

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: JACKIE HOLDER, ETC., ET AL., Petitioners v. E. K.
HALL, SR., ET AL.
CASE NO: 91-2012
PLACE: Washington, D.C.
DATE: Monday, October 4, 1993
PAGES: 1-52

ALDERSON REPORTING COMPANY

1111 14TH STREET, N.W.

WASHINGTON, D.C. 20005-5650

202 289-2260

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 JACKIE HOLDER, ETC., ET AL. :

4 Petitioners :

5 v. : No. 91-2012

6 E. K. HALL, SR., ET AL. :

7 - - - - -X

8 Washington, D.C.

9 Monday, October 4, 1993

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:05 a.m.

13 APPEARANCES:

14 R. NAPIER MURPHY, ESQ., Macon, Georgia; on behalf of
15 the Petitioners.

16 CHRISTOPHER COATES, ESQ., Milledgeville, Georgia; on
17 behalf of the Respondents.

P R C O N T E N T S

ORAL ARGUMENT OF

(11:05 a PAGE

R. NAPIER MURPHY, ESQ. REHNQUIST: We'll hear argument

next On behalf of the Petitioners *Shelby v. K. Hall*, 3

ORAL ARGUMENT OF *phy, you may proceed.*

CHRISTOPHER COATES, ESQ. OF R. NAPIER MURPHY

On behalf of the Respondents PETITIONERS 26

REBUTTAL ARGUMENT OF *Mr. Chief Justice and may it please*

R. NAPIER MURPHY, ESQ.

On behalf of the Petitioners *im that section 2 of* 49

*Voting Rights Act requires Blackley County, Georgia, to
enlarge its current, single-member county commission to a
five-person commission.*

*Our position is that the act cannot be read as
authorizing Federal courts to alter the size of governing
bodies. Instead, the existing structure of State and
local governments, the number, and types of offices, must
be taken as a given, a basic assumption. Thus, while the
method of election may be a cognizable claim, changing the
size of a government to prove a voting rights violation is*

*QUESTION: Well now, that means that if, for
instance, we had a situation where some counties had
three-member commissions and others had five-member
commissions, that if minority voters in a three-member*

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

2 (11:05 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in Number 91-2012, Jackie Holder v. E. K. Hall.

5 Mr. Murphy, you may proceed.

6 ORAL ARGUMENT OF R. NAPIER MURPHY

7 ON BEHALF OF THE PETITIONERS

8 MR. MURPHY: Mr. Chief Justice and may it please
9 the Court:

10 This case involves a claim that section 2 of the
11 Voting Rights Act requires Bleckley County, Georgia, to
12 enlarge its current, single-member county commission to a
13 five-person commission.

14 Our position is that the act cannot be read as
15 authorizing Federal courts to alter the size of governing
16 bodies. Instead, the existing structure of State and
17 local governments, the number, and types of offices, must
18 be taken as a given, a basic assumption. Thus, while the
19 method of election may be a cognizable claim, changing the
20 size of a government to prove a voting rights violation is
21 not.

22 QUESTION: Well now, that means that if, for
23 instance, we had a situation where some counties had
24 three-member commissions and others had five-member
25 commissions, that if minority voters in a three-member

1 commission county sued under section 2 seeking a five-
2 member commission, you would say that, as in this case,
3 section 2 just doesn't cover it.

4 MR. MURPHY: Your Honor, our position is not
5 that section 2 doesn't cover a claim. Our argument is
6 that section 2 cannot be read as authorizing Federal
7 courts to change the size of the government. The courts
8 must look at the existing structure when analyzing a
9 section 2 claim.

10 QUESTION: Suppose there were a commission, a
11 county commission of five commissioners, and it was shrunk
12 to three, allegedly causing a dilution, would there be a
13 section 2 remedy for the court in that instance?

14 MR. MURPHY: There would be a remedy under
15 section 5. That change --

16 QUESTION: No -- no, I said section 2.

17 MR. MURPHY: If there were a lawsuit seeking to
18 change the size of the government from five --

19 QUESTION: No. No, my hypothetical is that the
20 commission, as constituted, has five commissioners. It is
21 then reduced to three. Is there a section 2 violation if
22 it can be shown that there is a dilution?

23 MR. MURPHY: If there was an intentional reason
24 to dilute minority voting strength because of the
25 reduction, yes, there would be a violation. It would in

1 my opinion be a section 5 claim instead --

2 QUESTION: No, but --

3 MR. MURPHY: -- of a section 2 claim.

4 QUESTION: It's not intentional.

5 QUESTION: Suppose it's not intentional and it's
6 not covered by section 5. Suppose it's not a section 5
7 jurisdiction.

8 MR. MURPHY: If there has been a retrogression
9 of minority voting strength and minority votes are diluted
10 by virtue of that change by county government, then there
11 would be a section 2 claim, but the county --

12 QUESTION: So that the overarching proposition
13 that section 2 does not apply to changes in the size of a
14 governing body has at least one exception in the case that
15 I put.

16 MR. MURPHY: No, sir. The county has not tried
17 to change the size of the local governing body here.
18 There has been a group of private plaintiffs who have
19 filed a lawsuit seeking to change the size of the local
20 governing body.

21 Our position is that the intent of Congress in
22 writing section 2 was not to guarantee election to office,
23 not to guarantee proportional representation, but simply
24 to question whether the existing size, or the existing
25 system dilutes minority --

1 QUESTION: But I just want to make sure what
2 your proposition is. I thought that you'd stated at the
3 outset that section 2 is not applicable to changes in the
4 size of governmental entities, and I put this hypothetical
5 designed to test that, and I'm still not sure of your
6 answer.

7 MR. MURPHY: Your Honor, section 2 has not --
8 section 2 addresses the method of electing persons to
9 office. If there were a change by the government from
10 five to three, and it could be proven that there was a
11 dilution of minority voting strength as a result of that,
12 then there would be a claim under section 2.

13 QUESTION: All right, then the courts are, in
14 that instance, interfering with a governmental decision as
15 to what the size of the governing body ought to be.

16 MR. MURPHY: That is because the governing body
17 has made a change in the size. In our case, the governing
18 body has made no change in the size.

19 QUESTION: It's just a difference between an act
20 of omission and of commission?

21 MR. MURPHY: No, sir, I don't agree with that.
22 I don't think an act of omission is the same as an act of
23 commission.

24 There was one case from Carroll County, Georgia,
25 in which there was a change in the size of the county

1 commission from three to one, and in that case the
2 plaintiffs were able to prove an intent to discriminate
3 and to dilute minority voting strength as a result of
4 that. That is not the situation in our case.

