10-1975

East Carroll Parish School Board v. Marshall

Lewis F. Powell, Jr.

JO/SS 1/14/74

D

Reapportionment case in which CA 5 en banc invalidated a change in a small Parish in La. (13,000) from wards to electors at large. As the blacks were 59% of population, they apparently elected not to vote so that whites controlled parish.

PRELIMINARY MEMO

I would have thought at large in these circumstances was valid (one man one vote) & favorable to blacks. But we should not review this local issue

February 15, 1974 Conference
List 1, Sheet 3

Deny
Owens

No. 73-861

Cert to CA5 (En banc 9-6. Panel split noted below)

Timely

EAST CARROLL PARISH SCHOOL BOARD and EAST CARROLL PARISH POLICE JURY

v.

MARSHALL

Federal/civil - Reapportionment

The school board and the police jury (i. e., board of commissioners) of East Carroll Parish, La. seek review of a CA5 en banc ruling that a reapportionment plan requiring at large elections impermissibly diluted the voting power of blacks. The en banc court reversed a two to one CA5

panel and the USDC. Respondent Marshall is the black who challenged the reapportionment plan in USDC.

1. FACTS. East Carroll is a rural parish with a 1970 population of approximately 13,000, of which about 59% are black. The parish has an extensive history of de jure and de facto racial discrimination in schools, voting, etc. From 1922 to 1962, no black resident of the parish had been permitted to vote. As a result of federal voter registration drives, the voter registration now breaks down 46% black and 54% white. Thus, while blacks are a majority of the population of the parish, they are presently a minority of registered voters.

Traditionally the parish has elected its school board and police jury under a geographic ward system of voting. By 1971, this coupled with registration gains produced two black members of the policy jury and one black school board member. Allegedly in response to reapportionment requirements of federal law, the board and jury in the late 60's commenced efforts to convert from a geographic ward system of election to a wholly at large system. This was part of a state wide pattern. State enactments to effect this change statewide were submitted to the U. S. AG under §5 of the Voting Rights Act of 1965. The AG rejected these enactments as discriminating against black voters and as "denying to them an effective voice in the selection of Police Jury and School Board members". The AG cited as a specific example of racial discrimination the at-large scheme of election proposed for East Carroll Parish.

An ongoing USDC reapportionment lawsuit for East Carroll Parish produced an order that the Parish submit plans to reapportion itself. Despite the AG objections noted above, the Parish proposed an at large plan for the board and jury. Respondent was allowed to intervene on behalf of all blacks to challenge the at large plan. Respondent alleged that the USDC lacked power to approve such a plan, in light of the AG's objections under §5 of the Voting Rights Act of 1965. He also claimed that the plan violated the 14th and 15th Amendments.

The USDC (J. Dawkins) approved the at large plan. The court noted that an at large plan produced zero population deviation, the optimal one-man, one-vote outcome. Furthermore, minority voter dilution was not unacceptable, since blacks constituted a majority of the population, if not of registered voters. A 3 man CA5 panel affirmed 2-1 (Coleman, Ingraham; Gewin, dissenting). CA5 then took the case en banc.

2. THE EN BANC MAJORITY OPINION (Brown, Wisdom, Gewin, Bell, Thornberry, Goldberg, Ainsworth, Godbold, Simpson). Judge Gewin wrote for the majority. He declared that the concept of population possesses no talismanic quality for one-man, one-vote cases. That concept must always be balanced against the possibility of minimization of the voting strength of minority groups. In his opinion, the USDC had applied a per se rule that since blacks were in the majority in the parish, an at large plan could not possibly submerge their vote. This was contrary to, e. g., White v. Regester, 412 U. S. 755 (1973).

The majority believed that respondent had carried his burden of establishing that the at large plan would cancel out the effect of the black vote. The court stressed several factors as setting the boundaries for the inquiry: a lack of access to the process of slating candidates; the unresponsiveness of legislators to particularized minority interests; a tenuous state policy underlying the desire for at large voting; the existence of past discrimination that in general precludes effective participation. The court then devoted most of its attention to the latter factor, stressing the ways in which the effects of past discrimination carried over to the present - e. g., the fact that blacks were a majority of the population but a minority of the registered voters.

The court thought it unimportant that some blacks had been elected. This did not necessarily suggest minority voting strength. It might well reflect political motivations (???), such as electing token blacks to forestall federal suits, etc. The court remanded to the USDC for reconsideration of the plan allowing at large voting.

