

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Charles F. Zimmer v. John J. McKeithen

485 F.2d 1297 (5th Cir. 1973) · No. No. 71-2649 · Decided September 12, 1973

SUMMARY

The en banc Fifth Circuit held that an at-large electoral scheme for East Carroll Parish, Louisiana, could constitutionally dilute Black voting strength even though Black residents constituted a majority of the parish's total population. Applying the factors identified in *Whitcomb v. Chavis* and *White v. Regester*, the court emphasized the parish's history of racial discrimination, majority-vote requirement, registration disparities, and the departure from its prior ward-based electoral system. The court reversed the panel decision and vacated and remanded the district court's judgment.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Judge Gewin; John R. Brown, Chief Judge; Wisdom; Gewin; Bell; Thornberry; Coleman; Goldberg; Ainsworth; Godbold; Dyer; Simpson; Morgan; Clark; Ingraham; Roney
JURISDICTION	Federal
DECIDED	September 12, 1973
DOCKET	No. 71-2649
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	En banc appeal from a district court order approving an at-large reapportionment plan for the East Carroll Parish police jury and school board. The en banc court reviewed a prior panel decision affirming the district court.
STANDARD OF REVIEW	The court reviewed the district court's legal standard for evaluating vote dilution and its factual finding of no dilution; it held that the district court applied an impermissible per se rule and clearly erred in rejecting the dilution challenge.
PRECEDENTIAL VALUE	Published en banc federal appellate opinion; precedential within the Fifth Circuit subject to subsequent Supreme Court and circuit precedent.
PARTIES	Stewart Marshall, Intervenor-Appellant v. John J. McKeithen et al., Defendants-Appellees

TOPICS

voting rights election law redistricting equal protection constitutional law

PRACTICE AREAS

constitutional law civil rights election law voting rights municipal law

QUESTIONS PRESENTED

1. Whether the district court applied an improper per se rule by concluding that an at-large election plan could not dilute Black voting strength because Black residents constituted a majority of the parish's total population.
2. Whether the East Carroll Parish at-large election plan operated, under the totality of the circumstances, to minimize or cancel out the voting strength of Black voters.
3. Whether the district court's approval of an at-large plan was unconstitutional and required vacatur and remand.

HOLDINGS

1. Total population is not dispositive of minority vote dilution. A court must examine access to the political process and other circumstances bearing on whether an apportionment scheme minimizes or cancels out racial voting strength.
2. The at-large election plan diluted Black voting strength and was constitutionally infirm under the Fourteenth Amendment.
3. The preference for single-member districts is not absolute; a district court may use multi-member districts when significant interests justify them without compromising constitutional requirements or when they provide minorities a greater opportunity to participate in political processes.

KEY QUOTATIONS

“It is axiomatic that at-large and multi-member districting schemes are not per se unconstitutional.” (1305)

“The fact of dilution is established upon proof of the existence of an aggregate of these factors.” (1305)

“The remedial powers of an equity court must be adequate to the task, but they are not unlimited.” (1308)

FACTUAL BACKGROUND

East Carroll Parish had a 1970 population of 12,884, of whom 58.7 percent were Black. Although historical voting barriers had been removed, as of October 6, 1971, Black voters remained a minority of registered voters, and the parish had a history of segregated schools, an interpretation test, and exclusion of Black residents from voter registration. The challenged plan used at-large elections, required candidates to reside in designated wards, and permitted all parish voters to vote for the representatives from each ward; the plan also operated with majority-vote and anti-single-shot-voting requirements.

PROCEDURAL HISTORY

A 1968 district court order adopted an at-large election plan in response to one-person, one-vote litigation. After the 1970 census, the district court approved resubmission of that plan, finding zero population deviation and no dilution of Black voting strength. Stewart Marshall intervened to challenge the plan under the Fourteenth and Fifteenth Amendments and section 5 of the Voting Rights Act. A panel affirmed, 467 F.2d 1381, but the court granted rehearing en banc and vacated and remanded the district court's judgment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the district court's judgment and conduct further proceedings consistent with the en banc opinion, including reconsideration of the reapportionment plan under the proper vote-dilution standard.

CASES CITED

- Reynolds v. Sims, 377 U.S. 533 (1964)
- Gaffney v. Cummings, 412 U.S. 735 (1973)
- White v. Regester, 412 U.S. 755 (1973)
- Whitcomb v. Chavis, 403 U.S. 124 (1971)
- Connor v. Johnson, 402 U.S. 690 (1971)
- Howard v. Adams County Board of Supervisors, 453 F.2d 455 (5th Cir. 1972)
- Mahan v. Howell, 410 U.S. 315 (1973)
- White v. Weiser, 412 U.S. 783 (1973)
- Fortson v. Dorsey, 379 U.S. 433 (1965)
- Burns v. Richardson, 384 U.S. 73 (1966)
- Orleans Parish School Board v. Bush, 242 F.2d 156 (5th Cir. 1957), cert. denied, 354 U.S. 921 (1957)
- Louisiana v. United States, 380 U.S. 145 (1965)
- United States v. Manning, 205 F. Supp. 172 (W.D. La. 1962)
- Evers v. State Board of Election Commissioners, 327 F. Supp. 640 (S.D. Miss. 1971)
- Taylor v. McKeithen, 407 U.S. 191 (1972)
- Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187 (1972)
- Gomillion v. Lightfoot, 364 U.S. 339 (1960)
- Wright v. Rockefeller, 376 U.S. 52 (1964)
- Palmer v. Thompson, 403 U.S. 217 (1971)
- Associated Enterprises, Inc. v. Toltec Watershed Improvement District, 410 U.S. 743 (1973)
- Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973)

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