5 QUESTION: Is it your position that in a
6 multiofficial district, if the lines were not redrawn,
7 let's say, that there never could be a dilution claim?

8 Let's assume you had a county with -- that
9 elected three commissioners, its population had been
10 static for the last 50 years. Is it your position there
11 could never be a dilution claim brought against that
12 county?

13 MR. MURPHY: Under the preconditions set forth
14 by this Court in Gingles, in order to bring a vote
15 dilution claim, you must meet three preconditions.

16 QUESTION: Well, I -- let me interrupt you, if I
17 may. Maybe I don't understand you.

18 I thought you were taking a position that there
19 could be a challenge only if there had been some change by
20 the county in the manner in which the electoral district
21 was established. Was I wrong on that?

22 MR. MURPHY: There can be a change -- there can
23 be a challenge, regardless of whether there has been a
24 change or not.

25 QUESTION: All right.

1 MR. MURPHY: Our position in this case --

2 QUESTION: Well, why is the case different in a
3 multiofficial district than it is from the district before
4 us, where there's only one commissioner?

5 MR. MURPHY: Well, in the district before us
6 we're talking about a single-member district --

7 QUESTION: Yeah.

8 MR. MURPHY: -- which is the smallest political
9 unit from which any elected person can --

10 QUESTION: Well, I grant you that, but if change
11 by the government in the manner of disposing of its
12 authority is not a precondition in non-single-member
13 districts, why should it be a precondition in a single-
14 member district?

15 MR. MURPHY: There's nothing magical about this
16 being a single-member district. The question is --

17 QUESTION: Well, if there isn't, don't you lose?

18 MR. MURPHY: No, sir. The question here is
19 whether Congress intended, under section 2, to authorize
20 Federal courts to judge the governmental structure not as
21 it presently is constituted, but as it might be in a
22 hypothetical model, and if we have three, or five, or
23 seven, or one, it doesn't matter how many members you are
24 electing to office, minority members could always come in
25 and say, in our five-member commission we are in a

1 minority, we can't get elected, but if you increase the
2 commission to 10, then we have a chance to have
3 proportional representation.

4 QUESTION: Mr. Murphy --

5 QUESTION: I thought you said that you could
6 compel a change from three to five, that there had been a
7 certain change in the demographics.

8 MR. MURPHY: Our position is, the court, when it
9 is analyzing a section 2 claim, must analyze the claim
10 according to the existing governmental structure. It
11 presupposes --

12 QUESTION: But since you've conceded that you
13 can look to the way it was -- let's say you go from five
14 and shrink it to three, or even to one, you concede there
15 could be a dilution case that plaintiffs could win by
16 showing the way it was when it was five, and the way it is
17 when it's three or one. So you can compare what was to
18 what is, but you can't compare what is to what will be?
19 Is that --

20 MR. MURPHY: Exactly, Your Honor. In order
21 to --

22 QUESTION: But why --

23 QUESTION: Why?

24 QUESTION: -- why not?

25 MR. MURPHY: Because the statute -- when you

1 talk about changing government structure, you're talking
2 about local voters voting to change the way their county
3 is operated, whether it be by one, three, five, and in the
4 cases thus far, there have been changes in the size of the
5 local governing body, and the courts have looked to see
6 whether there was an attempt to discriminate because of
7 the change in the local governing body.

8 QUESTION: Well, there wasn't a change in the --

9 QUESTION: Well --

10 QUESTION: -- Houston Lawyers case. That was a
11 case of voters seeking a change. That was judges elected
12 county-wide --

13 MR. MURPHY: In the --

14 QUESTION: -- for each judge --

15 MR. MURPHY: Your Honor --

16 QUESTION: -- and this case appeared, at least,
17 in Houston Lawyers, to reject the kind of blanket
18 exclusion from section 2 that you're urging.

19 MR. MURPHY: Houston Lawyers I do not believe
20 involved a challenge to any district that had only one
21 judge. I believe all of the judges in Houston Lawyers
22 were from multimember districts, so to speak.

23 QUESTION: Well, there were a number of judges
24 elected by the voters county-wide. Each judge was voted
25 on county-wide by the voters, right?

1 MR. MURPHY: Some of those counties -- all of
2 those counties had more than one judge. There were
3 three --

4 QUESTION: Yes.

5 MR. MURPHY: -- 3 up to 59, and --

6 QUESTION: Each one elected county-wide, right?

7 MR. MURPHY: That's correct.

8 QUESTION: Yes.

9 QUESTION: What's the distinction? What is the
10 principle for your distinction? I don't get it.

11 MR. MURPHY: The distinction here is not that a
12 sole commissioner form of government is not subject to
13 section 2. Our argument here is that a section -- that
14 the sole commissioner form of government does not dilute
15 minority voting strength. Everyone in this county votes
16 for one representative for the entire political
17 jurisdiction. Every person's vote counts equally.

18 QUESTION: You can state that whenever the
19 government, for example, goes from a multimember district
20 to a single-member district. If that's true, you'll never
21 have a dilution claim in those cases, either.

22 MR. MURPHY: Our case --

23 QUESTION: Will you? You'll never have a
24 dilution claim in those cases on your reasoning, will you?

25 MR. MURPHY: Would you repeat the question, Your

1 Honor?

2 QUESTION: Well, if the county, for example,
3 decided to go from a multimember district to three single-
4 member districts, and it did it in a carefully crafted way
5 that would exclude any minority election, on your theory,
6 there never would be a dilution claim in that kind of
7 case.

8 MR. MURPHY: In that kind of case, you would
9 have a section 5 preclearance --

10 QUESTION: Let's assume that somebody is asleep
11 under section 5. The question is whether you have got a
12 section 2 claim, and on your reasoning, you would not
13 have, isn't that true?

14 MR. MURPHY: If the method of electing judges
15 violates or dilutes -- or electing any representative,
16 dilutes minority voting strength, then you do have a
17 claim --

18 QUESTION: But on your reasoning, you never
19 would have a dilution claim, isn't that true?

20 MR. MURPHY: My reasoning -- my argument here is
21 that when you analyze a section 2 claim, you don't look
22 to -- you look at the existing structure. You cannot look
23 at what might be. You cannot look --

24 QUESTION: Well, this just goes back to Justice
25 Ginsburg's question. Why not? Isn't that what we usually

1 do, and if so, why don't we do it here?

2 MR. MURPHY: Your Honor, the reason we don't do
3 that here, number 1, in this case we are looking at a
4 single-member district itself, which is the basic
5 political unit. We're not looking at a multimember
6 structure here. We're looking at a single-member
7 district.

