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PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: JOAN GROWE, SECRETARY OF STATE OF

MINNESOTA, ET AL., Appellants v.

JAMES EMISON, ET AL.

CASE NO: 91-1420

PLACE: Washington, D.C.

DATE: November 2, 1992

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IN THE SUPREME COURT OF THE UNITED STATES

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JOAN GROWE, SECRETARY OF STATE :
OF MINNESOTA, ET AL., :
Appellants :
v. : No. 91-1420
JAMES EMISON, ET AL. :
- - - - - X

Washington, D.C.
Monday, November 2, 1992

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
10:53 a.m.

APPEARANCES:

JOHN R. TUNHEIM, ESQ., Chief Deputy Attorney General of
Minnesota, St. Paul, Minnesota; on behalf of the
Appellants.

KENNETH W. STARR, ESQ., Solicitor General, Department of
Justice, Washington, D.C.; on behalf of the United
States, as amicus curiae supporting Appellants.

BRUCE DONALD WILLIS, ESQ., Minneapolis, Minnesota; on
behalf of the Appellees.

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1 P R O C E E D I N G S

2 (10:53 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in No. 91-1420, Joan Grove v. James Emison.

5 Mr. Tunheim, you may proceed whenever you're
6 ready.

7 ORAL ARGUMENT OF JOHN R. TUNHEIM

8 ON BEHALF OF THE APPELLANTS

9 MR. TUNHEIM: Thank you, Mr. Chief Justice, and
10 may it please the Court:

11 Redistricting is a power and responsibility that
12 is reserved to the States in the first instance. This
13 case presents the Court with an opportunity to illuminate
14 that important principle and clarify the apparent
15 confusion in the lower Federal courts.

16 I intend to direct my argument this morning to
17 the abstention issue: did the Federal court err by
18 refusing to abstain to an ongoing State judicial
19 proceeding?

20 And the case presents perhaps one of the most
21 stark examples of what can go wrong when there are
22 jurisdictional disputes in the redistricting process. We
23 have a Federal court that has twice enjoined an ongoing
24 State proceeding and enjoined a final valid judgment of a
25 State court and wrote redistricting plans that absolutely

1 ignored State law.

2 And I would like to focus on the proper role of
3 the Federal courts in the unique context of the decennial
4 responsibility of redrawing the election districts within
5 the boundaries of the States. You cannot have two sets of
6 rules, one drawn by the State and one by the Federal
7 courts. The time pressures are extraordinary. There must
8 be a rule that is absolutely clear on allocation of
9 responsibilities because at stake are really the vital
10 State interests that are involved in elections, in
11 ensuring the integrity of election districts within
12 States, and at stake are really important principles of
13 federalism.

14 Prior decisions of this Court have established
15 and reaffirmed a bright line abstention rule to be
16 followed by Federal courts in redistricting cases. The
17 rule is firmly grounded in the Constitution and by strong
18 policy reasons. Adherence to the rule would have
19 eliminated the costly, wasteful, and duplicative
20 proceedings that we had in this matter.

21 Now, any discussion of the abstention rule must
22 start by reemphasizing what is unique about the
23 redistricting process. It is an inherent State function.
24 This Court has emphasized that Federal courts --
25 emphasized over and over that Federal courts must defer to

1 State legislatures to accomplish the redistricting task,
2 and even when Federal courts do act, they must adhere and
3 defer to State policies that have been developed. This
4 deference principle I believe is at the heart of the
5 abstention doctrine for redistricting cases.

6 Now, this rule is limited to a relatively narrow
7 window for the redistricting process, the roughly 10
8 months or so that States have after receipt of the census
9 data and when they have to have district plans in place to
10 run the first election after that time.

11 If there is a redistricting challenge in State
12 courts, if there is such a challenge, the Federal court
13 should abstain in favor of the State court action just as
14 it must defer to the legislature.

15 QUESTION: Well, Mr. Tunheim, I guess at least
16 Scott v. Germano says that the Federal district court
17 should set a timetable for the State action.

18 MR. TUNHEIM: Yes.

19 QUESTION: Do you concede that it is the role of
20 the Federal court to do that much?

21 MR. TUNHEIM: It -- yes, I do, Your Honor. The
22 Federal court should under the rule retain jurisdiction to
23 ensure that all constitutional and statutory provisions
24 are adhered to by the State in the process.

25 QUESTION: Now, in this case I take it the

1 Federal district court did not set a timetable for the
2 State to make congressional redistricting?

3 MR. TUNHEIM: The Federal court in this case,
4 Your Honor, set a timetable for the legislature to act.
5 The Federal court throughout the process ignored --

6 QUESTION: On congressional redistricting?

7 MR. TUNHEIM: For the legislature to act on
8 congressional and legislative redistricting.

9 QUESTION: And for the State court?

10 MR. TUNHEIM: The Federal court did not set a
11 deadline for the State court because it essentially
12 ignored the State court throughout the process. It found
13 properly that it must defer.

14 QUESTION: And we have an election coming up
15 tomorrow. What congressional plan will be in effect
16 tomorrow?

17 MR. TUNHEIM: The election tomorrow is being
18 operated pursuant to the stay of this Court. Legislative
19 districts will be, by virtue of the State court plan
20 which --

21 QUESTION: But congressional by the Federal
22 district court plan.

23 MR. TUNHEIM: But congressional districts by the
24 Federal.

25 QUESTION: And do you say that this Court, if we

1 think the district court erred with regard to the
2 congressional plan, should set aside that election? And
3 then what would you do? I mean, what is it you're asking?

4 MR. TUNHEIM: We are not asking this Court to
5 take any action with respect to the election tomorrow.
6 The principle that we are urging on the Court is that the
7 Federal court must abstain in favor of a State court, and
8 in this case we had a State court that had an ongoing
9 proceeding with respect to congressional redistricting.
10 In fact, in -- at the later stage of the process after it
11 had been enjoined several times, it finally issued a plan.

12 QUESTION: Well, suppose we agree with you and
13 say the district court erred. What relief is it that
14 you're asking, please?

15 MR. TUNHEIM: The relief that we're asking with
16 respect to congressional districts is that the Federal
17 court decision be reversed and the matter be left for the
18 State court to complete the process of congressional
19 district that it -- congressional redistricting that it
20 worked on throughout the year. So, in other words, for
21 the 1994 elections, they would be run pursuant to a plan
22 drawn by the State court or the State legislature if it
23 chooses to pass a plan, but it would not impact the 1992
24 elections at all.

25 QUESTION: Well, the -- that would happen if the

1 State legislature acted anyway.

2 MR. TUNHEIM: Yes, it would, Justice White, but
3 the State court panel was proceeding in view of a valid --

4 QUESTION: Yes, the State -- yes, but the State
5 court isn't about to insist on having its own plan govern
6 the 1994 elections if the legislature has come up with a
7 plan of its own that meets constitutional requirements.