3. THE DISSENTS (Coleman, Dyer, Morgan, Clark, Ingraham, Roney). Judge Coleman's dissent was joined by Judge Ingraham. Judge Coleman would not believe that the gap between black and white voter registration was constitutionally significant, given that blacks were a majority of the population. He emphasized that the at large plan had resulted in the election of blacks, exploding any notion that black voting strength had been cancelled. He thought the majority's approach meant

that at large voting in any parish with a history of voter discrimination would never be possible unless blacks were both a majority of the population and of the registered voters. He failed to see how at large voting could hurt here, since blacks would soon be a majority of the registered voters and those elected would know they would have to be responsive to the whole parish, which is nearly 60% black.

Judge Clark, joined by the other dissenters, thought the majority had swept too broadly. He thought the standard should be whether an ethnic group had demonstrated that they had less opportunity than other residents to participate in the political processes and to elect legislators of their choice. Under this standard, the USDC decision was not clearly erroneous. Judge Clark speculated that the low black voter registration compared to population might be a product of choice. He also emphasized that blacks had been elected in the parish.

4. CONTENTIONS. (There is no response). The school board and the police jury argue that at large, multimember districts are not per se unconstitutional. But, they say, the CA5 decision will invalidate all such districts in Louisiana. (Query? The state traditionally has relied on a ward system. Only recently has it moved to an at large approach, and then it has run into U. S. AG resistance. There may not be many at large schemes in the state). Petitioners also contend that almost none of the factors CA5 considered relevant are present in the case. They also stress the tension between the CA5 opinion and one-man, one-vote principles.

5. DISCUSSION. The CA5 majority opinion wanders around and doesn't leave one with a satisfactory sense of the governing principle.

But this is probably precisely the kind of case that ought to be left in the lower federal courts, which are more familiar with the localized problems involved. White v. Regester, supra, appears to support a fact-oriented, localized approach. For example, the USDC must have sensed its error, because while the case was on appeal to the original 3 man CA5 panel, the USDC attempted to withdraw its first order and to require the petitioners to abandon their at large voting plan. The CA5 panel refused to allow this, because the USDC lost jurisdiction over the case once it went up on appeal. Nevertheless, it shows that the DJ on the scene as well as a majority of CA5 en banc are of the view that at large voting presents too much of a risk to black representation in this case.

There is no response.

1/14/74 Owens CA5 panel and en banc ops in Pet Ap

March 1, 19 Owens

DISCUSS

No. 73-861 Response in

East Carroll Parish etc. v. Marshall

The response says that the reason the parish tried to switch from a ward system of voting to at-large was because a couple of the wards attained a majority of black voters and started electing blacks. The Parish then wanted to go to at large in an effort to submerge the black vote in those wards where it was in the majority. The response also says that the U.S. A.G. has repeatedly opposed this practice in La. because it represents an effort to, in essence, disenfranchise blacks. Respondent further contends that the case is controlled by White v. Regester and is of localized importance.

The petition should be denied.

Conference 3-15-74

Court CA - 5 | Voted on ....., 19...

Argued ....., 19... | Assigned ....., 19... | No. 73-861

Submitted ....., 19... | Announced ....., 19...

EAST CARROLL PARISH SCHOOL BOARD AND EAST CARROLL PARISH POLICE JURY, Petitioners

vs.

STEWART MARSHALL

12/3/73 Cert. filed.

I voted to Deny
Non-miserable little
case - tho 9 think
it erroneously decided.

+ related
Hold for Brescol
CA5 case from
Texas. (9 granted
Stay)
(Several of us
- including myself
- voted to Deny.
But enough voted
to Hold

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
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Burger, Ch. J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Conference 5-24-74

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 73-861

EAST CARROLL PARISH SCHOOL BD.

DISCUSS

vs.

MARSHALL

RELIST

Hold for
White v Regester
(which ~~was~~ was
Noted)

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
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Rehnquist, J.					Hold									
Powell, J.			✓											
Blackmun, J.			✓											
Marshall, J.			✓											
White, J.					Hold									
Stewart, J.			✓											
Brennan, J.			✓											
Douglas, J.			✓											
Burger, Ch. J.					Hold									

Memorandum in No. 73-861, East Carroll Parish School Board v. Marshall
Held for White v. Regester

This parish is in the northeastern corner of the state; its largest town is Lake Providence.