8 QUESTION: But you conceded that if you went --
9 if you had a system of five, and you went to a system of
10 one, even though it was only one, there might be a
11 section 2 claim of voter dilution.

12 MR. MURPHY: If minority voting strength is
13 diluted. By the same --

14 QUESTION: Even though you end up with one, and
15 you conceded that you -- the test of the "if" is to
16 compare what was to what is, and so we're now back --
17 since you can make some comparison, why can't you compare
18 what will be?

19 MR. MURPHY: Because I think we're talking about
20 two separate events here. Simply because you might be
21 prevented from going from five to one doesn't mean that if
22 you already have one in place, the court can require you
23 to go to five. The proviso in section 2 is that it is not
24 designed to ensure proportional representation.

25 If you have 25, and you reduce to 5, and you

1 dilute minority voting strength, that would be a section 5
2 violation. That doesn't mean, on the other hand, that
3 you -- the court can take 5 and require a county to go to
4 25 in order to assure an Asian district, a Hispanic
5 district, or a black district, simply because --

6 QUESTION: How many counties are left that have
7 this system? It's dwindling, isn't it?

8 MR. MURPHY: I believe it's 14.

9 QUESTION: Fourteen are left, and is it so that
10 Georgia's the only State that has a single commissioner?

11 MR. MURPHY: Yes, Your Honor.

12 QUESTION: How many have recently changed, do
13 you know, from --

14 MR. MURPHY: I think from the time we filed the
15 petition until today, five have changed, either by
16 settlement of voting rights litigation or by county
17 election to change.

18 QUESTION: May I ask another, sort of more
19 basic -- let's assume you have a history with just one
20 commissioner, as you have, you never had anything else,
21 but assume that -- and contrary to the facts in this case,
22 assume that there was overwhelming evidence that the
23 reason that they had maintained the single-member
24 district, or single commissioner form of government, was
25 to prevent the black voters from having an opportunity to

1 elect a representative.

2 Just say there's abundant evidence of intent,
3 and that's why they lost the last election when they tried
4 to change it, and so forth and so on. Would that be a
5 violation, or not?

6 MR. MURPHY: Your Honor, that hypothetical
7 question probably would go more toward a constitutional
8 claim than it would a section 2 claim.

9 QUESTION: Oh, I understand it might violate the
10 Constitution. I'm asking if it violates section 2 of the
11 Voting Rights Act.

12 MR. MURPHY: Section 2 of the Voting Rights Act
13 does not address difficulty to elect. It addresses an
14 equal opportunity --

15 QUESTION: It seems to me that you could tell me
16 in very short -- two different words, yes or no, probably,
17 I'd find out what your position was.

18 MR. MURPHY: If you can prove that during the
19 time that this sole commissioner --

20 QUESTION: Prove it from 1865 to today. They
21 had this government for that very reason and no other
22 reason, and that was the purpose of doing it. Section 2
23 violation, or not?

24 MR. MURPHY: Yes, but that is not our argument
25 here. Our argument is that you --

1 QUESTION: Your answer is yes, that would be a
2 violation.

3 MR. MURPHY: By virtue of the method of
4 electing. I'm not saying that simply because you have a
5 sole commissioner you are violating section 2.

6 QUESTION: No, I understand, but you do seem to
7 be willing to acknowledge that if it were motivated solely
8 by racial animus and discriminatory intent and all the
9 invidious language we can put into it, that situation
10 would constitute a violation of section 2.

11 MR. MURPHY: Your Honor --

12 QUESTION: If you also prove the three Gingles
13 factors.

14 MR. MURPHY: If you also prove the three Gingles
15 factors.

16 QUESTION: Sure, you have to prove those.

17 MR. MURPHY: Which is my argument exactly, in
18 this --

19 QUESTION: Which is impossible, you say.

20 MR. MURPHY: It is impossible --

21 QUESTION: So therefore, it would not be a
22 violation of section 2 --

23 MR. MURPHY: Simply because it exists --

24 QUESTION: Right? Isn't that your position?

25 MR. MURPHY: -- it is not diluted.

1 QUESTION: So why don't you say it would not be
2 a violation? It's perfectly awful, it's horrible, there
3 may be a constitutional remedy, but it's not a violation
4 of section 2. Isn't that your position? Otherwise, I
5 haven't understood your briefs.

6 MR. MURPHY: Yes, sir, that is our position.
7 Having one person elected from one jurisdiction would not
8 violate section 2 of the Voting Rights Act.

9 QUESTION: Even with the kind of intent I've
10 described.

11 MR. MURPHY: Yes.

12 QUESTION: You've changed -- Justice Scalia has
13 persuaded you to change your position.

14 (Laughter.)

15 QUESTION: That's correct, isn't it?

16 MR. MURPHY: I have changed my answer, yes.

17 QUESTION: You did make that concession before
18 you had a little help.

19 MR. MURPHY: Yes, sir.

20 QUESTION: Not -- if you've always had it, it
21 can never be a violation, but if you changed to get a one-
22 member district, then you could have a violation.

23 MR. MURPHY: The change could be a violation.
24 Simply having a one-member district is not a violation,
25 but I agree that changing, if you have intent, could be a

1 violation.

2 QUESTION: Well, how can you satisfy the Gingles
3 factors after a change but not be able to satisfy the
4 Gingles factors before a change?

5 MR. MURPHY: I think --

6 QUESTION: One-member district, same factors.
7 What's the difference?

8 MR. MURPHY: Okay, because in our case there has
9 not been a change, number 1, and number 2 --

10 QUESTION: No, but that -- that doesn't respond
11 to the question.

12 I thought you said you can never satisfy the
13 Gingles factors when you're dealing with a dilution claim
14 on a single-member district, and you just said yes, you
15 can do that if there's been a change to a single-member
16 district, and I don't see why that's consistent with your
17 position that Gingles can never be satisfied in single-
18 member cases.

19 MR. MURPHY: Well, Gingles -- Gingles' three
20 preconditions require that you have compactness and
21 numerosity in a single-member district, that you have
22 political cohesion, and racial polarization --

23 QUESTION: Okay --

24 MR. MURPHY: -- both.

25 QUESTION: -- can you satisfy that first factor

1 in a single-member district which is new, as opposed to
2 one which is old?

