Washington and Lee Journal of Civil Rights and Social Justice

Volume 1 | Issue 1 Article 12

Spring 4-1-1995

JOHNSON v. DEGRANDY 114 S.Ct. 2647 (1994) United States Supreme Court

JOHNSON v. DEGRANDY
114 S.Ct. 2647 (1994)
United States Supreme Court

FACTS

In 1992, a group of Hispanic voters headed by Miguel DeGrandy brought suit in a United States District Court in Florida against state officials, including the Speaker of the Florida House of Representatives.[1] The original complaint alleged that the districting plan of 1982 violated both the Fourteenth Amendment's Equal Protection Clause and the Voting Rights Act of 1965[2] in that the districts from which voters had chosen representatives and senators were malapportioned, and failed to reflect changes in the state's population since 1982.[3] The complaint sought redistricting and reapportionment. The Florida Conference of the National Association for the Advancement of Colored People (NAACP) and individual black voters filed a similar suit. The two suits were subsequently consolidated by the district court.

Several months after DeGrandy and the NAACP filed suit, the state legislature adopted Senate Joint Resolution 2-G (SJR 2-G),[4] which once again reapportioned the districts at issue. In the districting scheme based on the 1990 census, Florida was divided into forty single-member Senate voting districts and one hundred and twenty single-member House voting districts. Hispanics were a majority in nine House districts and three Senate districts.[5]

Both the Hispanic and the black plaintiffs amended their complaints to allege that SJR 2-G violated section two of the Voting Rights Act. They claimed that the new plan "unlawfully fragments cohesive minority communities and otherwise impermissibly submerges their right to vote and to participate in the electoral process."[6] The essence of the complaints was the plan's failure to maximize the number of districts where black or Hispanic voters would be a majority. The Department of Justice (DOJ) filed a similar complaint, alleging that SJR 2-G diluted the voting strength[7] of blacks and Hispanics in Miami and Pensacola.[8] The district court consolidated the DOJ's complaint with the other complaints.

After trial, the district court found that the plan's provisions for state House districts was in violation of section two because "more than [SJR 2-G's] nine Hispanic districts may [have] be[en] drawn without having or creating a regressive effect upon black voters."[9] The court imposed a remedial plan offered by the *DeGrandy* plaintiffs which created eleven majority Hispanic House Districts.[10]

The court did not change the number of SJR 2-G's Senate districts, however. Although it found that a fourth majority Hispanic district could have been drawn, it would have been at the expense of black voters.[11] The court was "of two minds",[12] undecided whether this violated section two without a remedy, or whether it did not violate section two at all.[13] The defendants' motion for reconsideration was denied.

In an expanded opinion,[14] the district court found that Dade County, Florida, where Miami is located, had a "tripartite" political structure with whites, blacks, and Hispanics voting as separate blocs.[15] The Hispanic and black blocs were internally cohesive, and did not cooperate with each

---

[1] When initially filed, the Speaker of the House was T.K. Wetherell. Bolley Johnson became the new Speaker by the time the suit reached the Supreme Court.

[2] Pub. L. 103-94, 107 Stat. 1005 (codified as amended at 42 U.S.C. § 1973 (1988)).

[3] *DeGrandy v. Wetherell*, 815 F. Supp. 1550 (N.D. Fla. 1992).

[4] 1992 Fla. Sess. Law Serv. 3311 (West).

[5] *Johnson v. DeGrandy*, 114 S.Ct. 2647, 2652 (1994).

[6] *DeGrandy v. Wetherell*, 815 F.Supp. at 1559.

[7] Vote dilution is defined as techniques preventing minorities from gaining access to political power by reducing or nullifying the effects of the votes that minorities cast. *See* Wasby, Vote Dilution, Minority Voting Rights, and the Courts 1 (1982).

[8] The Pensacola issues were settled before trial, leaving only the complaints of Hispanic voters regarding Dade County vote dilution before the Court. *See DeGrandy*, 114 S.Ct. at 2652 n.4.

[9] *Id.* at 2652.

[10] *DeGrandy*, 114 S.Ct. at 2652.

[11] *Id.*

[12] *Id.* at 2653.

[13] The district court's subsequent opinion explained that its earlier opinion "should be read as holding that the Florida Senate plan does not violate section 2 such that a different remedy must be imposed." *Id.* at 2653 n.5 (citing *Wetherell*, 815 F. Supp. at 1582).

[14] *Wetherell*, 815 F.Supp. at 1550.