Justice White's major concern seems to be the CA5 opinion, which he views as bad precedent for the circuit. He's probably right about that, but I do not think it justifies granting a case that will be affirmed in any event. I see two possibilities: either leaving the case alone and taking the next CA5 multimember-distr case in which the result is questionable, or affirming this decision in a brief (perhaps one-paragraph) opinion that cites Chapman v. Meier, thus making clear that this Court approves the result because district courts should not impose multimember plans in reapportionment cases, rather than because multimember districts are inherently suspect as CA5 seems to think. The latter course of action would probably satisfy Justice White's expressed concerns, as it would imply some disapproval of CA5's opinion. The Court then could face the multimember issue in a case where it will make a difference in the result, and perhaps advance the law. Taking this case will not advance the law, unless someone writes an unnecessarily long opinion, but will surely be decided on Chapman grounds in any event. This end does not seem worth listening to an hour of oral argument or forcing the parties to file briefs.

I agree

penny

Gail

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 18, 1975

Inclined to Grant or affirm DISCUSS citing Chapman v. Meier

CA 5 op: finds multi-member districts void under Court

MEMORANDUM TO THE CONFERENCE

Re: No. 73-861 - East Carroll Parish School Board v. Marshall
Held for No. 73-1462 - White v. Regester

This case raises the question of the constitutionality of an apportionment plan imposed by the District Court for the election of the school board and police jury in East Carroll Parish. The plan provides for the at-large election of one school-board member and one police juror resident in each of six wards and three of each resident in a seventh ward. A three-judge panel of the CA 5 affirmed,[1/] but the Court of Appeals en banc then reversed, 9-6.

Negroes make up approximately 59% of the population in the parish but only 46% of the registered voters. The total population is 12,884. The Court of Appeals en banc relied heavily upon White v. Regester I in finding the at-large plan to be unconstitutional. The Court of Appeals described a history of racial discrimination in the parish touching upon the right to vote. While the devices through which that

discrimination had been effected had been eliminated, the effects continued. The CA also pointed to the majority-vote requirement operating in the parish and to the fact that an anti-single-shot provision was in force in the ward in which three members of each elected body must be resident. The CA conceded that there was no evidence that the elected bodies had been unresponsive to the interests of the Negro community. Unlike the situation in both Dallas and Bexar Counties in White v. Regester I, however, there was in this case no long-standing state policy of multimember districting. The CA did not find its result contradicted by the fact that three Negroes were elected to the bodies under the plan in the 1971 and 1972 elections.[2/] Those results had not been before the District Court at the time of its decision. Moreover, such success should not be viewed as foreclosing the possibility of unconstitutional dilution of a minority's vote. The allowance of a limited degree of success could otherwise be used to thwart challenges through the courts.

Had the Court of Appeals merely ruled that court-ordered plans should provide for single-member districts absent some good reason to the contrary, there would be little difficulty here. But the nine-man majority treated this case as raising constitutional issues, invalidated the multi-member district on those grounds and in the process announced that

multimember districts would generally be unacceptable unless single-member districts themselves infringed on constitutional rights or unless the use of multimember districts would afford a minority greater opportunity for political participation. For reasons stated in the draft which circulated in White v. Regester, especially the portion of the draft dealing with El Paso County, I am in disagreement with the Court of Appeals. Of course, this is a puny case except for the fact that it is now a strong Fifth Circuit precedent. It was this opinion on which the White v. Regester court later relied. I shall vote to grant.

B.R.W.

73-861 Footnotes

1/ After the appeal was taken to the Court of Appeals, and upon the motion of respondent, the appellant below, the District Court withdrew its order approving the plan and substituted another one which did not provide for at-large elections. The Court of Appeals panel vacated that order on the ground that the District Court had not had jurisdiction to enter it.

2/ Petitioner states that of the three seats on the school board which were up for election in 1972, two were won by Negroes. See Petition, at 11; id., at 77 (Clark, J., dissenting). Other details of these 1971 and 1972 elections are not given.

Conference 6-19-75

Court ..... *Voted on* ....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 73-861

Submitted ....., 19... *Announced* ....., 19...

East Carroll Parish School Bd.

vs.