8 MR. TUNHEIM: Absolutely. The important
9 principle is that all courts must defer to the
10 legislature. The legislature in this instance was unable
11 to pass a congressional plan that was signed by the
12 Governor, and so the State court proceeded to draw a
13 congressional redistricting plan. And it would be that
14 plan that we would urge the Court to allow to go into
15 effect to recognize the power and the responsibility of
16 the State judiciary to address these issues under the
17 abstention rule.

18 QUESTION: Mr. Tunheim, in response to a
19 question from Justice O'Connor, you said that the Federal
20 district court should set a timetable for the -- does that
21 mean anything more than a deadline? I mean, you're not
22 suggesting that the Federal court should tell the -- that
23 one house should pass a bill on such and such a day and
24 another on another day, are you?

25 MR. TUNHEIM: No, I'm not, Your Honor. What I'm

1 suggesting is what this Court in Germano suggested, that
2 the Federal court retain jurisdiction and fix a reasonable
3 time by which the State must complete the process in order
4 to avoid Federal intervention.

5 QUESTION: And if it isn't done by that time,
6 then the Federal court says, all right, we can't wait any
7 longer. We're going to go ahead. Is that right?

8 MR. TUNHEIM: That's correct.

9 QUESTION: And your position is that that
10 deadline applies not just to the State legislature, but
11 also to the State courts, that you set a date and if the
12 State hasn't taken action by then either through its
13 legislature or through its courts, then the Federal courts
14 get in.

15 MR. TUNHEIM: That's correct. And I believe
16 that's a reasonable administration of justice rule because
17 administration of justice is an important concern in
18 redistricting matters, especially with the very quick time
19 line that must follow.

20 QUESTION: But in this case, the State court was
21 working, wasn't it?

22 MR. TUNHEIM: The State court was proceeding.
23 It, in fact, entered a final valid judgment on legislative
24 redistricting. It was deferring to the legislature to
25 give the legislature an opportunity to pass a

1 congressional plan in January of 1992, and --

2 QUESTION: Was that beyond the deadline that the
3 Federal court had --

4 MR. TUNHEIM: No. The Federal court set a
5 deadline of January 20 for the legislature, but the
6 Federal court did not set a deadline for the State to
7 complete the process. Their deadline applied only to the
8 legislature.

9 QUESTION: Not for the congressional
10 districting.

11 MR. TUNHEIM: But for -- well, for legislative
12 redistricting and congressional redistricting, both of
13 which are the power of the legislature to draw lines if
14 they can accomplish that task.

15 QUESTION: I know.

16 Did the Federal court set a deadline for the
17 legislature to act with respect to congressional
18 districting?

19 MR. TUNHEIM: Yes, January 20, the same date --

20 QUESTION: And was the State court willing to
21 wait longer than that?

22 MR. TUNHEIM: The State court was proceeding
23 through the process --

24 QUESTION: Yes or no?

25 MR. TUNHEIM: The State court did adhere to that

1 date. Yes, it did. So, the answer to your question is
2 yes. The State court was prepared to review any
3 congressional plan that the legislature would have passed.
4 It had already --

5 QUESTION: Prior to January 20.

6 MR. TUNHEIM: Well, it was waiting until the
7 legislature had an opportunity in January. It was
8 represented to both courts that the legislature was going
9 to meet in January and attempt to pass a congressional
10 plan and attempt to pass a corrections bill for the
11 legislative redistricting plan.

12 QUESTION: Before January 20?

13 MR. TUNHEIM: Before January 20. That's
14 correct.

15 QUESTION: I take it you would agree that the
16 time set, let's say, for State court action should be a
17 time which would leave the Federal courts with time
18 themselves to come up with a plan if the State courts
19 don't. You agree to that, I take it.

20 MR. TUNHEIM: Yes, I would, Justice Souter,
21 although I must reemphasize the unique time pressures that
22 are involved in redistricting. And in many cases, it may
23 not be possible for two court systems to both work on the
24 redistricting process within this narrow 10-month window.

25 QUESTION: Right. Well, that's what I want to

1 get at. If that is the case, so that any date that would
2 give the Federal courts time to begin, would not be a date
3 which would give the State courts time to finish. In a
4 case like that, doesn't it make sense to say that
5 abstention really doesn't have much of an application
6 because if, indeed, that's the case, then by abstaining,
7 the only thing the Federal court is doing is just
8 squeezing its own timeframe in? And we know perfectly
9 well that it's going to get into the business of
10 considering its own plan before the State courts could
11 have acted. So, in a case like that, why have any
12 abstention?

13 MR. TUNHEIM: Well, because of the unique nature
14 of redistricting, which is a function that this Court has
15 time and time again referred to as an important State
16 function. The --

17 QUESTION: Well, I know it, but I mean, how does
18 that help you to get to an answer of my -- to my question?

19 MR. TUNHEIM: Well, it helps because what is
20 important for the Federal court to do is to leave
21 sufficient time for the State to complete its process.
22 That includes the legislature if it so chooses to act --

23 QUESTION: Yes, but if I may interrupt you. On
24 the hypothesis that you and I are working on, the only
25 effect of leaving that time is kind of a gesture of

1 politeness because we're assuming that the State courts
2 aren't going to have time to finish by the date at which
3 the Federal courts are going to have to begin if there is
4 no plan in place, so that the only thing we're really
5 doing is going through kind of a -- sort of an after you,
6 Alphonse scheme when you know perfectly well that the
7 Federal courts are going to get into it before the States
8 are going to finish anyway.

9 MR. TUNHEIM: Well, hopefully, that would not be
10 the case that -- if the Federal court would permit a State
11 to go through the process, both legislative and through
12 the State judiciary, and give them an opportunity to
13 complete this process in the 10-month period of time, that
14 is really what is at stake in the abstention rule.
15 Germano involved a situation in which there was a Federal
16 court order that was issued before a State court order,
17 and this Court --

18 QUESTION: Well, that is a difference between
19 this case -- why should the Federal court have retained
20 jurisdiction here since the State court proceedings were
21 initiated before any Federal court proceedings were?

22 MR. TUNHEIM: Well, I would suggest that that
23 was the rule that was suggested by this Court in Germano,
24 that the court retain jurisdiction.

25 QUESTION: Yes, but as you should point out in

1 Germano, the Federal court proceedings came first. Here
2 the State court proceedings came first.

3 MR. TUNHEIM: The only reason for the Federal
4 court to retain jurisdiction is just simply to provide
5 some kind of assurance that all concerns of voters will be
6 resolved in the process.