3 MR. MURPHY: You cannot satisfy that in an
4 existing single-member district. All you --

5 QUESTION: Why can you satisfy it in a new
6 single-member district? What's the difference?

7 MR. MURPHY: Well, the difference is because you
8 have made a change. You have made a change. Simply
9 because there might be a violation because of a change --

10
11 QUESTION: Well, the change may -- the change
12 may go to your intent. The change may go to the
13 measurement of the dilution which you make after the
14 Gingles factors are satisfied, but I don't see what it's
15 got to do with the question whether you can satisfy the
16 factors, and in particular the first one, any better or
17 any worse whether it's a new single-member district or an
18 old single-member district.

19 MR. MURPHY: If you have one person -- I agree
20 with you, judge, if you are looking at either a new or
21 an --

22 QUESTION: Well, if you agree with me, then
23 don't you also have to go back to your concession that
24 there can be the possibility of a dilution claim in an
25 existing single-member district? Don't you have to go

1 back to your first answer to Justice Stevens?

2 MR. MURPHY: No, sir, because I'm looking at
3 this as an intent to discriminate when you make a change.

4 QUESTION: Yeah, but the intent to discriminate
5 is not the essence of section 2. This isn't a Fourteenth
6 Amendment claim.

7 MR. MURPHY: That's correct. That's correct.

8 The question here is whether the courts should
9 take an existing single-member district or a commission of
10 three or a commission of five and judge that by an assumed
11 model, which is what the Eleventh Circuit has done here.

12 QUESTION: Well, you may have a very
13 different --I mean, you do, it seems to me, have a very
14 different argument when you in effect say, well, where are
15 you going to stop, are you going to impose a 100-member
16 commission, and so on and on, but that's a very different
17 argument.

18 MR. MURPHY: There are no workable standards
19 if -- regardless of whether you have one or three or five,
20 if courts start coming in and trying to determine a vote
21 dilution not by the existing model but by some assumed
22 commission of --

23 QUESTION: But it's not some assumed, and I
24 think the concession is made that you just couldn't pick a
25 number that would happen to give you proportional

1 representation. The number that has been picked here
2 that's allegedly the benchmark is the most frequent form,
3 the five-member commission, so it's not just a number that
4 is pulled out of a hat.

5 MR. MURPHY: The sole county commissioner form
6 in Georgia is the third most popular form in Georgia.
7 It's true that five is the most common form, but that
8 doesn't mean that it's the only form or the --

9 QUESTION: But at least it's an answer to your
10 argument that where do you stop? I mean, you can have 20
11 members, just as long as you come up with the number that
12 happens to give you a representative.

13 MR. MURPHY: Well, assume that we have a
14 commission of 10 members, should the -- and that's the
15 situation in Clarke County, Georgia. Should we be
16 required to go up to 25 in order to assure a certain
17 number --

18 QUESTION: I think the answer is the only
19 position taken in this case is that where you have what
20 they call benchmarks, five or three, that you could use
21 those, not that you could use anything other than those,
22 but that you must have solid precedent for those.

23 MR. MURPHY: Your Honor, I disagree that that is
24 a benchmark in Georgia. There are counties with all
25 different sizes. It's a question of local and State

1 interest in determining the size, because every county is
2 different. They have different geographies, different
3 ideologies, different needs, and simply because most
4 counties have five doesn't mean that the citizens in one
5 county or another must have five or must have three simply
6 because that's the most popular form.

7 QUESTION: When the State proposed changing this
8 single commissioner system for this county, they did
9 propose -- wasn't it a five-member board that was
10 proposed --

11 MR. MURPHY: Yes, Your Honor.

12 QUESTION: -- was it '85 or '86?

13 MR. MURPHY: Five plus one at large. It was a
14 referendum. The General Assembly passed legislation
15 authorizing a referendum to go to a six-member commission,
16 five from districts and one at large.

17 There was very little interest in the black
18 community in that referendum. It was a tax issue. There
19 had been an ad valorem tax change in the county by the
20 commissioner, voters were unhappy with it, the referendum
21 was held whether to change the commission, and the voters
22 in the county, only 25 percent of whom voted, voted in
23 favor of keeping their sole commissioner.

24 In School Board District Number 2, which is the
25 majority black school board district, the measure passed

1 by only 2 votes, and there was very little organized
2 interest in the black community at all in that referendum.

3 QUESTION: Were those -- those were not -- were
4 they at the same time, the school board and the
5 commissioner?

6 MR. MURPHY: No, Your Honor. Four years
7 earlier, the county had decided to go to five single-
8 member districts for the school board, so it's not a
9 question of whether the county is racist or polarized.

10 The county voters decided they preferred five
11 single-member districts for the school board. As far as
12 their county governing authority is concerned, one is what
13 the citizens there prefer.

14 QUESTION: Who pays the county commissioners?

15 MR. MURPHY: The county commissioner is paid by
16 taxpayers. He has regular office hours in the Bleckley
17 County Courthouse, he conducts regular monthly meetings,
18 if he has to make a policy decision he advertises it in
19 the local newspaper, he makes \$32,500 a year, and it's --

20 QUESTION: Have you made the argument that it
21 would cost more to have a five-member commission?

22 MR. MURPHY: Yes. That is the reason -- that is
23 the primary reason local voters like what they have. If
24 you need your roads scraped, if you need anything that the
25 county commissioner has authority to do, you walk into his

1 office, and you talk to him about it. It is a very
2 efficient, economical, workable system, and he's
3 immediately responsive to the voters.

4 QUESTION: How is his salary determined? Is
5 that fixed by State law, or --

6 MR. MURPHY: Yes. Yes.

7 QUESTION: It is. In these five-member
8 commission districts, are the salaries of the
9 commissioners fixed by State law, too.

10 MR. MURPHY: They would be, yes.

11 QUESTION: They would.

12 MR. MURPHY: Yes.

13 QUESTION: And would it cost the county five
14 times as much to have five commissioners instead of one,
15 or are they a lesser salary because they only have
16 legislative duties?

17 MR. MURPHY: If they were only part-time, which
18 I assume they would be, then they would make less money,
19 but then the county would be required to hire a county
20 administrator to manage the day-to-day functions of the
21 office.

22 QUESTION: I'm just wondering if your financial
23 concern might be met by hiring your one administrator to
24 do most of the work and then have these five commissioners
25 on a part-time, low-salaried basis. All you'd have is the

1 small amount of additional salary for the part-time.

2 MR. MURPHY: It might be met, Your Honor, but
3 the point I want to make here is that the single county
4 commissioner is what the government -- the local citizens
5 in that body desired.