Marshall

Heretofore held for White v. Regester

Case is a "Pee-Wee" - but this is major precedent in CA5 & is contrary to our case. White permeates me - in light of my CA5 current Justice responsibilities - to take this case (contrary to my previous thinking) Grant.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Sally —

Open file

This was granted today — 6/23

June 20, 1975

Re: No. 73-861 - East Carroll Parish School Board v. Marshall

Dear Byron:

I have come to the conclusion, with understandable reluctance, that you are right and I was wrong in the Conference discussion of your proposed per curiam in this case. After rereading the opinion of the Court of Appeals for the Fifth Circuit, I now realize that petitioner here does not challenge the original invalidation of its own apportionment law, but simply argues as to whether the District Court's own plan should have been upheld by the Court of Appeals. Perhaps other people could be prevented from making the same mistake I did if you were to insert the word "concededly" before the word "invalid" in the eighth line of the proposed per curiam as it now appears on page 2 of your memorandum.

Sincerely,

WHR

Mr. Justice White

Copies to the Conference

Conference 6-23-75

Court ..... *Voted on* ....., *19*...

Argued ....., *19*... *Assigned* ....., *19*... No. 73-861

Submitted ....., *19*... *Announced* ....., *19*...

EAST CARROLL PARISH SCHOOL BOARD

vs.

MARSHALL RELIST

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
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Carried over for Monday Conference

[c. JUNE 1975]

MEMORANDUM TO THE CONFERENCE

Re: No. 73-861 - East Carroll Parish School Board v. Marshall

This case was granted on Thursday. It is an apportionment case in which the Court of Appeals for the Fifth Circuit ruled that single-member districts should have been ordered by the District Court. I agree with that result, for we have ruled that when a district court is forced to draft and promulgate its own plan, single-member districts are preferred absent unusual circumstances. Here, however, the Court of Appeals placed its ruling on constitutional grounds, indicating that state-fashioned plans must also provide single-member districts unless there are special reasons for permitting multimember arrangements. It was this opinion on which the three-judge court in White v.

Regester II relied. The case is thus a strong precedent in the Fifth Circuit.

If there was sufficient support for it, I could join a per curiam along the following lines, affirming the judgment summarily but not passing on the constitutional views expressed:

> Per curiam.
>
> The petition for certiorari is granted and, without passing on the validity of the constitutional views expressed by the Court of Appeals in this case, the judgment is affirmed on the ground that when United States District Courts are put to the task of fashioning their own apportionment plans to supplant invalid state legislation, single-member districts are to be preferred absent unusual circumstances. Chapman v. Meier, 420 U.S. 1, 17-19 (1975); ~~Sxxxdxxxd.~~ Mahan v. Howell, 410 U.S. 315, 333 (1973); Connor v. Williams, 404 U.S. 549, 551 (1972); Connor v. Johnson, 402 U.S. 690, 692 (1971).
>
> So ordered.

B.R.W.

Jan 1976

Bobtail Memorandum

To: Justice Powell

From: Phil Jordan

No. 73-861 East Carroll Parish School Board v. Marshall

When I read the briefs in this case back before Christmas I wondered why the Court granted it, since CA 5's decision seemed supportable on the narrow ground that the DC ordered a multi-member district plan without making the findings required to show that single-member districts were for some reason unworkable. After looking at the file, my understanding now is that the Court took the case only because of its precedential effect in CA5--especially since it was an en banc decision. It is my impression that the Court believes CA5 should be affirmed on the narrow ground mentioned above, which ground was reaffirmed as a general principle in Chapman v. Meier, 420 U.S. 1 (1975).

Basis for decision

Yes

I agree with that disposition of the case, subject to having my mind changed by oral argument. CA5 appears needlessly to have written in fundamental constitutional terms, when all it had to do was point out that a DC should order multi-member districts only after finding that single-member districts were unusually likely to have discriminatory effects in this case.

A "klinker" has been injected into the case by the amici, however. Both the SG and the Lawyer's Committee for Civil Rights Under Law make an argument that the DC should not have ordered the multi-member district plan without the Parish's first having run the plan by the U.S. AG for his approval under § 5 of the Voting Rights Act. Tentatively, and subject to discussion with you, I disagree with the amici and, moreover, think their proposed rule is unworkable and borders on interference with

the judiciary.

To understand the amici's argument it is necessary to sketch very briefly the chronology of the events in this case:

(1) First, in 1968, a white plaintiff went into ~~the DC~~ the DC challenging the ward ~~xyw~~ system then in effect as ~~xxxxxxx~~ violative of one-person, one-vote. The DC ruled that the ward system violated the 14th Amendment and ordered the Jury and Board to submit a re-apportionment plan.