7 QUESTION: Well, what --

8 MR. TUNHEIM: If a State court is ongoing, there
9 really is no need for a Federal action.

10 QUESTION: Yes, and the Federal court cannot
11 review the State court decree. Why not -- if a State
12 court proceeding starts first in reapportionment, why not
13 simply leave it to the State courts and appeal through
14 their system and review here, just as you get through the
15 Federal court system?

16 MR. TUNHEIM: I would suggest to the Court that
17 that is a better rule. That wasn't the rule suggested in
18 Germano, but that --

19 QUESTION: But Germano is different factually
20 from this case.

21 MR. TUNHEIM: Germano is different factually,
22 although I would -- I would hesitate to think that a rule
23 that provided for some sort of race to the courthouse
24 would be the proper rule to apply. Our argument is that
25 this -- that the power of the States to redistrict should

1 be recognized both through the legislature and through the
2 State court system and make the Federal court a reviewer
3 of last resort and only if it's necessary.

4 QUESTION: Are you -- I gather you're suggesting
5 that -- suppose the State court in this case had finished
6 both jobs, both the legislative job and the congressional
7 redistricting, and the -- there was also a suit pending in
8 the Federal court. Now, could the Federal court then be
9 asked to rule that the State court had misapplied the
10 Constitution and actually review the decision of the State
11 court? I take it you think it could.

12 MR. TUNHEIM: I suggest, Justice White, that it
13 should not review the decision of the State court. If
14 there are different parties raising different claims in
15 Federal court, then the proper rule under any abstention
16 analysis is to look to whether the State court provided an
17 adequate opportunity for all parties to have their issues
18 resolved before the State court. If that's true, it's the
19 end of the case, and there's no more need for Federal
20 court --

21 QUESTION: This isn't a question of res judicata
22 exactly. It's whether or not the Federal court has the
23 authority to say, well, the State court should have
24 provided a minority district here and it didn't. And the
25 State court had considered it and rejected the notion.

1 Now, can the Federal court displace the State court in
2 that respect?

3 MR. TUNHEIM: Absolutely not. The rule should
4 be, as stated in Germano -- and I recognize the factual
5 situation is a little bit different here, in fact, more
6 favorable to the State interests -- the Federal court
7 should not have an opportunity to review on the merits
8 what the State court has done. That appeal is through the
9 --

10 QUESTION: Of course, the State court hadn't
11 finished the job when the Federal court ruled on
12 congressional redistricting.

13 MR. TUNHEIM: Pardon? I'm sorry.

14 QUESTION: The State court had not, as a matter
15 of fact, finished the job on the congressional
16 redistricting when the Federal court acted.

17 MR. TUNHEIM: That is true, in part because of
18 the first of the Federal injunctions which stopped the
19 State court from proceeding forward.

20 QUESTION: What if -- how would your rule apply
21 to a case in which the plaintiff in the Federal action
22 raises issues that were not raised in the State
23 litigation? For example, a State litigation might just
24 challenge the redistricting under State constitutional
25 provisions and never raise a question under the Voting

1 Rights Act or the Constitution.

2 MR. TUNHEIM: Well, certainly if there are no
3 issues raised in the State court action with respect to
4 the Voting Rights Act, which is not the case here, but
5 were that to be the case, and there is still sufficient
6 time for a Federal court to review those issues before the
7 election, the Federal court should go ahead and review
8 those because that's an entirely separate action.

9 QUESTION: Or if they're challenging a different
10 part of the State. Let's say, they didn't like the
11 district in Minneapolis, but in the Federal action, they
12 might have challenged something else. Should the Federal
13 court abstain or should it go ahead?

14 MR. TUNHEIM: I would suggest that in that
15 instance the State court should provide, as this Court
16 did, an opportunity for anyone to come forward with their
17 concerns, their one person/one vote concerns, in any part
18 of the State and to resolve those in the State court.

19 QUESTION: Must the plaintiff challenge in the
20 State court if the plaintiff prefers a Federal forum?

21 MR. TUNHEIM: Well, certainly we wouldn't argue
22 a rule that forces a plaintiff to go to State court,
23 although from the administration of justice standpoint,
24 that may be the best rule under the narrow window of the
25 redistricting process. But if a plaintiff chooses to stay

1 in Federal court, it may be that their concerns don't get
2 resolved until after the first election has run. That's a
3 possible outcome because of the quick time involved in the
4 process.

5 QUESTION: Of course, a lot of the time is not
6 always attributable to the Federal proceeding. Let me put
7 it that way.

8 MR. TUNHEIM: Absolutely. There's a lot that
9 needs to be done in any redistricting process, and 10
10 months is really an insufficient time for it.

11 QUESTION: Mr. Tunheim, could you tell me -- you
12 made the comment, of course, the State court didn't finish
13 because it was enjoined. Was the State court not
14 proceeding at all during December? It was not doing
15 anything at all when the injunction was in effect.

16 MR. TUNHEIM: The State court issued a final
17 order on legislative redistricting after the Federal court
18 issued its injunction in December. The order was, of
19 course, subject to the limits of the Federal injunction.
20 Both courts at that point were waiting for the legislature
21 to come back into session in January to see whether there
22 was any final legislative action. So, both courts were
23 waiting for that. Once the legislature failed in January,
24 then the State court proceeded to issue a valid final
25 judgment and to proceed ahead on congressional

1 redistricting. It's at that point that the Federal court
2 once again stopped the State court by enjoining both its
3 actions on congressional and legislative redistricting.

4 QUESTION: That was when?

5 MR. TUNHEIM: In February.

6 QUESTION: February.

7 MR. TUNHEIM: Right.

8 I would like to reserve the remaining time for
9 rebuttal.

10 QUESTION: Very well, Mr. Tunheim.

11 General Starr, we'll hear from you.

12 ORAL ARGUMENT OF KENNETH W. STARR

13 ON BEHALF OF THE UNITED STATES

14 AS AMICUS CURIAE SUPPORTING THE APPELLANTS

15 MR. STARR: Mr. Chief Justice, and may it please
16 the Court.

17 The interest of the United States in this case
18 focuses on a different aspect of the proceedings below,
19 namely the interpretation of the Voting Rights Act by the
20 district court and specifically section 2 as amended in
21 1982.

22 QUESTION: Do you take no position at all on the
23 abstention argument that we've just heard?

24 MR. STARR: We do not. Abstention is obviously
25 a fact-intensive inquiry. The principles of this Court

1 have, obviously, indicated the importance of State
2 procedures and that this is a State function, but the
3 fact-intensive nature of this is such that we take no
4 position.

