a reasonable, workable benchmark against which to measure the practice of electing a sole commissioner."[25] The dissent further asserted that here "identifying an appropriate baseline against which to measure is

---

[12] Section 5 of the Voting Rights Act requires preclearance approval by a court or by the Attorney General "[w]henever a [covered] State or political subdivision . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting . . . different from that [previously] in force or effect" so as to ensure that it "does not have the purpose and will have the effect of denying or abridging the right to vote on the account of race or color . . . ." 42 U.S.C. § 1973c (1982).

[13] *Holder*, 114 S.Ct. at 2586.

[14] *Id.*

[15] *Id.* at 2587.

[16] *Id.*

[17] *Id.* at 2589.

[18] *Id.* at 2587.

[19] *Id.*

[20] *Id.* at 2591.

[21] Section 2(b) provides that a violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election . . . are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other member of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office . . . is one circumstance which may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population. 42 U.S.C. § 1973 (1982).

[22] *Holder*, 114 S.Ct. at 2596.

[23] *Id.* at 2598.

[24] Justice Blackmun filed a dissenting opinion, in which Justices Stevens, Souter, and Ginsburg joined. Justice Ginsberg filed a separate opinion. Justice Stevens filed a dissenting opinion in which Justices Blackmun, Souter and Ginsburg joined.

[25] *Holder*, 114 S.Ct. at 2622.

not difficult. In other cases, it may be harder. But the need to make difficult judgments does not 'justify a judicially created limitation on the coverage of the broadly worded statute, as amended by Congress.'"[26]

I. The Statutory Claim

In this section two vote dilution suit challenging the size of a governing authority, the Court seemed most concerned that no benchmark exists by which to measure vote dilution. "With respect to challenges to the size of a governing authority, respondents fail to explain where the search for reasonable alternative benchmarks should begin and end, and they provide no acceptable principles for deciding future cases . . . we therefore conclude that a plaintiff cannot maintain a section two challenge to the size of a government body . . . ."[27]

In some respects the plurality's holding is not unequivocal. Although they concluded that a plaintiff cannot maintain a section two challenge to the size of a government body because the determination of a benchmark is "inherently standardless," one wonders whether the plurality might have found a violation of section two if respondents in this case had made a more convincing showing of an acceptable benchmark. Under this reading, only two justices in the majority completely foreclosed section two suits challenging the size of a governmental body: Justices Thomas and Scalia asserted that the Court should not *attempt* to determine benchmarks in any kind of vote dilution case.

The problem of identifying a benchmark is unique to section two challenges to size because, as Justice Kennedy pointed out, in other section two dilution cases such as challenges to an anti-single-shot voting rule, for instance, dilution can be evaluated by comparing the system with that rule to the system without that rule.[28] In a challenge to a multimember at-large system, a court may compare it to a system of multiple single-member districts. The *Holder* decision implicity overrules a Eleventh Circuit case[29] in which a single commissioner form of government was challenged under section two. In that case neither the district court nor the appellate court considered the question of an appropriate benchmark.

By focusing on the absence of a benchmark by which to measure the amount of dilution, the plurality erects a roadblock for plaintiffs bringing suits under the Voting Rights Act. In effect, the plurality adds another prong to the *Gingles* test for case in which the size of a governing body is challenged. The Court agreed with the court of appeals that the *Gingles* preconditions have been met. However, the Court seemed to be saying that, although a standard, practice or procedure abridges minority voting rights, without an objective showing of degree, there is no remedy.

This is disingenuous. The benchmark requirement belies the Court's growing anxiety in deciding cases involving race-based classifications. The underlying rationale for the plurality's opinion is in step with the holdings of *Shaw v. Reno*[30] and *Johnson v. DeGrandy*,[31] in which the majority disfavors racial categorizations whether they help or hurt minorities.

