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Written Brief for Bush v. Vera

The results of the 1990 census revealed that the population of Texas increased; therefore, the state was entitled three more congressional seats in the House of Representatives. Three new congressional districts were created, and in the interest of the Voting Rights Act, one was newly created with an African-American majority, District 30, while another two were created and constructed to make two different majority minority districts, one with a Hispanic majority, District 29, and the other with an African-American majority, District 18. In spite of approval from the Department of Justice, six voters challenged this approval, claiming that 24 of the 30 congressional districts were unconstitutional. The Texas District Court declared only District 18, 29, and 30 to be unconstitutional. After this decision, a number of voters, along with the Governor of Texas and the United States Government, filed an appeal with the Supreme Court. The belief is that using race as the predominant factor in creating a congressional district is unconstitutional.

Opponents of this belief think that District 18, 29, and 30 should be created in the hopes of giving minorities more power. First, according to Justice Stevens, "Racial gerrymandering of the sort being addressed in these cases is 'discrimination' only in the sense that the lines are drawn based on race, not in the sense that harm is imposed on a given person on account of their race" (Bush v. Vera), and that no discernible discrimination is taking place. A second reasoning is that it'll protect Hispanics and African-Americans voices in the voting process, something that has been historically denied or diminished for them in Texas. A third reason is to maintain minority power in

the government, where minorities still struggle to be properly represented in respect to their percentage of the population. Justice Souter says, “It was impossible to see mere happenstance in the facts that the American voting age population was 10.5% black, but the Congress that assembled in 1981 had only 17 black representatives out of 435 and no black senator” (Bush v. Vera).

The three newly-created districts have the intended effect of grouping minority groups, in this case, African-Americans and Hispanics, into specific districts through the use of gerrymandering. Part of section 2 of the Voting Rights Act states that “it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice (TITLE 42),” where subsection A says that voting procedures shall not be denied or diminished on the basis of color or race. District 18, 29, and 30 violate the Voting Rights Act by the fact that they were drawn up with the intent to group certain minorities together, thus violating Section 2 of the Voting Rights Act.

Proponents of the gerrymandering according to race point out that the gerrymandering was done in interest of the State of Texas, not just for racial intentions. However, this is not the case. “Not only are the shapes of the districts bizarre; they also exhibit utter disregard of city limits, local election precincts, and voter tabulation district lines,” says O’Connor (Bush v. Vera). O’Connor also points out that REDAPPL, a computer program, was used to configure the district based on racial data. Also

mentioned, "(The State) made no apparent attempt to compile, and did not refer specifically to, equivalent data regarding communities of interest" (Bush v. Vera).

Justice Thomas concurs, saying, "it means that the legislature affirmatively undertakes to create a majority minority district that would not have existed but for the express use of racial classifications--in other words, that a majority minority district is created "because of," and not merely "in spite of," racial demographics" (Bush v. Vera).

Next, a rationale for creating new congressional districts with majority minority districts is to reverse the historical trends of discrimination in the voting process in Texas and to give minorities more power to be elected. However, this rationale is too broad. O'Connor comments, "First, the discrimination that the State seeks to remedy must be specific, "identified discrimination" (Bush v. Vera); second, the State "must have had a 'strong basis in evidence' to conclude that remedial action was necessary, before it embarks on an affirmative action program (Bush v. Vera)." The only reason behind the rationale for the specific drawing up of the boundaries of the districts is the weakening of voting power for minorities if the districts were drawn up traditionally. O'Connor says that that reasoning is not a valid one; only when boundaries are drawn up traditionally can racial considerations be made.

Though empowering minorities by giving them majority minority districts can reverse the historical effects of discrimination, it can also be seen as an extension of racism. First, as mentioned earlier, this type of gerrymandering makes race the dominant factor in districting, which could assist or hinder a particular race. In addition, majority minority districts show that the creators of these districts are stereotypical: that they think that people of one race all think and vote the same. In the Shaw v. Reno case, another

landmark case concerning race and districting, O'Connor, speaking for the majority, says "A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who have little in common with another but the color of their skins, bears an uncomfortable resemblance to political apartheid" (Shields). Back to the *Bush v. Vera* case, Justice Kennedy, in his opinion, feels that, "such districts may cause constitutional harm insofar as they convey the message that political identity is, or should be, predominantly racial" (*Bush v. Vera*).

Lastly, some have argued that creation of these new districts will ensure the maintenance of power of these minority groups after fear that redistricting would diminish their power, but after review, these new districts only serve to strengthen their power, which is quite opposite of the argument that power would be lost.. The argument for the maintenance of power for minorities stems from Section 5 of the Voting Rights Act, which "prohibits the enforcement in any jurisdiction... . . . of any voting qualification or prerequisite to voting... . . . that will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group" (PROCEDURES FOR THE ADMINISTRATION OF SECTION 5...), and from the *Shaw v. Reno* case, where "as long as racial bloc voting takes place, legislators will have to take race into account in order to avoid dilution of minority voting strength in the districting plans they adopt" (*Shaw v. Reno*, 1993). However, in the *Bush v. Vera* case, the creation of the new districts actually strengthens power of minority groups in each newly created district. According to O'Connor, "At the previous redistricting, in 1980, District 18's population was 40.8% African American. As a result

of Hispanic population increases and African American emigration from the district, its population had reached 35.1% African American and 42.2% Hispanic at the time of the 1990 census. The State has shown no basis for concluding that the increase to a 50.9% African American population in 1991 was necessary to insure nonretrogression” (Bush v. Vera). Section 5 says nothing about creating districts to strengthen the power of minority groups in districts, but only to make sure power is not diminished. So the argument that the districts are created to maintain power of minorities is invalid.

The decision to disallow the use of race in constructing congressional districts will have an effect on the entire United States, especially in diverse racial communities like in San Francisco, Los Angeles, or New York. It will ensure that boundaries are not constructed in a way that gives one race too much power in one district, while at the same time, denying minorities a voice in that same district. In addition, strides have been made to giving all people the opportunity to vote for whom they prefer, and much care must be provided to ensure that the power to ensure everyone the right to vote is not abused with vague laws which gives certain groups more power than others. For example, such laws as women and minority suffrage and the repeal of the polling tax advance voting rights, but some laws, such as the argument in this case, shouldn't be passed that would unfairly help one group gain voting power, even if apparently, it would benefit everyone. Finally, a decision to disallow the use of race in constructing congressional districts will help end racial discrimination. It will make people use other, race-neutral criteria which will not enhance or decrease a particular race's power to draw up congressional districts. In addition, it will end stereotyping that everyone of one particular race thinks the same and votes the same way.

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