5 Our focus is on the merits portion of what the
6 district court did, its interpretation of section 2, and
7 our submission about section 2 is this, that the language
8 of section 2, its purpose, and the underlying logic of
9 voter dilution claims all combine to suggest that the
10 preconditions identified by this court in the Gingles case
11 should apply to single member district challenges as well
12 as to the multimember district challenge at issue. That
13 is to say that minority plaintiffs or any challenger
14 should show that there is a sufficiently large,
15 geographically compact group of minority voters so as to
16 constitute a majority within a particular district, and
17 then that the voting behavior has been characterized by
18 racial polarization on the part of both minorities and
19 then a white voting block in response.

20 Above all, unless there is racial block voting
21 -- and as the district court mentioned, the three-judge
22 majority mentioned, there is no evidence at all of racial
23 polarization here -- then there is no predicate for
24 overturning State drawn districts on a dilution claim.

25 If we look to what the Voting Rights Act was

1 intended to do and we go back to 1982, the purpose of that
2 restoration in 1982 was to codify this Court's decision in
3 White against Regester and a wide variety of lower court
4 cases, especially out of the Fifth Circuit, some 23 cases
5 that preceded the City of Mobile v. Bolden. In all of
6 those cases, racial block voting was present, and when we
7 focus on the logic of a dilution claim, unless there is
8 political cohesiveness, then there is nothing about the
9 State's electoral structure that has interfered with that.
10 Not only in those cases was there block voting on the part
11 of minority interests, but there was also racial block
12 voting by the white majority that had the effect of
13 cancelling out or of submerging the minority vote.

14 In addition, the concept of geographic
15 compactness is closely related to the concept of what an
16 electoral district is, that as this Court said in Gingles,
17 unless there is geographic compactness and a large enough
18 group to constitute a majority in the district, then a
19 defeat at the polls is a result of the lack of numbers and
20 not because of the kind of concerns that Congress was
21 getting at in amending section 2.

22 Section 2 is getting at the deprivation of equal
23 opportunity on account of race or color. It is not
24 getting at coalition politics, interest group politics.
25 It is getting at clearing the channels of politics, of the

1 obstacles that prevent what the statute calls an equal
2 opportunity to participate while guarding against the
3 danger which was part of the great compromise of 1982 of
4 analyzing section 2 in such a way that yields up
5 essentially powerful tendencies in favor of proportional
6 representation. We believe at bottom that was the vision
7 that was guiding the district court in this particular
8 case.

9 QUESTION: General Starr, I know the Government
10 doesn't take a position on the threshold issues here, but
11 does the section 2 analysis in a Federal proceeding depend
12 at all on what may have happened with regard to section 2
13 issues in a State proceeding?

14 MR. STARR: It is conceivable, it seems to me
15 just in terms of the orderly administration of justice,
16 that the district court might well be advised to look to
17 the record of the proceedings in the State court case
18 assuming that it had, in fact, had a trial, or at least
19 there were evidentiary submissions and so forth.

20 QUESTION: Well, beyond looking at the record,
21 supposing a State court disagreed with your analysis and
22 found a section 2 violation that you would say was plainly
23 wrong, would there be -- would that judgment be entitled
24 to full faith and credit in a parallel Federal proceeding,
25 do you think?

1 MR. STARR: Well, again, we have taken no
2 position at all on that.

3 QUESTION: This is very important because we
4 have ongoing litigation in two systems frequently, and I
5 think the United States -- it's strange to me you don't
6 have a position on that issue.

7 MR. STARR: Primarily because of the inherently
8 fact-intensive nature of these proceedings. That -- I
9 think the value -- when we look at Scott against Germano
10 and what this Court was trying to do, I think the Court
11 was essentially saying to Federal courts please be
12 respectful of State court proceedings, and as the Chief
13 Justice indicated, once those State court proceedings are
14 under way there is -- and, in fact, what happened in
15 Minnesota, as the Court knows, is that a special three-
16 judge court was impaneled representing different parts of
17 the State with then direct appeal to the Minnesota Supreme
18 Court. From all that appears, although we have no
19 specific position here, it appears that the State court
20 proceedings were going forward correctly.

21 Now, if there is concerns on the part of the
22 United States with respect to what a State court might, in
23 fact, do, we obviously are capable of intervening and
24 participating in that litigation. And obviously, if there
25 is an -- ultimately an incorrect interpretation of section

1 2 by the State court system, that obviously suggests that
2 an appeal would -- or certiorari might be appropriate in
3 this Court.

4 The present dynamic is one that is quite
5 frustrating because you have under the statute these
6 three-judge district courts across the country with direct
7 appeal to this Court, and at the same time you have this
8 phenomenon of the parallel State proceedings. It does
9 seem to us that there is wisdom in the profederalism
10 vision of Scott against Germano, but at the same time, we
11 have not taken a specific position in terms of the
12 judgment and whether it would be entitled to full faith
13 and credit protection.

14 Back to section 2, if I may, just for a moment.
15 It does seem to us that when one analyzes the three-judge
16 court's opinion, what it essentially said was there is a
17 lack of proportional representation, and the bottom line
18 and what the court did there was to create a new district,
19 that new Senate District 59, which no one in the
20 redistricting process, that deliberative process, hearing
21 from various interested groups and so forth, including
22 minority groups, no one had been recommending --

23 QUESTION: The court said there was no
24 statistical evidence of political cohesiveness in the
25 minority. Was there any other evidence at all either in

1 the State proceeding that it could take notice of or in
2 the proceedings before it from which it might come to the
3 conclusion that there was a politically cohesive force in
4 the minority voting block?

5 MR. STARR: To the contrary. I cannot confess
6 intimate familiarity with the State court record, but what
7 I do know is that the State court itself in these
8 proceedings, this special three-judge court, heard
9 evidence, considered this very point, and in fact, as
10 you'll see in the appellants' brief, there is evidence
11 quite to the contrary in Minnesota, that individuals,
12 minority individuals, have been elected to various and
13 sundry positions, including in the Twin Cities area, from
14 overwhelmingly majority or white districts.

15 QUESTION: How did the district court handle
16 that? As I read the footnote, footnote 30, it seems
17 simply to make a presumption that this -- that there's
18 usually going to be political cohesiveness.

19 MR. STARR: Exactly right. I think what Judge
20 Lay and his colleague did on the district bench was simply
21 cite a Law Review article. That is exactly what this
22 Court in Gingles said cannot be done, and it's also what
23 the Senate report at page 33 and 34 said cannot be done.
24 We don't presume racial block voting in this country.

25 QUESTION: General Starr, was there a Voting

1 Rights Act challenge to the congressional redistricting
2 brought in State court here?

3 MR. STARR: I'm sorry. I don't know the answer
4 to that. The answer is, I am informed, no, in State
5 court.

6 QUESTION: And was there any section 2 Voting
7 Rights Act challenge to the congressional plan brought in
8 the Federal district court?

9 MR. STARR: No.

10 QUESTION: And so, what is the error there if
11 there was one?

12 MR. STARR: I'm not sure that there was in the
13 congressional area, and I don't think that there has been
14 an appeal with respect to that.