To their credit, Justices Thomas and Scalia are more forthright in their approach in holding that vote dilution cases should not be heard under section two. In contrast to Justices Kennedy, O'Connor and the Chief Justice, who draw the line against vote dilution cases where determining benchmarks is too difficult, Justices Thomas and Scalia asserted that whenever the Court makes a determination of a benchmark, it is making a policy judgment and that in pursuing the ideal measure of voting strength, the Court has devised remedial mechanisms that encourage federal courts to segregate voters into racially designated districts to ensure minority voting success.[32]

---

[26] *Id.* at 2622 (quoting *Chisom v. Roemer*, 111 S.Ct. 2354, 2368 (1991))(holding that section two of the Voting Rights Act applied to the at-large election from a multimember district of two members of the seven-member Louisiana Supreme Court).

[27] *Holder*, 114 S.Ct. at 2587.

[28] *Id.* at 2585.

[29] *Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547 (11th Cir.1987), cert. denied sub nom., *Duncan v. Carrollton*, 485 U.S. 936 (1988) (holding that *Gingles* required a restructuring of the single commissioner form of government and remanded the case for the sole purpose of allowing the plaintiffs to prove sufficient geographic compactness and political cohesiveness to establish a violation of section 2).

[30] 113 S.Ct. 2816 (1993) (holding for the first time that white voters could challenge the constitutionality of oddly drawn majority black districts).

[31] 114 S.Ct. 2647 (1994) (ruling that the Voting Rights Act does not entitle minority voters to the largest possible number of minority dominated election districts); see also *Johnson v. DeGrandy*, 1 REAL Digest 48 (this digest).

[32] *Holder*, 114 S.Ct at 2591.

II. The Constitutional Claims

The Court addressed only the statutory claim of the respondents.[33] The question not answered in this case is what evidence of intent would be necessary to establish a violation of the Fourteenth and Fifteenth Amendments.

The showing of intent is not always easy. In the district court, the only court in this case to examine the constitutional claim, the absence of any evidence showing that the single commissioner government was established to abridge the voting rights of African-Americans was conclusive to the finding of no intent. The district court followed the district court's analysis in *Stallings*, which emphasized the importance of the plaintiff's historical evidence that Carroll County had sought to establish a one person commission in order to keep blacks from participating in local government. The *Stallings* court found racially charged statements about the advantages of a single commissioner by a government official to be particularly dispositive of intent.[34]

In voting rights cases that have reached the Supreme Court, the intent standard has been equally high. In *Mobile v. Bolden*,[35] Justice Stewart asserted that in order to claim that an at-large system violated the Voting Rights Act or the Fourteenth and Fifteenth Amendments, the plaintiff would have the burden of showing that the at-large scheme "represents purposeful discrimination against the Negro voter."[36]

In the constitutional claims, although the problem of determining a benchmark that is created by the statutory results test may be eliminated to a certain extent, a showing of intent would not necessarily allay the judicial policy-making concerns of the Court. Even if intent is shown, the amount of dilution caused by a particular governmental structure would need to be determined and an appropriate remedy would have to be identified.

CONCLUSION

While the *Holder* Court has added further restrictions on section two, all, however, may not be lost - yet. While it is debatable whether a plaintiff could ever point to an acceptable benchmark, plaintiffs who are successful in doing so may prevail in a dilution challenge to size. This window of opportunity, however, does not offer much hope given the Court's growing hostility toward the Voting Rights Act as evidenced in *Johnson* and *Shaw*.

In adding the benchmark requirement to the *Gingles* inquiry, the Court transformed the results test heralded as a victory by civil rights activists into a hindrance in vote dilution challenges to size. And while the *Holder* Court did not evaluate intent, judging from the outcome of recent constitutional voting rights cases,[37] minority plaintiffs who bring a vote dilution claim under the Fourteenth and Fifteenth Amendments are likely to fare no better.

Summary and Analysis Prepared By:
Carla J. Urquhart

---

[33] *Id.* at 2587.
[34] *Stallings*, 829 F.2d at 1552.
[35] 446 U.S. 55 (1980).
[36] *Id.* at 74.

[37] *See Shaw v. Reno*, 113 S.Ct. at 2816 (1993); *See also Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547 (11th Cir. 1987).