6 Simply because there's one person to fill that
7 office doesn't make it magical. The question here is
8 whether, under the Gingles test, the court has the
9 authority or should take on the responsibility --

10 QUESTION: Would you take the same position if
11 the evidence showed that it wouldn't cost a penny more,
12 you'd get volunteers, and there wouldn't be any
13 interference with the efficiency of the government, it's
14 just an absolute rule regardless of how trivial the State
15 justification might be?

16 MR. MURPHY: I would take the same position that
17 the existing single-member form of government in Bleckley
18 County --

19 QUESTION: Is outside the coverage of the act.

20 MR. MURPHY: Is not subject to challenge as
21 dilutive --

22 QUESTION: As dilutive, right.

23 MR. MURPHY: -- of minority voting strength, and
24 I would like to reserve the remainder of my time, please.

25 QUESTION: Very well, Mr. Murphy.

1 Mr. Coates, we'll hear now from you.

2 ORAL ARGUMENT OF CHRISTOPHER COATES

3 ON BEHALF OF THE RESPONDENTS

4 MR. COATES: Mr. Chief Justice and may it please
5 the Court:

6 The district court judge, after he heard all of
7 the evidence in this case, announced from the bench that
8 having run for public office himself, I guarantee you
9 under these circumstances I wouldn't run if I were black
10 in Bleckley County. You're going to put your hard-earned
11 time and shoe leather campaigning through this county
12 under these circumstances.

13 The court of appeals found that voting in
14 Bleckley County is along racial lines. At present, the
15 only polling place in this county, which consists of
16 219 square miles, is an all-white private club. Between
17 1978 and 1986, 224 persons were appointed to serve as poll
18 managers in Bleckley County, and not one of the 224
19 appointees were black persons.

20 QUESTION: Do you think perhaps the same
21 statement could have been made at least 20 years ago with
22 respect to the President of the United States -- if I were
23 a black person, I wouldn't run for President of the United
24 States?

25 MR. COATES: Yes, sir.

1 QUESTION: Because you don't stand a chance of
2 getting elected?

3 MR. COATES: Yes, sir.

4 QUESTION: And does that render that unlawful?

5 MR. COATES: No, sir.

6 QUESTION: That system of government, one
7 elected President?

8 MR. COATES: No, sir, because the President of
9 the United States has traditionally been a true single-
10 member office in this country. He's a member of the
11 executive branch. There must be one decisionmaker as
12 President of the United States.

13 The governing body that we're talking about here
14 today is a body, the Bleckley County Commission, that
15 carries out legislative functions as well as executive
16 functions.

17 QUESTION: What about the governorship of some
18 States? If you could make the same statement about the
19 governorship, do you think that would be a violation of
20 the Voting Rights Act?

21 MR. COATES: No, sir, because I think, again,
22 the governorship of the State is a true, single-member
23 office.

24 QUESTION: This is not a statute that talks
25 about intent. I don't see how whether it's a true single-

1 member or non-single-member has anything to do with it.
2 There's nothing like that in the statute.

3 MR. COATES: Well, the courts --

4 QUESTION: I mean, you know, when we say, it's
5 not a true single-member, that implies, you know, this has
6 been done -- made a single-member with the intent of
7 disadvantaging blacks, but this is not an intent statute.

8 MR. COATES: Well, section 2 --

9 QUESTION: It just looks to the consequence,
10 whatever the intent was, doesn't it?

11 MR. COATES: No, sir. Section 2 has both an
12 intent and result component.

13 QUESTION: What is the intent component? Which
14 one is that?

15 MR. COATES: Section 2 has been construed to
16 prohibit racially motivated voting procedures, which would
17 be the same as prohibited by the Fourteenth Amendment.

18 QUESTION: It requires intent.

19 MR. COATES: No, sir, it does not. It has a
20 double standard.

21 QUESTION: Then my question stands. You don't
22 need intent to make it invalid, so why would it make any
23 difference whether this was a natural one-person district
24 or not a natural one? The only thing that goes to show is
25 that somebody had a bad intent, but you don't need a bad

1 intent to show a violation here.

2 MR. COATES: Yes, sir. I think that -- Your
3 Honor, the response to that question would be that one
4 would have to look at what the Congress was intending to
5 prohibit or to address enacting section 2 in 1982, and if
6 you look --

7 QUESTION: Well, do you think that Congress
8 really did intend in section 2 to authorize dilution
9 claims to the various single-member offices found around
10 the country --

11 MR. COATES: My position --

12 QUESTION: County sheriff, county treasurer,
13 county attorney, so forth and so on?

14 MR. COATES: No, I do not. I do not think if
15 it's a true single-member office that carries out
16 legislative functions -- it carries out executive
17 functions and not legislative functions, that I think the
18 Congress did not intend to reach those offices.

19 QUESTION: But it certainly didn't in language
20 in the statute draw a legislative or executive
21 distinction, did it?

22 MR. COATES: That's correct, Your Honor, but
23 looking at the legislative history, the principal problem
24 that the Congress was addressing in enacting the Voting
25 Rights Act was the dilution of minority voting strength at

1 the legislative body process, and I think that that's the
2 distinction that should be drawn here with regards to true
3 single-member offices and legislative offices.

4 QUESTION: The statute doesn't apply to
5 executive offices, is that it? Section 2 does not address
6 executive offices?

7 MR. COATES: It does -- there was not an intent
8 by Congress in enacting the statute to increase -- to
9 allow section 2 plaintiffs to increase the number of
10 true -- true single-member offices.

11 QUESTION: You're talking about truly executive
12 -- I've spent much of my life in administrative law trying
13 to figure out what's executive and what's legislative, but
14 you very clearly see that some things are truly executive
15 and other things truly legislative.

16 MR. COATES: Yes, sir.

17 QUESTION: This is truly legislative, this
18 particular office.

19 MR. COATES: The Bleckley County Commission --

20 QUESTION: Right.

21 MR. COATES: -- is both -- has all the
22 legislative powers of the governing authority in Bleckley
23 County as well as the executive powers, but a test can --

24 QUESTION: What about Federal agencies that can
25 issue regulations? Are they executive agencies, or not?

1 MR. COATES: They -- my understanding would be
2 that they would be executive agencies.

3 QUESTION: Even though they can make all sorts
4 of rules just the way this county commission can.

5 MR. COATES: But they would not be legislative
6 bodies.

7 QUESTION: Why?

8 MR. COATES: Because they do not have the power
9 to govern in the sense of passing ordinances that a
10 local --

11 QUESTION: They pass regulations. It's the same
12 things as ordinances. You violate them, you go to jail.

13 MR. COATES: Yes, sir. Well, in the traditional
14 sense, they do not have the authority to legislatively
15 enact laws or ordinances that a county commissioner or a
16 city council or a general assembly of a State would.