15 QUESTION: And you don't -- you take no position
16 on that.

17 MR. STARR: We take no position with respect to
18 that.

19 QUESTION: Thank you.

20 MR. STARR: I thank the Court.

21 QUESTION: Thank you, General Starr.

22 Mr. Willis, we'll hear from you.

23 ORAL ARGUMENT OF BRUCE DONALD WILLIS

24 ON BEHALF OF THE APPELLEES

25 MR. WILLIS: Mr. Chief Justice, and may it please

1 the Court:

2 I think the ultimate issue in this case is
3 whether the Federal court properly issued both legislative
4 and congressional redistricting plans for Minnesota in
5 February of 1992. And the appellees believe that this
6 Court may determine that issue on the basis of the
7 application of principles of Federal court jurisdiction
8 and doctrines of Federal court abstention without having
9 to determine whether the Federal court's finding of a
10 violation of section 2 of the Voting Rights Act was
11 clearly erroneous, if this Court so chooses, because in
12 issuing its plans, the Federal court indicated that it was
13 affording the same relief that it would have afforded had
14 it not found a section 2 Voting Rights Act violation. And
15 appellees further believe that such a determination of
16 this matter may be made by this Court without disturbing
17 any precedents of the Court.

18 And first of all, this Court has recognized on
19 numerous occasions in cases such as Colorado River that a
20 Federal court has a virtually unflagging duty adjudicate
21 matters before it. The Federal court in this case had
22 jurisdiction, and it was obligated to adjudicate the
23 constitutional and statutory claims of the plaintiffs
24 before it.

25 QUESTION: Well, how do you explain Scott v.

1 Germano if you're correct, Mr. Willis?

2 MR. WILLIS: I don't view, although I will have
3 to admit, Chief Justice, that the -- we bought into the
4 language used by the appellants describing Scott v.
5 Germano as an abstention case. It properly read is not an
6 abstention case. It is a deferral case, but quite
7 clearly, this Court told the Federal court in Illinois in
8 that case that it should retain jurisdiction. Abstention,
9 as I read that term, means --

10 QUESTION: But that doesn't tell you what should
11 happen if a State court -- after the Federal court holds
12 its hand, if the State court decides the issue -- do you
13 think Gingles tells -- or do you think Scott against
14 Germano tells you that this Federal court can then sit in
15 judgment of how the State court decided the issue?

16 MR. WILLIS: I'm not -- I think that Scott v.
17 Germano is an anomaly, and it is, as this Court knows, a
18 case that arose as part of the spate of decisions across
19 the country that followed Baker v. Carr and Reynolds v.
20 Sims when virtually every redistricting plan in the
21 country was rendered unconstitutional.

22 QUESTION: So, the main holding was, whether you
23 call it abstention or what, it was the Federal court
24 should not have proceeded to adjudicate the case while the
25 State agencies were working.

1 MR. WILLIS: I think the case has to be read
2 that way, but it also has to be recognized that that case
3 was brought 2 years in advance of an election, and I don't
4 think that it provides very efficient guidance for Federal
5 courts today operating under the kinds of time constraints
6 that Mr. Tunheim has described.

7 QUESTION: Well, supposing the Minnesota State
8 court had completed its redistricting plan and the
9 plaintiffs in the Federal action said, well, this is all
10 wrong. They said there's no voting rights violation. We
11 want you to say there is one. They said it was consistent
12 with the U.S. Constitution. We want you to say it isn't
13 consistent. Can the Federal court review the State plan
14 on the merits?

15 MR. WILLIS: I don't think the Federal court
16 reviews the State court plan on the merits, but I think
17 the Federal court has an obligation to adjudicate the
18 claims that are before it no matter what the State court
19 has done.

20 QUESTION: Even though it reaches a result in
21 conflict with the State court --

22 MR. WILLIS: Even if it reaches a --

23 QUESTION: -- on the same issues.

24 MR. WILLIS: Even if it reaches a result in
25 conflict with the court on the same issues.

1 QUESTION: That's a rather strange result.

2 MR. WILLIS: It strikes me, Your Honor, that
3 this Court in its decision in New Orleans Public Service 3
4 years ago rather strongly stated that abstention
5 principles -- the Younger abstention principle that has
6 been argued for application here in this case does not
7 require abstention in deference to a State judicial
8 proceeding reviewing legislative or executive action.

9 The Court went on to say -- and I quote -- it is
10 true, of course, that the Federal court's disposition of
11 such a case may well affect or for practical purposes
12 preempt a future or even a pending State court action, but
13 there is no doctrine that the availability or even the
14 pendency of State judicial proceedings excludes the
15 Federal court.

16 QUESTION: But the Chief Justice's question to
17 you didn't involve a future or pending State action. It
18 involved a completed State action. And you've said that
19 the Federal court could simply review and overturn the
20 result of the State court action.

21 MR. WILLIS: I said that the -- in my judgment
22 the Federal court could reach an inconsistent conclusion.

23 QUESTION: Do you know of any other area where
24 this is so, where a Federal issue was presented to a State
25 court, the State court decides it and rules upon it, and a

1 Federal court has authority to review that same issue and
2 come to a different conclusion?

3 MR. WILLIS: Justice Scalia, we are -- in this
4 particular instance, we are dealing with a situation in
5 which the Federal court and the State court, having
6 simultaneous jurisdiction, you know, had claims before it.
7 The Federal court had no -- the State court had arrived at
8 no conclusion.

9 QUESTION: There are lots of areas where claims
10 can be brought in either Federal or State courts. State
11 courts have jurisdiction over other Federal causes of
12 action. Do you know of any other area where -- when the
13 Federal cause of action has been resolved in the State
14 court, the Federal court has authority to reconsider the
15 matter and set aside the State court judgment?

16 MR. WILLIS: Your Honor, it's --

17 QUESTION: You might consider whether the
18 parties are the same.

19 MR. WILLIS: Well, thank you, Your Honor, but -
20 - (Laughter.)

21 MR. WILLIS: If we were talking about res
22 judicata and preclusive effect, I mean, that -- in this
23 -- if you're talking about the facts of this case as
24 opposed to an abstract legal principle, in this case there
25 were different parties. The parties in the Federal court

1 were not the -- all parties to the State action. All of
2 the appellants here were parties to both actions. In
3 fact, three of the appellants voluntarily intervened in
4 the Federal action having been parties to the State
5 action, so that the State court determination here did not
6 have, in our judgment, preclusive effect on the parties to
7 the Federal action. I misunderstood your question and
8 thought you were speaking in the -- in a more abstract
9 manner.