[15] *DeGrandy*, 114 S.Ct. at 2653 (quoting *Wetherell*, 815 F. Supp. at 1572). "Tripartite" politics is defined as where "ethnic factors predominate over all others."

other. In other words, there were no "crossover" votes. The court also found that whites voted as a bloc to bar minority groups from electing their chosen candidate, except when minorities were the majority of voters.[16] Despite its finding of vote dilution, the district court decided that the remedies for blacks and Hispanics were mutually exclusive and the "fairest" accommodation was to keep SJR 2-G.[17]

The *DeGrandy* plaintiffs and the United States appealed this decision on grounds that the district court failed to provide relief for the alleged section two violation in SJR 2-G's senatorial districts. The United States Supreme Court stayed judgment and noted probable jurisdiction.

HOLDING

The Supreme Court held that the district court misapplied the "totality of circumstances" test for vote dilution, resulting in a misreading of the governing law from *Thornburg v. Gingles*.[18] It further held that there was no violation of section two of the Voting Rights Act in the House districts because minority voters formed effective voting majorities in a percentage of House districts roughly proportional[19] to their percentage share of the voting-age population in Dade County.[20] In other words, the failure to maximize the voting strength of the minority population did not violate section two of the Voting Rights Act.[21] Regarding the senatorial districts, the Supreme Court held that although the district court again misapplied the governing law, it correctly left the state's plan undisturbed.[22]

ANALYSIS/APPLICATION

I. The *Gingles* Test

The state defendants argued that the district court misapplied Supreme Court precedent to require the maximum number of minority-voter districts even when, as in this case, the number of districts is in proportion to the area's minority voting-age population.[23] The state argued that this proportionality bars a finding of vote dilution.

Analyzing the state's claim, the Court retraced the requirements to prove vote dilution. Using the test first stated in *Gingles*,[24] the Court cited the three conditions that must be met for a dilution challenge: 1) a minority group must be sufficiently large and geographically compact to constitute a majority in a single-member district; 2) the group is politically cohesive; 3) the white majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate.[25]

The first condition was assumed to have been met in spite of the factual dispute of whether the correct characteristic of the Hispanic population is age or citizenship.[26] The state contended that half of the voting-age Hispanics were not citizens, and thus were not eligible to vote. Therefore, the lower

---

[16] *DeGrandy*, 114 S.Ct. at 2653.

[17] *Id.*

[18] 478 U.S. 30 (1986); *DeGrandy*, 114 S.Ct. at 2662.

[19] "Proportionality" is defined here as the number of majority-minority voting districts compared to the minority members' share of the voting-age population. *Id.* at 2658 n.11.

[20] *Id.* at 2658-2659.

[21] *Id.* at 2659.

[22] *Id.* at 2663.

[23] The record shows that out of the 20 House districts in part of Dade County, Hispanics would make an effective voting majority in 45% of them. "Effective" majority is defined as 60-65%. This percentage accounts for the lower voter turnout, registration, and younger median Hispanic population. Hispanics constitute 47% of the voting age population in that area. *DeGrandy*, 114 S.Ct. at 2658 (citing *Wetherell*, 815 F.Supp. at 1580-82).

[24] 478 U.S. 30 (1986). The *Gingles* conditions narrowed the interpretation of the factors stated in the Senate Report of the 1982 amendments. The factors outlined in the report include: (1) the history of voting-related discrimination in the state or political subdivision; (2) the extent to which voting is racially polarized; (3) the extent to which the state or political subdivision has used discriminatory voting practices or procedures; (4) the extent to which minorities bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process; (5) whether past political campaigns have been characterized by overt or subtle racial appeals; (6) the extent to which members of the minority group have been elected to public office in the jurisdiction. Furthermore, probative evidence includes the elected officials' unresponsiveness to the minority group's needs, and tenuous policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure. S. Rep. No. 417, 97th Cong., 2d Sess. 27-29 (1982), *reprinted in* 1982 U.S.S.C.A.N. 177, 206-07.

[25] *Gingles*, 478 U.S. at 50-51. White majority bloc voting may be considered a more significant indicator of vote polarization than minority bloc voting because of its effect in shutting out the minority. Wasby, *supra* note 7, at 8.