17 QUESTION: Well, you mean they're not
18 responsible to -- directly responsible to an electorate.

19 MR. COATES: That's another distinction, Your
20 Honor.

21 QUESTION: Well, do you really have to rest your
22 case on this distinction? Why -- I thought your argument
23 rested at least equally well and, I guess I would suggest
24 maybe more strongly, on your reference to tradition in
25 effect as a source of benchmark, and if you do that, you

1 don't have to get wrapped up in the question of whether
2 someone is performing executive or legislative function,
3 you in effect look to some historical basis, if you can
4 find one, for your benchmark.

5 MR. COATES: Yes, sir. Well, your benchmark
6 goes to the question that was raised by the county here
7 concerning how and to what limit there would be a
8 limitation on the expansion of representatives on the
9 local government body.

10 QUESTION: No, I realize that, but doesn't it
11 equally address the question whether the office in issue
12 is one which may be subject to a section 2 claim if it is,
13 as in this particular case, a single-member office?

14 MR. COATES: I think the benchmark test would go
15 to that question, and you would look to tradition in this
16 country of having a distinction between legislative
17 offices, which are normally multimember boards, and
18 executive offices, which are normally true, single-member
19 offices.

20 QUESTION: Why do you have to get executive and
21 legislative in there at all? Why don't you just look to
22 the number of the office?

23 MR. COATES: Yes, sir. Well, in response to the
24 question by Justice Scalia, I was responding in that
25 manner, but the benchmark that -- that --

1 QUESTION: Do you concede that it is essential
2 to make a legislative executive distinction in order to
3 support your position in this case?

4 MR. COATES: Not for this particular case, but
5 in response to his question I was answering it in that
6 way.

7 QUESTION: Mr. Coates, you said, I thought, in
8 response to Justice Souter's question that you look all
9 around the country for a benchmark so that even if all of
10 the 250 or whatever it is counties they have in Georgia
11 all had single commissioners, you might find a benchmark
12 out in the State of Oregon, say, where perhaps they all
13 had -- the counties had five-member commissions?

14 MR. COATES: No, sir. I think that the first
15 place you would look to a benchmark would be to the State,
16 because that would determine the State's policy.

17 QUESTION: So if you found all single
18 commissioners in Georgia, could you look any further?

19 MR. COATES: I think that that would be a much
20 more difficult case, because if Georgia had a statute that
21 provided that every county would have a sole commissioner,
22 then there would be a strong argument in this case that
23 the State policy required the sole-commissioner form of
24 government, but I thought --

25 QUESTION: It wouldn't be conclusive?

1 MR. COATES: It would not be -- I think it would
2 be a much more difficult case. Whether or not some
3 counsel could construct an argument that would say that
4 you could look to Oregon, I just don't know, but in this
5 case 159 counties exist in Georgia. Only -- my count's a
6 little bit different -- 11 counties have the sole
7 commissioner form.

8 QUESTION: I was thinking of Texas, I think.

9 MR. COATES: Yes, sir. There are only 11
10 counties in Georgia that have a sole commissioner form of
11 government.

12 QUESTION: It's 11 -- the number's 11, not 14?

13 MR. COATES: Yes, ma'am, I think it is.

14 QUESTION: The district court went with you, as
15 I understand it, the first two steps of the way. Where
16 the district court and the court of appeals divided was on
17 what has been called the second two Gingles factors.
18 Would you explain on what basis you think that your case
19 meets those second two requirements, the cohesiveness on
20 the part of the minority community and the bloc voting on
21 the part of the majority community?

22 MR. COATES: Well, the court of appeals held
23 that the analysis applied to the issue of racial bloc
24 voting by the district court judge was too narrow. The
25 district court held that in making that analysis, or

1 determination, that he was limited to statistical analysis
2 in determining the existence or nonexistence of racial
3 bloc voting.

4 The court of appeals held that you could look to
5 other, antidotal evidence in the case that addressed the
6 issue of racial polarization, such as the fact that when
7 black people go to vote in Bleckley County, that there
8 would be in an 8-year period 224 black -- white managers
9 and no black managers, for example.

10 The court of appeals said that one could look
11 at --

12 QUESTION: Well, you wouldn't have to look at
13 anything other than if you had a minority population that
14 would always be the case. Then no single-member system
15 would be permissible.

16 There was no proof of any kind with respect to
17 the division of the votes at the time of the referendum
18 minority-majority votes for and against, was there?

19 MR. COATES: That's correct, because in 1986,
20 the eight existing precincts that existed in 1984 had been
21 consolidated into one precinct, and under a one-precinct
22 situation regression analysis is not possible because you
23 need at least two or more precincts to compare to do the
24 regression analysis, so it was not a possibility for the
25 plaintiffs in this case to offer a statistical showing

1 concerning the 1986 referendum.

2 But the court of appeals pointed to footnote 25
3 of this Court's opinion in the Gingles case and read that
4 footnote to say that the district court was incorrect in
5 ruling that you looked at only statistical evidence, and
6 allowed a broader look, and on that basis came to the
7 conclusion that the district court had erred.

8 What is the broader look, other than that when
9 you have a unit that has a majority population and a
10 minority population, the chances are that you will have a
11 representative from the majority group?

12 MR. COATES: The broader look was the continuing
13 racial segregation and polarization within the county
14 which created an impediment for black candidates to
15 solicit white voters, or for black voters to form
16 coalitions with white voters, and that continuing
17 polarization was evidence sufficient in addition to the
18 statistical evidence that the plaintiffs offered to
19 satisfy the racial polarization requirement in Gingles.
20 The court --

21 QUESTION: If you have a jurisdiction in which,
22 say, there are four races, and one race is 10 percent, and
23 that race has had difficulty in electing its
24 representative, I take it under your principle we would
25 have to go to proportional representation and have, say, a

1 10-person commission?

2 MR. COATES: No, sir. First of all, our
3 position is that the increase in the number of
4 representatives on the governing authority would first be
5 determined by looking at the State law benchmark, and the
6 State law benchmark in this case I believe is 5, it would
7 not be 10.

8 Secondly, this court held in 1972, in the
9 Beens case -- I think it's Sixty-seventh Minnesota v.
10 Beens -- that minor deviations are allowed from the State
11 choice concerning the number of representatives. If the
12 deviation from the State benchmark were more than minor,
13 then Beens would tend to teach that that alteration would
14 not be allowed.