10 QUESTION: Well, Mr. Willis, now here is it true
11 that the State court suit was filed first?

12 MR. WILLIS: That is true, Your Honor.

13 QUESTION: And the State court acted in a timely
14 fashion.

15 MR. WILLIS: Your Honor, we would not concede
16 that. First of all -- and let me correct a
17 misapprehension that may exist. The question was asked
18 earlier if the Federal court had established a deadline by
19 which not only the legislature, but by which State actions
20 had to be taken. The Federal court did so in an order on
21 October 4, 1991 in which it established January 25, 1992
22 as the date by which the State of Minnesota shall enact
23 both legislative and congressional redistricting plans.

24 QUESTION: Well, enact plans. That doesn't
25 refer to State court action, does it?

1 MR. WILLIS: It depends on how one reads the
2 State of Minnesota.

3 QUESTION: Well, if one thinks that enactment of
4 a plan refers to a legislative act, then it didn't cover
5 it.

6 MR. WILLIS: It could be read that way, Your
7 Honor.

8 QUESTION: And if we read it that way, then the
9 State court acted in a timely fashion perhaps. At least
10 that's arguable.

11 MR. WILLIS: That is arguable.

12 QUESTION: And do the respondents claim that the
13 State plan that was enacted for legislative districts is
14 unconstitutional?

15 MR. WILLIS: No, Your Honor. We claim that it
16 was not, however, entitled to deference by the Federal
17 court because it was not a legitimate legislative
18 enactment entitled to deference. It was not reflective of
19 State policy because it was in all -- it was virtually
20 identical to a plan that was specifically rejected as
21 State policy 1 month later.

22 We have the unusual circumstance here of having
23 a State judicial plan ordered 1 month before the
24 legislature reconvened to attempt to -- you know, to pass
25 a legislative redistricting plans. We have a judicial

1 proceeding before the legislative action. The legislature
2 attempted to adopt in January of 1992 a plan that but for
3 two Senate districts was identical to the plan the State
4 court had ordered in December, and that was specifically
5 rejected as State policy in Minnesota by virtue of the
6 Governor's veto and this Court's --

7 QUESTION: So, what we have left is the State
8 court adopted plan. Is that right? For the --

9 MR. WILLIS: The State court adopted plan --

10 QUESTION: Yes.

11 MR. WILLIS: -- still exists. That's correct.

12 QUESTION: Yes, all right. And that could be
13 seen as the reflection of State policy in this case.

14 MR. WILLIS: We argue that it is not a
15 reflection of State policy in that it was virtually
16 identical with the plan that was specifically rejected as
17 State policy.

18 QUESTION: Well, suppose that that --

19 QUESTION: It wasn't rejected. It was simply
20 not enacted at all.

21 MR. WILLIS: Well --

22 QUESTION: I mean, one can view the legislative
23 -- the legislature did not adopt a different plan. So,
24 all that happened when the legislative process was all
25 done was that the plan announced by the State court

1 remained in effect. At the end of the day, that was the
2 State plan.

3 MR. WILLIS: Except this Court has announced
4 that in Minnesota specifically in dealing with
5 redistricting specifically in the Smiley v. Holm case that
6 State policy in Minnesota is reflected by valid
7 legislative enactments, and that in Minnesota the
8 Governor, as the chief executive officer, is a necessary
9 element for a valid legislative enactment to occur.

10 QUESTION: But that doesn't completely answer
11 the question we're dealing with here. So far as the
12 Federal courts are concerned, perhaps a law passed by the
13 legislature, signed by the Governor would have been the
14 best evidence of State policy, but surely the -- a plan
15 adopted by a State court is better evidence of State
16 policy than a plan adopted by the Federal court.

17 MR. WILLIS: I would disagree, Chief Justice
18 Rehnquist. I don't think that State policy, at least in
19 Minnesota, is reflected by -- is found in judicial
20 enactments. State policy in Minnesota is found in the
21 valid enactments of the State legislature.

22 QUESTION: You say the State court then was
23 simply proceeding under the same restraints or laws that
24 the Federal court would have to proceed. It was not
25 entitled to make any more policy choices than a Federal

1 court would be?

2 MR. WILLIS: I think that is correct. I think
3 that is correct.

4 And first of all, I don't see that there is any
5 greater reason for a Federal court to abstain in a matter
6 involving voting rights than in a case involving any other
7 basic civil rights. And no one I think would suggest
8 seriously that because there was a State forum available,
9 that an individual challenging discriminatory educational
10 practices or prison conditions or whatever could not have
11 access to a Federal forum even though the State has a
12 strong State interest in matters of that kind.

13 QUESTION: So, Germano should be overruled?

14 MR. WILLIS: I don't think it's necessary to do
15 that. I don't think it's necessary to do that because
16 Germano is -- does not tell Federal courts to abstain, but
17 I think Germano --

18 QUESTION: Well, it tells them to abstain for a
19 while.

20 MR. WILLIS: It tells them to stay their hand,
21 but it doesn't tell them to -- you know, to dismiss the
22 case because there is a pending State court action.

23 QUESTION: But on your argument, I'm not sure
24 why deferrals should be any more palatable than
25 abstention.

1 MR. WILLIS: Certainly in the timeframe involved
2 in this case, deferral was -- would not be more palatable
3 than abstention, but the Court should recognize what the
4 Federal court did here. Not only -- in attempting to
5 follow the dictates of Germano, it established first
6 January 20 and later January 25 as the date by which State
7 action had to occur. No one objected to that. All of the
8 parties agreed that a plan should be in effect ideally by
9 early February, at latest by the first of March.

10 The Federal court recognized also the inherent
11 potential for delay in the State appellate proceedings,
12 you know, indicated that because it -- you know, it was
13 going to give the legislature an opportunity to act. If
14 the legislature did not make good on its representation
15 that it would adopt a valid plan of both legislative and
16 congressional redistricting, it would become law in
17 January. The Federal court knew it wasn't going to have
18 time to start at that point and get plans done.

19 QUESTION: Well, why was delay in the State
20 proceedings any more objectionable than delay in the
21 Federal proceedings? I mean, first you have the district
22 court and then you have an appeal here. So, it's not as
23 if the district court spoke with any final authority.

24 MR. WILLIS: Well, except the Court also has to
25 recognize that Congress has, by the enactment of section

1 2284, given Federal courts specifically jurisdiction over
2 statewide legislative apportionment, as well as
3 congressional apportionment, because they are both
4 specifically mentioned in that section. It also provides
5 for a direct appeal to this Court from the determination
6 of the three-judge panel.

7 The three-judge panel created in Minnesota was
8 not created under any statute that relates to
9 redistricting. It was an ad hoc panel created by the
10 constitutional authority of the Chief Justice of the State
11 Supreme Court to move judges from one district to another.
12 Since it was not created pursuant to a special statute,
13 there is no special statute regarding appeal, and on its
14 face, the determination of that three-judge panel would be
15 subject to Minnesota's two-tiered appeal process and then
16 possibly to this Court after determination by the
17 Minnesota Supreme Court.