[26] *DeGrandy*, 114 S. Ct. at 2655.

number of actual voting-age Hispanic citizens do not warrant a change in the state's plan.[27] The Court dismissed this argument as unnecessary to resolve.[28] It agreed with the district court and found that the Hispanic minority met all three *Gingles* conditions.[29]

II. Totality of Circumstances

The *Gingles* factors are a necessary precondition to prove a section two claim, but are insufficient in and of themselves. The totality of circumstances must also be examined, as required by section 2(b) of the Voting Rights Act, which states that "a denial or abridgment occurs where, based on the totality of circumstances . . . [members of a protected class] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[30]

The Court noted that proof of vote dilution may become more difficult in a case like this, where the issue is "not the chance for some electoral success in place of none, but a chance for more success in place of some."[31] In other words, the *DeGrandy* plaintiffs were not alleging dilution because of an absence of Hispanic majority districts, but rather because it would have been possible to create more.

In finding vote dilution, the Court held that the district court misjudged the "totality of circumstances."[32] In spite of meeting the *Gingles* conditions for vote dilution, SJR 2-G provided minority representation proportional to the minority voting-age population. With the plan, Hispanic voters had an equal measure of political and electoral opportunity. The Court held that SJR 2-G would end discrimination, not perpetuate it.[33]

The plaintiffs wanted more weight to be placed on the district court findings of packing, (placing a large number of minority voters in one district so that there are few minority voters in other districts), and fragmenting, (distributing a small number of minorities in several districts to limit their influence).[34] The districting plan divided the same housing development, heavily populated by Hispanics, into two districts. Consequently, one district packed Hispanic voters, while two others fragmented them.[35]

In response, the Court stated that "some dividing by district lines and combining within them is virtually inevitable and befalls any population group of substantial size. Attaching the labels 'packing' and 'fragmenting' to these phenomena, without more, does not make the result vote dilution when the minority group enjoys substantial proportionality."[36]

III. Maximization of Districts

The Court reasoned that the district court placed insufficient weight on proportionality in the House and Senate districts, and apparently adopted a rule of thumb that anything short of the maximum number of majority-minority districts violated section two.[37] Such a reading "tends to obscure the very object of the statute and runs counter to its textually stated purpose."

In the five Senate districts wholly within Dade County, the percentage of the voting age minority population was proportional to the percentage of majority-minority districts.[38] The voting age population of Hispanics was approximately fifty-four percent, while sixty percent of the districts had an effective Hispanic majority. For blacks, the voting age population was 13.5%; twenty percent of the districts had a black majority.[39]

Moreover, the Senate plan achieved near proportionality even including the area surrounding Dade County.[40] As with the House districts, the Court concluded that there was no violation of section two considering the totality of circumstances.[41] In the Court's view, "one may suspect dilution from political famine, but one is not entitled to suspect

---

[27] *Id.*

[28] *Id.* at 2656.

[29] The second condition, political cohesion, was found among Hispanic and black minorities. Political immigrants — Cubans, Nicaraguans, and other Central Americans — formed a conservative coalition. Puerto Ricans and Dominicans, while less conservative, identified more with the language minorities than with blacks. Blacks were found to be heavily Democratic; ninety percent were registered Democrats. The district court also found that whites voted as a bloc. Substantial testimony concluded that three distinct and separate ethnic groups existed in Dade County, each with different social and economic interests. According to expert testimony, minorities were usually only able to elect candidates of their choice when they were firmly in the majority. *Wetherell*, 815 F. Supp. at 1572.

[30] 42 U.S.C. § 1973(b).

[31] *DeGrandy*, 114 S.Ct. at 2658.

[32] *Id.*

[33] *Id.* at 2658-2659.

[34] *Id.* at 2659.

[35] *Id.*

[36] *Id.* at 2659.

[37] *Id.*

[38] *Id.* at 2663 n.19.

[39] *Id.*

[40] *Id.* at 2663.

[41] *Id.*

dilution from mere failure to guarantee a political feast."[42]

IV. Safe Harbor Provision

Although the Court rejected maximization of districts, it also rejected the state's position that no dilution occurs whenever the percentage of single-member districts in which minority voters form an effective majority mirrors the minority's percentage of relevant population,[43] the so-called "safe-harbor" of proportionality.[44]

First, it found that the "safe harbor" provision violated the statutory requirement for assessment of the totality of circumstances,[45] as well as the considered purpose and ideal of the Voting Rights Act.[46] Totality review is necessary because of the ingenuous devices that may be employed by state and local governments to subvert section two even where proportionality exists.[47]

Secondly, even restricting safe harbor to cases of redistricting dilution runs the risk of allowing gerrymandering so long as the overall outcome is proportional.[48] Thus, some minorities' rights could be traded off against others.[49] Moreover, a safe harbor rule could "promote and perpetuate efforts to devise majority-minority districts even in circumstances where they may not be necessary to achieve equal political and electoral opportunity."[50] Thus, proportionality is to be used only as evidence in the assessment of section two claims.