(2) One week after the white plaintiff filed suit, the state changed its enabling legislation to permit at-large elections for Jury and Board.

(3) The Jury adopted a plan providing for at-large elections, and asked the DC to incorporate it in its judgment, i.e., as the plan which the DC had ordered the Jury to come up with. See # 1, supra. The DC did so, and extended the at-large plan to the Board as well. The DC did this in December 1968.

(4) After the DC ruled, the state submitted the enabling legislation, see # 2, supra, to the U.S. AG for § 5 review. The U.S. AG interposed objections, thus blocking the enabling legislation from taking effect. Moreover, in 1970 the U.S. AG by letter informed the Jury that it could not conduct at-large elections without violating federal ~~xxx~~ law. Such elections were held anyway.

(5) In 1971, the DC asked the Jury to submit new apportionment plans following the new census. The Jury resubmitted the at-large plan. At this point Marshall (respondent here) intervened. He is black, and he challenged the at-large plan on 14th and 15th Amendment, as well as § 5 grounds.

(6) The U.S. AG appears to have tried to get the DC

to consider the applicability of § 5. (See SG's amicus brief, at 9-10.) Whether ~~the~~ that in fact was the ~~intexit~~ intention, the DC in any ~~exet~~ event felt that § 5 was inapplicable because of Connor v. Johnson, 402 U.S. 690 -- any plan incorporated in a decree issued by the Court would not have to be submitted to the AG.

(7) The DC then incorporated the at-large plan in its decree, in August 1971. This decree was appealed to CA5, and has led, ~~eventually~~ ultimately, to this case before the Court.

(8) While the appeal was pending with CA5, the U.S. AG withdrew his objection to the state enabling legislation, with the understanding that each Jury and School Board which chose to re-apportion to an at-large plan would submit that plan to the AG for § 5 approval. Apparently, the U.S. AG has objected to some of the plans subsequently submitted, and has never withdrawn his right to object to others as they are submitted. See SG's amicus brief at 11.

SG argues DC must stay its proceedings

On this incredibly muddled chronology, the SG argues that last term's decision in Connor v. Waller, 421 U.S. 656 (1975) (per curiam), requires that a DC, like the one in this case, [redacted] must stay its proceedings while a political body like the Jury or Board runs any proposed plan by the AG pursuant to § 5. Waller actually decided only that a DC should not reach constitutional challenges to state laws enacted but not submitted to the AG under § 5, on the theory that such laws were not "effective as laws" until cleared by the AG. The foundation of the SG's argument that a plan submitted to a DC during re-apportionment litigation also must go before the AG before the DC can order it implemented, is that a state or other governmental body

who submits a plan to a DC is "seeking to administer" the plan within the meaning of § 5 of the Act. See SG's Brief at 24-25. The SG then relies on legislative history of the recent re-enactment of § 5 for the argument that Congress intended such plans to be passed upon by the AG.

The short answer to the SG's argument, for me, is that a governmental body in submitting a plan to a DC for approval is not "seeking to administer" the plan and thus does not come within the plain language of § 5. I don't care what the legislative history says about Congress' intent--that legislative history can be characterized as an incorrect interpretation of Connor v. Johnson by the Congress.

The longer answer to the SG's argument is that his proposal would require an elaborate procedure, and could result in the DC for the District of Columbia more or less "pre-empting" whatever DC had the proposed plan before it. This is clear from the SG's discussion at pages 26-27 of his brief, where he explains how things would work if the AG approved, and if he disapproved the plan. If he approves, everything is okay, for the original DC can then proceed. If the AG disapproves, however, the governmental unit must go into the DC for District of Columbia and show that its plan does not abridge voting rights. If that DC holds that the governmental unit has not shown that its plan is benign, then the governmental unit is precluded from relitigating the issue in the original DC--and thus, ultimate resolution of the question of the plan's validity would have been had in the District of Columbia DC. See SG's Brief at 27 n.25. This, of course, is the SG's

real goal--to keep DC's in Southern states from having the final say on whether re-apportionment plans submitted by suspect governmental bodies are permissible.