15 QUESTION: Well, let me put it this way. If
16 there were a benchmark that permitted a governing body of
17 a size which would give proportional representation to the
18 excluded race, then it is your position that they would
19 have to reconform the district accordingly, is it not, in
20 the case that I put?

21 MR. COATES: It might be, but the --

22 QUESTION: So basically what you have is
23 proportional representation in every case.

24 MR. COATES: No, sir. No, because the increase
25 there, Your Honor, would be not because of the claim of

1 proportional representation, but because the expansion
2 would be tied to the benchmark established by State law,
3 as is the case here.

4 QUESTION: But what is the objective? The
5 objective is to allow racial representation.

6 MR. COATES: No, sir. The -- in this case, I
7 would respectfully beg to differ. The court did not
8 say -- the court of appeals did not say, in suggesting the
9 use of the five single-member district plan, that that was
10 done to effectuate proportional representation. It chose
11 the five single-member district plan because it would have
12 been choosing an alternative system which was established
13 by a benchmark of State policy.

14 QUESTION: Which came the closest to giving
15 proportional representation.

16 MR. COATES: It had that incidental effect, yes,
17 sir.

18 QUESTION: Incidental? That was the whole
19 object of it, wasn't it?

20 QUESTION: Well, let me ask you this -- let me
21 ask you this: suppose the -- we affirm the finding that
22 there should be a five-member district. Those districts
23 would have to be drawn on a race-conscious basis to comply
24 with your theory, would they not?

25 MR. COATES: The -- if the plan was drawn as the

1 board of education -- if the board of education plan was
2 adopted, then I do not think it would be fair to say that
3 that would be drawn on strictly a race-conscious basis,
4 because that is the very plan adopted by the Georgia
5 General Assembly in 1983 for school board elections, so
6 what the court of appeals was suggesting --

7 QUESTION: Suppose there were no -- suppose
8 there were no existing precincts, and this case goes back,
9 is race a factor in drawing the new district lines?

10 MR. COATES: Yes, sir.

11 QUESTION: It has to be, doesn't it, so there
12 can be proportional representation?

13 MR. COATES: No, it does not have to be because
14 of proportional representation. It would have to be
15 because if the finding of vote dilution, Your Honor, is
16 affirmed by this Court, then the district court, in
17 determining the remedy, would have the responsibility of
18 implementing a plan that would cure the vote dilution
19 effect. That would be the general standard.

20 QUESTION: Mr. Coates, we said in Chisom v.
21 Roemer -- and I didn't agree with our saying it, but we
22 said it, and maybe we said it in order to get around this
23 problem of converting section 2 against its plain text
24 into a provision that provides proportional
25 representation. We said that you have to show two things,

1 not just inability to elect, but you have to show, in
2 addition, lack of opportunity, equal opportunity to
3 participate. In other words, we read the two clauses of
4 section 2 as being cumulative.

5 Now, has there -- what lack of equal opportunity
6 to participate does there exist in this situation?

7 MR. COATES: To --

8 QUESTION: Doesn't everybody in the county, when
9 voting for this one member, participate in the electoral
10 process equally?

11 MR. COATES: No, sir.

12 QUESTION: No?

13 MR. COATES: No, sir, and a system --

14 QUESTION: I can understand how you say they
15 can't elect by race with this much facility, but how do
16 they participate unequally?

17 MR. COATES: Yes, they do not participate
18 equally, black and white people in Bleckley County,
19 because the fact that there would be 224 people appointed
20 as poll managers over a 8-year period and not one of those
21 people would be black, would show that participation in
22 the voting process in this county is manifestly not equal.
23 Black people have to go to the polls, but they are run by
24 white people. There was testimony in the case that that
25 deterred some black people from voting. They have to go

1 to the polls and vote in an all-white private club.
2 That's not equal participation.

3 QUESTION: Do they have the same ballot?

4 MR. COATES: Yes, sir, they do.

5 QUESTION: They vote for the same people.

6 MR. COATES: Yes, sir.

7 QUESTION: They're not excluded from the polls,
8 nobody excludes them from the polls.

9 MR. COATES: The choice of having all-white
10 managers --

11 QUESTION: You're saying that they cannot elect
12 a member of their own race and that affects the outcome,
13 but that's the elect provision, not the participate
14 provision.

15 MR. COATES: Yes, sir. Well, the Congress said
16 in section 2, and it's right in the face of the statute,
17 that the failure of a minority group member to be elected
18 is one factor to be taken into consideration in deciding
19 whether the system is vote-dilutive.

20 There are many cases that come to this Court,
21 such as Gingles, where there has been some success by
22 minority candidates. In this case, on a county-wide basis
23 since 1912, there has been zero success.

24 QUESTION: If the minority population were
25 12 percent, you would have no case, is that -- are you

1 recognizing that?

2 MR. COATES: If the --

3 QUESTION: Suppose, instead of being close to
4 20, it was 12 percent.

5 MR. COATES: If the benchmark for testing the
6 sufficiency and size requirement were 5, as we maintain it
7 is in this case, then if the minority population were 12,
8 that would create severe problems for satisfying the size
9 and compactness requirement of Gingles. I haven't done
10 that mathematically, I haven't done that hypothetical,
11 Your Honor, but I would concede that it would create a
12 problem in satisfying the sufficiency and size requirement
13 under the benchmark --

14 QUESTION: These practices of having all white
15 commissioners, or poll-watchers, can that not be
16 challenged separately under section 2, or under the
17 Fourteenth Amendment?

18 MR. COATES: Yes, sir, and I have filed such a
19 suit.

20 QUESTION: If we were to change the facts that
21 you've given us, and if the county had been from your
22 standpoint perhaps more prudent, and had been careful to
23 appoint a racial mixture among its poll-watchers, and if
24 it had set up polling places in public schools, and so on,
25 are you conceding that you would not have a case?

1 MR. COATES: No, sir, I would not concede that I
2 wouldn't have a case, but certainly that would take away
3 the antidotal evidence, the nonstatistical evidence of
4 racial polarization that the court of appeals pointed to.

5 QUESTION: And you would be left simply with
6 the -- you would be left simply with the fact, under those
7 circumstances, that there had never been a black
8 commissioner.

9 MR. COATES: Well, I wouldn't be left with just
10 that fact. For example, there was a --

11 QUESTION: What else would you have?

12 MR. COATES: Well, for example, there was a
13 finding by the district court, affirmed by the court of
14 appeals, that black people in Bleckley County continue to
15 suffer from the effects of racial discrimination in
16 housing and employment and areas like that, and that --

17 QUESTION: Well, what's that got to do with
18 participation?

19 MR. COATES: Because --

20 QUESTION: Under section 2?

21 MR. COATES: Because that's one of the factors
22 that the Senate report pointed to as bearing upon the
23 question of equal participation, and both the district
24 court, I think, importantly, and the court of appeals,
25 found that that present depressed socioeconomic status

1 hindered the ability -- and this is what the district
2 court said, even though that judge ruled against us --
3 hindered the ability of black people to vote and run for
4 office.