In addition to the majority's opinion, Justices O'Connor and Kennedy offered concurring opinions. Justice O'Connor's opinion stressed that proportionality is always relevant evidence, but is never itself dispositive.[51] In other words, the absence of proportionality does not prove dilution, just as its presence does not prove non-dilution.

Justice Kennedy not only agreed that section two does not require maximization of majority-minority districts, but rejects remedial districting entirely. Moreover, he wrote, sorting persons by race "raises the most serious constitutional questions",[52] and "takes us further away from the goal of a political system in which race no longer matters."[53]

Lastly, Justices Thomas and Scalia joined in a dissent which would have dismissed the cases for failure to state a claim under section two.[54]

CONCLUSION

The majority's decision may be considered a compromise. Proportionality is not dispositive, only evidentiary. However, the decision brings with it questions about the future of section two claims. Applying the maximization principle in this case may have been inappropriate, but questions arise when only one minority group is involved. What the decision apparently holds is that even when another minority group's interests are not at stake, the state is not obliged to create the maximum number of majority-minority districts.

However, in practice, the Court's treatment of proportionality is confusing. While it states that proportionality is not dispositive, the fact that the Hispanic districts were in proportion to the Hispanic population was *the* major factor in the decision. Although the Court dismissed the state-proposed safe harbor rule, it seems to have adopted it. The Court warned that such a rule would allow insidious tactics of discrimination to continue if proportionality was the end result. Nevertheless, allegations of the "fragmenting" and "packing" of a Hispanic housing project were discounted as mere "recitations of testimony."[55] Given this response by the Court, it is difficult to imagine when the Court would find a violation of section two when proportionality exists. Those persons challenging a districting scheme that is proportional to the minority population will find it a difficult case to win.

Moreover, the Kennedy concurrence may be a precursor to even tougher times for section two claims. Kennedy not only rejects maximization, but

---

[42] *Id.* at 2660.

[43] The parties were in dispute about whether the relevant population in the case was the minority group's share of the population, or the percentage of minorities actually eligible to vote. *Id.* at 2660 n.14.

[44] *Id.* at 2660.

[45] *See* 42 U.S.C. § 1973(b).

[46] *See Prosser v. Elections Board*, 793 F.Supp. 859, 870 (W.D. Wis. 1992) (goal of the Voting Rights Act is to enhance the electoral power of minority voters).

[47] *See McCain v. Lybrand*, 465 U.S. 236, 243-246 (1984).

[48] *Degrandy*, 114 S.Ct. at 2660.

[49] *Id.* at 2661.

[50] *Id.*

[51] *Id.* at 2664.

[52] *Id.* at 2666.

[53] *Id.* (quoting *Shaw v. Reno*, 113 S.Ct. 2816, 2832 (1993)).

[54] The dissent is more fully stated in *Holder v. Hall*, 114 S.Ct. 2581, (1994), 1 REAL Digest 44, 45 (apportionment plan is not a "standard, practice, or procedure" that may be challenged under section 2 of the Voting Rights Act) (Thomas, J., concurring).

[55] *Id.* at 2659.

questions the very existence of remedial districting. For Kennedy, the creation of majority-minority districts gives rise to an equal protection claim and is subject to strict scrutiny.

The Kennedy opinion is also indicative of the Court's desire to ignore the importance of racial bloc voting as a measure of vote polarization.[56] It also signifies an inability to handle a controversial, racially-charged issue. Nevertheless, the Court simply cannot wish away "the group nature of representation itself, especially in a system of geographic districting".[57] To be sure, "[t]he concept of 'representation' necessarily applies to groups: groups of voters elect representatives, individual voters do not."[58]

Summary and Analysis Prepared By:
Greer D. Saunders

---

[56] *See* Wasby, *supra* note 7, at 8. Justice Stevens is noted as stating that "in the long run, there is no more certainty that individual members of racial groups will vote alike than that members of other identifiable groups will do so." *See City of Mobile v. Bolden*, 446 U.S. 55, 88 (1981).

[57] *See* Guinier, The Tyranny of the Majority: Fundamental Fairness in Representative Democracy, 120-21 (1994).

[58] *Id.* at 125 (quoting *Davis v. Bandemer*, 478 U.S. 109, 167 (1986)) (Powell, J., concurring and dissenting).