The SG would have a system in which plans actually formulated by the DC, or submitted by plaintiffs to the DC, could be ordered into effect by the DC without any recourse to § 5 procedures; but plans submitted to the same DC in the same litigation by the defendant governmental unit could not be ordered into effect by that DC without submission to the § 5 procedures. There is only one purpose behind such a plan -- to avoid the possibility of some racially prejudiced southern DC sort of "rubber-stamping" some re-apportionment plan submitted to it by a defendant governmental unit. I am not so naive as to think that such things don't occur, but I think the SG's rather strained argument to avoid the possibility of its occurrence is a cure far worse than the disease. I believe we, and the Department of Justice as well (!), must place trust in the integrity of DC's all over the country not to order implemented a re-apportionment plan that carries discriminatory potential. After all, the rule of Chapman v. Meier exists to force the DC's to justify use of a plan that could likely have a discriminatory potential, and appellate review exists check DC abuses. There is no need to turn everything over to the AG.

As a final point: The SG's argument in this case--that everything connected with re-apportionment should wind up in the AG's hands if there's a governmental unit behind the plan--re-affirms my belief (and yours) that Justice Black was correct in Allen. [redacted]

As a final final point: Even if the Court should be interested in the SG's argument in this case, this is not the case in which to deal with it. The chronology is so confused that we cannot really be sure, without a lot of trouble, exactly what the status was at crucial moments. Furthermore, there is simply no need to reach the $SG_{\sigma}^{\sim}$'s point: CA 5 can simply be affirmed on the basis of Chapman v. Meier, with no discussion of the SG's argument, and the question will still be open for another day and a better record.

Phil

73-861 EAST CARROLL PARISH SCHOOL BOARD v. MARSHALL 1/21/76

Ward (for Petr.)

Q White noted that Petr. in here trying to sustain an order of DC that CA 5 has invalidated & that DC itself now thinks is invalid. J. Rehnquist ~~says~~ asked whether the DC held any hearing before entering its second order.

Halpin (for Resp)

CA 5 did not consider DC's second order, as CA 5 thought DC no longer had juris. over the case.

In view of second order this case is "moot". The order is in record before CA 5.

Conceded that the Police Jury did not have power under La law to adopt a reapportionment plan providing for at large districts. Then, as Stewart & Rehnquist noted, Connor v. Waller (requiring legislative action rather

Halpin (cont.)
than judicial actions) does not control this case. And absent legislative approval or authorization of a plan, Section 5 does not approve.

White noted that §5 does not replace all reapportionment action. Stewart said it is settled law that a judicial plan is not subject to §5.

White says D/Justice will not allow multi-member districts under §5 — & this is not the Const. standard. (This explains why Halpin is struggling to bring this case under §5)

Landsberg (for SG as amicus

Connor v Johnson and Connor v Waller did not address ~~what~~ meaning of phrase "sought to administer" in § 5. They dealt only with a court formulated plan (SG concedes that such a plan, as contrasted with a plan formulated by a state or political sub-division, is not subject to § 5).

SG argues that if the court ordered plan was submitted by the political sub-division to the court in a reapportionment case, this constitutes an effort to "administer" a plan.

7

No. 73-861, East Carroll Parish v. Marshall Conf. 1/23/76

Affirm 9 - 0

The Chief Justice

Remand
or
Affirm

Virtually a "non-case" at this point.

State record - 5 yrs old.

~~Douglas, J.~~

Stevens

Affirm

A modified P.C. - OK

Brennan, J. Affirm

Think Byron's P.C. of last June is proper disposition.

Does'nt want to address issue of whether this ~~a~~ was a judicial or a ~~state~~ legislative plan.

Stewart, J. Affirm

If we reach § 5 issue, Byron's op. would decide it implicitly.

SG is quite wrong. This was clearly a court plan.

White, J.

Aff in
Use P.C. but
add sentence saying
this was court plan.
CA 5 wrong in stating
a court. rule.

Marshall, J.

Aff in

Blackmun, J. Aff in

Powell, J. Aff in

I will join
Byron's opinion
with changes indicated
by him.

Rehnquist, J. Aff in

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 2-23-76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Received
LFP
Join

No. 73-861

East Carroll Parish School Board and East Carroll Parish Police Jury, Petitioners, *v.* Stewart Marshall.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March —, 1976]

PER CURIAM.

The sole issue raised by this case is how compliance with the one-man, one-vote principle should be achieved in a parish (county) that is admittedly malapportioned.

Plaintiff Zimmer, a white resident of East Carroll Parish, brought suit in 1968 alleging that population disparities among the wards of the parish had unconstitutionally denied him the right to cast an effective vote in elections for members of the police jury [1] and the school board. See *Avery* v. *Midland County*, 390 U. S. 474 (1968). After a hearing the District Court agreed that the wards were unevenly apportioned and adopted a reapportionment plan suggested by the East Carroll police jury calling for the at-large election of members of both the police jury and the school board.[2] The 1969 and 1970 elections were held under this plan.