18 QUESTION: Mr. Willis, who were the judges on
19 the State side?

20 MR. WILLIS: On the -- pardon me, Your Honor?

21 QUESTION: Who were the State judges, the three?

22 MR. WILLIS: Judge Harriet Lansing of the
23 Minnesota Court of Appeals, State District Court Judge
24 William Walker from northwestern Minnesota, and State
25 District Court Judge Kenneth Maas from the Stillwater

1 area.

2 QUESTION: From where?

3 MR. WILLIS: Stillwater or White Bear Lake.

4 QUESTION: Why should we consider the potential
5 appellate process at all? You've got a valid judgment
6 once the State court acts, just as you've got a valid
7 judgment once a three-judge Federal court acts. Why isn't
8 that enough? Why isn't that the only thing that should be
9 considered?

10 MR. WILLIS: Because of the exigencies of the
11 political processes in the State, you know, as the
12 Attorney General has acknowledged. It is essential that
13 between the time that the legislative data are available
14 early in the year following the census year, that the
15 redistricting process both for legislative districts and
16 for congressional districts be completed in such a fashion
17 that the processes necessary to conduct the election in
18 the even numbered year are in place.

19 QUESTION: You can conduct an election based on
20 a -- in this case, your three-judge State court decree.
21 There's no difficulty in conducting an election. You just
22 wouldn't have time to appeal it through the two tiers.

23 In other words, the State is providing a
24 perfectly enforceable remedy, and you're, of course, quite
25 right that there isn't time to appeal the correctness of

1 that remedy perhaps in cases, in this case. But I don't
2 see why that is a -- as it were, a failing of the State
3 court system which somehow should be considered in
4 determining what the Federal courts should or should not
5 do.

6 MR. WILLIS: I think it is a consideration, Your
7 Honor, and I think that taken together with section 2284
8 an expression of congressional intent that Federal courts
9 have jurisdiction over such cases and providing for
10 immediate and direct appeal to the United States Supreme
11 Court from the determinations of three-judge panels, that
12 Congress has evidenced an intention that there be quick
13 determination of redistricting issues.

14 QUESTION: But, you know, this district court
15 decree was entered when? Last February?

16 MR. WILLIS: The Federal district court decree?

17 QUESTION: Yes.

18 MR. WILLIS: February 19.

19 QUESTION: And we noted probable jurisdiction
20 last spring. Here it is November. We're hearing the case
21 argued on the merits. Maybe there will be an opinion out,
22 you know, this winter or this spring. And obviously, it
23 wasn't -- this review wasn't in time for the 1992
24 election.

25 MR. WILLIS: No, but if -- I would suggest, Your

1 Honor, that if this Court were hearing the case after
2 review by two tiers of the Minnesota appellate process and
3 possible certiorari from the determination of the
4 Minnesota Supreme Court that we would probably be sitting
5 here at this time next year or certainly sometime very
6 much later than this.

7 QUESTION: Mr. Willis, can I explore with you a
8 little further the consequence of the State court decree
9 if the State court proceeding had been allowed to go
10 forward? Let's take it out of the voting rights context.

11 Suppose you have a shareholder dispute in a
12 close corporation, and there's some dispute as to how the
13 stock should be divided. And one of the three
14 shareholders sues in State courts, and the State court
15 says, well, it ought to be 60-20-20. That's how the stock
16 ought to be divided, and a judgment is entered to that
17 effect. Meanwhile, another suit is begun in Federal court
18 somehow, some basis of Federal jurisdiction. Wouldn't the
19 suit in the Federal court which claims likewise an
20 inequitable distribution -- wouldn't that suit have to
21 start on the assumption that the current distribution is
22 60-20-20, the decree entered by the State court?

23 MR. WILLIS: If you had an identity of parties
24 involved.

25 QUESTION: Well, even if you didn't have an

1 identity of parties. If the court had the power to order,
2 you know, statewide that there be -- in the context of my
3 example, that the corporate shares be divided that way,
4 they would be divided that way. Now, you could argue that
5 that new arrangement is violative of Federal law, but
6 wouldn't that new arrangement be the status quo? And why
7 isn't that the same here? If that is true in that
8 situation, why isn't it here?

9 You can review the State court determination so
10 long as there are new parties, but the status quo, what
11 you must attack, is the current court decree, not the
12 prior legislative districting that this legislature had
13 established. Why wouldn't that be the situation?

14 MR. WILLIS: Because here, Your Honor, in
15 dealing with redistricting, this Court has said that, you
16 know, the courts must defer to State policy, you know, in
17 making their determinations regarding redistricting. The
18 hypothetical that you present I don't perceive as having
19 State policy implications. Here the Federal court --

20 QUESTION: Okay. It goes back to that. I --

21 MR. WILLIS: Here the Federal court had
22 determined that -- you know, by the time it acted in
23 February, I mean, it had a number of facts available to
24 it. It knew that what the State court had adopted in
25 December was a plan that under Minnesota law, as

1 interpreted by this court, had been specifically rejected
2 as State policy in January. It also had no congressional
3 plan of any kind before it. The legislature's attempt to
4 pass a legislative plan similarly was rejected as State
5 policy by the veto of the Governor in January, and the
6 State court had not generated a congressional plan.

7 And I would take issue with, by the way, the
8 representation that in any way stays of the Federal court
9 contributed to that circumstance. As Mr. Tunheim
10 acknowledged, in its December 9 order, the State court
11 said that we are not going to act on congressional plans
12 now. We're going to give the legislature a chance to act
13 in January while at the same time not giving them a chance
14 to act again in January on the legislative plans. The
15 legislature passed a congressional redistricting plan -- a
16 stay -- that order was issued subject to an existing stay
17 of the Federal panel.

18 The legislature passed its congressional plan on
19 the 9th of January. The Governor vetoed it in the 10th of
20 January. This Court vacated the stay on the 10th of
21 January, so that all the State court had said it would do
22 is wait till the legislature attempted to act by the 10th
23 of January, it was known what was going to happen, and by
24 the 10th of January the stay of the Federal court had been
25 vacated by this Court.

1 QUESTION: And you don't defend the district
2 court's decision to enter the stay here, do you?

3 MR. WILLIS: I think that the district -- absent
4 the district court stay, the legislature likely would not
5 have attempted to act on legislative redistricting. I
6 think the district court legitimately saw the issuance of
7 a legislative redistricting plan a month before the
8 legislature was scheduled to reconvene to consider
9 redistricting as having a chilling effect on the
10 legislative process in Minnesota. This Court, obviously,
11 did not agree that the stay was appropriate. It was
12 vacated without comment.