[1] In Louisiana, the police jury is the governing body of the parish. Its authority includes construction and repair of roads, levying taxes to defray parish expenses, providing for the public health, and performing other duties related to public health and welfare. La. Rev. Stat. § 33:1236 (1950).

[2] Prior to 1968, Louisiana law prohibited at-large elections of

The proceedings were renewed in 1971 after the District Court, apparently *sua sponte*, instructed the East Carroll police jury and school board to file reapportionment plans revised in accordance with the 1970 census. In response, the jury and board resubmitted the at-large plan. Respondent Marshall was permitted to intervene on behalf of himself and all other black voters in East Carroll. Following a hearing the District Court again approved the multimember arrangement. The intervenor appealed,[3] contending that at-large elections would tend to dilute the black vote in violation of the Fourteenth and Fifteenth Amendments and the Voting Rights Act of 1965.

Over a dissent, a panel of the Court of Appeals affirmed,[4] but on rehearing en banc, the court reversed.[5]

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members of police juries and school boards. In July 1968, the Governor of Louisiana approved enabling legislation permitting the at-large election of parish police juries and school boards. La. Acts 1968, No. 445, codified at La. Rev. Stat. §§ 33:1221, 22:1224 (1974); La. Acts 1968, No. 561, codified at La. Rev Stat. §§ 17:71.1–17:71.6 (1974).

Both Acts were submitted to the United States Attorney General pursuant to § 5 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973c, and both were rejected because of their discriminatory effect on Negro voters. See letters, June 26, 1969, and September 10, 1969, from Jerris Leonard, Assistant Attorney General, Civil Rights Division, to Jack P. F. Gremillion, Attorney General of Louisiana. Indeed, East Carrol Parish was cited as exemplifying the dilution in black ballot strength that at-large voting may cause. *Id.*, September 10, 1969.

[3] The original plaintiff, Zimmer, was allowed to withdraw from the case.

[4] *Zimmer* v. *McKeithen*, 467 F. 2d 1381 (CA5 1972)

During pendency of the appeal in the court below, the District Court purported to withdraw its order approving the at-large plan and to substitute in its stead a complex redistricting plan submitted by intervenor Marshall. The Court of Appeals vacated the order

[*Footnote 5 is on p. 3*]

It found clearly erroneous the District Court's ruling that at-large elections would not diminish the black voting strength of East Carroll Parish. Relying upon *White* v. *Regester,* 412 U. S. 755 (1973), it seemingly held that multimember districts were unconstitutional, unless their use would afford a minority greater opportunity for political participation, or unless the use of single-member districts would infringe protected rights.

We granted East Carroll School Board's petition for a writ of certiorari, 422 U. S. 1055 (1975), and now affirm the judgment below, but without approval of the constitutional views expressed by the Court of Appeals.[6] See

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on the ground that when the appeal was filed, the District Court lost jurisdiction over the case. *Id.*, at 1382.

[5] *Zimmer* v. *McKeithen,* 485 F. 2d 1297 (CA5 1973) (en banc).

[6] The Government has filed a brief *amicus,* in which it argues that the preclearance procedures of § 5 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973c, must be complied with prior to adoption by a federal district court of a reapportionment plan submitted to it on behalf of a local legislative body that is covered by the Act. This issue was not raised by the petitioner, nor did respondent cross-petition. In any event, we agree with the Court of Appeals, *Zimmer* v. *McKeithen,* 467 F. 2d 1381, 1383 (CA5 1972); *Zimmer* v. *McKeithen,* 485 F. 2d 1297, 1302 n. 9 (CA5 1973) (en banc), that court-ordered plans resulting from equitable jurisdiction over adversary proceedings are not controlled by § 5. Had the East Carroll police jury reapportioned itself on its own authority, clearance under § 5 of the Voting Rights Act, as amended 42 U. S. C. § 1973c, would clearly have been required. *Connor* v. *Waller,* 421 U. S. 656 (1975). However, in submitting the plan to the District Court, the jury did not purport to reapportion itself in accordance with the 1968 enabling legislation, see n. 2, *supra,* and statutes cited therein, which permitted police juries and school boards to adopt at-large elections. App., at 56. Moreover, since the Louisiana enabling legislation was opposed by the Attorney General of the United States under § 5 of the Voting Rights Act, the jury did not have the authority to reapportion itself. See n. 2, *supra;* Tr. of Oral Arg. 13–14, 31–32, 43–44. Since the reapportionment scheme was

Ashwander v. *TVA*, 297 U. S. 288, 346–347 (1936) (Brandeis, J., concurring).

The District Court, in adopting the multimember, at-large reapportionment plan, was silent as to the relative merits of a single-member arrangement. And the Court of Appeals, inexplicably in our view, declined to consider whether the District Court erred under *Connor* v. *Johnson*, 402 U. S. 690 (1971), in endorsing a multimember plan, resting its decision instead upon constitutional grounds. We have frequently reaffirmed the rule that when United States district courts are put to the task of fashioning reapportionment plans to supplant concedely invalid state legislation, single-member districts are to be preferred absent unusual circumstances. *Chapman* v. *Meier*, 420 U. S. 1, 17–19 (1975); *Mahan* v. *Howell*, 410 U. S. 351, 333 (1973); *Connor* v. *Williams*, 404 U. S. 549, 551 (1972); *Connor* v. *Johnson*, *supra*, at 692. As the en bance opinion of the Court of Appeals amply demonstrates, no special circumstances here dictate the use of multimember districts. Thus, we hold that in shaping remedial relief the District Court abused its discretion in not initially ordering a single-member reapportionment plan.

On this basis, the judgment is

Affirmed.

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submitted and adopted pursuant to court order, the preclearance procedures of § 5 do not apply. *Connor* v. *Johnson*, 402 U. S. 690, 691 (1971).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 24, 1976

Re: No. 73-861 - East Carroll Parish School Board, et al. v. Marshall

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 24, 1976

Re: No. 73-861 - East Carroll Parish School Board v. Marshall

Dear Byron:

I agree with your per curiam.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 24, 1976

RE: No. 73-861 East Carroll Parish School Board, etc.
v. Stewart Marshall

Dear Byron:

I agree with the Per Curiam you have prepared in the above.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 24, 1976

73-861 - East Carroll Parish School v. Marshall

Dear Byron,

I agree with the proposed Per Curiam you have circulated in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 25, 1976

Re: No. 73-861 - East Carroll Parish School Board v. Marshall

Dear Byron:

Please join me.

Sincerely,

WHR

Mr. Justice White

Copies to the Conference

February 26, 1976

No. 73-861 East Carroll Parish v. Marshall

Dear Byron:

Please join me in your Per Curiam.

Sincerely,

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 26, 1976

Re: No. 73-861 -- East Carroll Parish School Board and East Carroll Parish Police Jury v. Stewart Marshall

Dear Byron:

I agree with your Per Curiam in this case.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 26, 1976

Re: No. 73-861 -- East Carroll Parish School Board and East Carroll Parish Police Jury v. Stewart Marshall

Dear Byron:

I agree with your Per Curiam in this case.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 4, 1976

Re: No. 73-861 - East Carroll Parish School Bd
v. Marshall

Dear Chief:

There is much to what you say, but I am inclined to retain n. 6 and am recirculating with your statement.

Sincerely,

Byron

The Chief Justice

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 4, 1976

Re: No. 73-861 - East Carroll Parish School Board v. Marshall

Dear Byron:

Your Per Curiam opinion dated February 24 is generally acceptable to me but the treatment of § 5 in a footnote (Note 6) leaves me uneasy. I question whether it is necessary to reach the issue, and to decide a question of that importance in a "dicta-footnote" seems something less than desirable.

Are you open to reexamining it? If not, I think I must concur but be shown as

> "The Chief Justice considers it unnecessary to reach the question discussed in Note 6, p. 3. It was, as the Court observes in Note 6, 'not raised by the petitioner, nor did respondent file a cross-petition.' The scope of § 5 of the Voting Rights Act is an important matter and he would not undertake to express any view on what the Court discusses by way of dicta in Note 6."

Regards,

WEB

Mr. Justice White

Copies to the Conference

JPS

THE C. J.	~~W. O. D.~~	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
				1/28/76				
	join BRW 2/24/76	join BRW 2/24/76	join BRW 2/24/76	PC 1st draft 2/23/76	join BRW 2/26/76	join BRW 2/24/76	join BRW 2/25/76	join BRW 2/25/76
				2nd draft 2/24/76 3rd draft 3/5/76				

73-861 East Carroll Parish v. Marshall