13 QUESTION: So, whose view do you choose? This
14 Court's or the district court's?

15 MR. WILLIS: I choose your view, Your Honor.

16 (Laughter.)

17 QUESTION: Mr. Willis, did the State court
18 during -- in December, when the December stay was in
19 effect, did they do any work at all on, you know, how they
20 would themselves redistrict if the State legislature
21 didn't come up with anything?

22 MR. WILLIS: The State court?

23 QUESTION: Yes.

24 MR. WILLIS: I don't know the answer to that
25 question, Your Honor.

1 QUESTION: I think that's somewhat relevant to
2 whether the State court was dilatory later when the stay
3 was finally lifted; that is, when the legislature had
4 acted, the State comes in and says, well, we moved as fast
5 as we could once the December stay was, in effect,
6 eliminated by the legislative plan having been adopted.
7 If I thought that they could have gone ahead and done
8 something during December, I might feel differently about
9 it. Do you think that they were able to proceed with
10 contingency plans during December even though they
11 couldn't have violated the Federal district court --

12 MR. WILLIS: I think the court itself could have
13 proceeded with the development of contingency plans as the
14 Federal court had done. My recollection of the terms of
15 the stay was simply that no action could be taken to
16 implement such a plan and that the parties themselves were
17 enjoined from participating in further proceedings of the
18 State panel, but I think the State panel itself could have
19 and perhaps did. That was not something to which counsel
20 were privy as I -- you know, it may have been working on
21 contingency plans.

22 QUESTION: The parties were enjoined from
23 proceeding before the State court, and then you suggest
24 that it's appropriate for the State court to continue
25 absent the representation of the parties? That's very

1 curious.

2 MR. WILLIS: Excuse me, no. I was speaking only
3 to the issue of whether the State court could itself have
4 proceeded with the development of contingency plans
5 subject to the stay. The Federal court prepared
6 contingency plans without -- strike that.

7 The Federal court prepared contingency plans
8 which were not to be made public until and unless they
9 were needed. There was input from counsel. From the
10 outset of the State court action, the State court
11 concerned itself only with legislative plans, and
12 congressional plans were not even mentioned until the
13 order of December 9 in which the State court said we are
14 going to wait until the legislature has an opportunity to
15 act in January.

16 QUESTION: Mr. Willis, you haven't said much
17 about the section 2 vote dilution claim. Do you think
18 that such a claim can be established absent proof of
19 minority block voting?

20 MR. WILLIS: Your Honor, we do not believe that
21 the determination of the Federal district court was
22 clearly erroneous, but as I --

23 QUESTION: Wait a minute. What I asked you was
24 whether you believe that a vote dilution claim under
25 section 2 can be established absent proof of minority

1 block voting.

2 MR. WILLIS: I think that's -- that that is a
3 stretch, Your Honor.

4 QUESTION: That it cannot be.

5 MR. WILLIS: It cannot be.

6 QUESTION: But you think somehow there was such
7 proof in this case. Is that your position?

8 MR. WILLIS: I think that the Federal court
9 satisfied itself from an examination of voting patterns
10 that there was racial block voting --

11 QUESTION: Well, it said there's no statistical
12 evidence.

13 MR. WILLIS: But once again, Your Honor, I think
14 that it is possible for this panel to deal with the issues
15 in this case without making a determination of the
16 propriety or impropriety of the section 2 Voting Rights
17 Act violation, and I would encourage the Court to do so.
18 I think that the Court is going to have on its calendar on
19 December 8 a case that will allow the Court to address
20 those same issues, and I don't think -- I think that this
21 case can be disposed of on the grounds of the application
22 of principles of preclusion and that in this case the
23 State court -- or I mean, the Federal court had
24 jurisdiction and obligation to act. There is no principle
25 of abstention that would require them not to act. In

1 fact, the Court's pronouncements have been to the
2 contrary, and that the court in issuing its plans of
3 legislative and congressional redistricting properly
4 exercised its broad remedial power and that --

5 QUESTION: It issued an injunction to protect
6 its jurisdiction. Is that --

7 MR. WILLIS: And to issue an injunction to
8 protect its jurisdiction in connection with the issuance
9 of its order.

10 But it -- I mean, it issued a plan that complied
11 with all of the directions of this Court regarding court
12 ordered plans for de minimis population deviations. It
13 avoided the fracturing of minority voting populations. It
14 created compact districts. It was drawn without
15 consideration of the residence of incumbents, and faced
16 with several alternatives for the City of Minneapolis on
17 how best minority voting interests be protected, I don't
18 think that the Federal court's decision to create a super
19 majority-minority Senate district can be said to be
20 clearly --

21 QUESTION: Well, suppose we think that the
22 district court improperly found a section 2 Voting Rights
23 Act violation. Now, had the district court not found that
24 or inasmuch as we might think it's improper, should the
25 Federal district court then have at least adopted the

1 State court plan?

2 MR. WILLIS: Well, I think --

3 QUESTION: Isn't that what's left? There was no
4 contention by respondents that the State court plan was
5 unconstitutional. So, why in the world wouldn't the
6 Federal district court resort to the State court plan if
7 there's no section 2 violation?

8 MR. WILLIS: Because the stay of the Federal
9 court determined that the State court plan was not -- it
10 was not a valid reflection of State policy in that
11 virtually identical plan had been specifically rejected
12 during the 1992 legislative session in January.

13 QUESTION: Thank you, Mr. Willis.

14 Mr. Tunheim, you have 1 minute remaining.

15 REBUTTAL ARGUMENT OF JOHN R. TUNHEIM

16 ON BEHALF OF THE APPELLANTS

17 MR. TUNHEIM: Thank you, Mr. Chief Justice.

18 A couple of concerns to address Justice Scalia's
19 concern about the delay involved in the State court
20 consideration of congressional redistricting.

21 The State court had before it congressional
22 redistricting from the beginning. On August 16 it set the
23 criteria by which it would review any congressional plan
24 that would be enacted by the legislature. It was stayed.
25 Its hand was stayed by the Federal injunction from early

1 December until January 10 when that injunction was lifted
2 here. At that point, the State court once again moved
3 forward on congressional redistricting, asking the parties
4 to come forward and present their views on what the State
5 court should do on congressional redistricting.

6 Any delay in that process is solely attributable
7 to the injunctions that were imposed on the State court
8 and on the parties by the Federal panel. There's no
9 reason to believe -- and the State court, in fact --

10 QUESTION: Thank you.

11 MR. TUNHEIM: Thank you, Your Honor.

12 CHIEF JUSTICE REHNQUIST: Your time has expired,
13 Mr. Tunheim. Thank you.

14 The case is submitted.

15 (Whereupon, at 11:55 a.m., the case in the
16 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

Grove v. Edison

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Lona M. May

(REPORTER)