5 Only 15 percent of the black people in Bleckley
6 County have high school educations in a system --

7 QUESTION: Mr. Coates, could you have another
8 referendum? The State proposed it in '85-'86, and it
9 seemed that there wasn't much of an interest in either
10 community in voting in that referendum, but if the
11 preference, the strong minority preference is for a five-
12 member commission, could you have another referendum?

13 MR. COATES: If the Georgia General Assembly
14 authorized the holding of another referendum, yes, you
15 could, Your Honor.

16 QUESTION: Do you have any information in this
17 record about what happened in the other counties, now
18 we've got this number that's now dwindled to 11, and they
19 went from one to a larger number?

20 MR. COATES: Yes. Yes, Your Honor. There's
21 a -- in the appendix, there have been the consent orders
22 in some of the cases which have been settled.

23 For example, in Webster County there was a sole
24 commissioner, there was an expansion to a three-member
25 commission elected from single-member districts, and an

1 at-large commissioner who would serve as the county
2 administrative official, so that's how in one of the
3 counties the problem has been resolved.

4 There has -- there's no evidence that in any of
5 these counties have the cases been resolved on the basis
6 of expanding the membership of a sole commissioner to 50
7 or 100 commissioners.

8 QUESTION: Suppose that throughout Georgia the
9 choice were between having either a one-commissioner
10 system or a three-commissioner system, and suppose further
11 that in Bleckley County the increment from one to three
12 would not result in the election of any representatives of
13 the black community. What then would be your position as
14 to the appropriate remedy? Could the court then order
15 five?

16 MR. COATES: That would be a much more difficult
17 case, because there would be a policy, a State policy
18 applied across the board to counties that would establish
19 either a one-person commission or a three-person
20 commission.

21 QUESTION: But if it's necessary to cure a
22 violation, how can a State policy thwart a Federal
23 statute?

24 MR. COATES: Because in determining the
25 benchmark for the increase, I believe that it would be

1 appropriate for the Federal courts to give deference to
2 the State policy established in that benchmark. The
3 Federal courts would not be at liberty to just create
4 numbers so as to achieve some type of proportional
5 representation, but they -- but the --

6 QUESTION: But not -- could not give deference
7 to the county policy. I mean, you're willing to have us
8 override the county voters, who want one, even though the
9 State wants to defer to those county voters --

10 MR. COATES: Yes.

11 QUESTION: But somehow we can't override the
12 State, just the county, is that it?

13 MR. COATES: That's correct, Your Honor,
14 because --

15 QUESTION: I see. Is there some principle of
16 law that --

17 MR. COATES: Yes, sir. It is mentioned in the
18 legislative history of section 2, where it says that in
19 determining whether or not a State's policy is tenuous,
20 you look to how the State has treated other jurisdictions
21 in a State. The State policy is not established by what
22 happens in Bleckley County. The State policy is
23 established by comparing how Bleckley County is treated
24 with other counties in the State.

25 QUESTION: Well, Mr. Coates, I don't find

1 anything, actually, in section 2 that says you defer to
2 State policy. If you find vote dilution then there's a
3 violation and a Federal remedy is required.

4 MR. COATES: The only place that it is referred
5 to is not in the face of the statute, but in the seven
6 Senate factors. The tenuousness of the State policy is --

7 QUESTION: In looking at the totality of the
8 circumstances to determine the dilution question, right?

9 MR. COATES: Yes, ma'am. That would be one of
10 the factors that a court would appropriately look at.

11 QUESTION: But if dilution is found, then I
12 suppose a remedy is required.

13 MR. COATES: Yes. The only analysis that I'm
14 saying, or presenting to the Court, is that the Federal
15 court would not be permitted to completely disregard the
16 State's policy, but that's not what happened in this case.

17 QUESTION: Now, it's a little hard to read the
18 limiting principle into the language of the statute.

19 MR. COATES: Yes, ma'am.

20 QUESTION: Well, isn't it the nub of your
21 argument that dilution is in effect a question involving
22 comparisons, and what the appropriate comparison may be,
23 you assume, Congress intended to be established by looking
24 to traditional practice within a State?

25 MR. COATES: Yes, sir.

1 QUESTION: Is that --

2 MR. COATES: That's correct, a State practice
3 establishes the benchmark, and it would be a different
4 case --

5 QUESTION: So ultimately you're saying, what is
6 an appropriate comparison is a question of congressional
7 intent, and congressional intent was, look to what they
8 have been doing within the State for other possible,
9 reasonable comparisons.

10 MR. COATES: That's correct, because I think
11 section 2 shows that there's a demonstrated Federal
12 interest to cure the problem of vote dilution in the
13 United States. I mean, it's Nationwide, and so if there's
14 vote dilution found, and there's a Federal interest in
15 correcting that, then if you're going to give some special
16 weight to the State's interest, it at least ought to be an
17 interest that has been applied by the State in some type
18 of systematic manner, not --

19 QUESTION: You talk about vote dilution as
20 though it's something objective, but you've told us it
21 isn't objective, that there's no such thing as vote
22 dilution if you've had a single-member office all along.
23 That isn't vote dilution, even though the same system set
24 up somewhere else is vote dilution if -- I don't now, if
25 it hasn't been a uniform State policy.

1 MR. COATES: If I said there --

2 QUESTION: I don't know what vote dilution
3 means. It's a meaningless term. It's entirely relative,
4 isn't it?

5 MR. COATES: Well, if I said that there wasn't
6 vote dilution under the single commissioner form in
7 Bleckley County, I did not intend to say that.

8 QUESTION: No, no, but you said in another State
9 there wouldn't be. If another State had all single-member
10 people, that wouldn't be vote dilution, even though the
11 votes would be diluted to the same degree, but that
12 wouldn't be "vote dilution" as you've been talking about,
13 isn't that right?

14 MR. COATES: It would depend upon the particular
15 circumstances or evidence in that particular jurisdiction.

16 Thank you, Your Honor.

17 QUESTION: Thank you, Mr. Coates.

18 Mr. Murphy, you have 3 minutes remaining.

19 REBUTTAL ARGUMENT OF R. NAPIER MURPHY

20 ON BEHALF OF THE PETITIONERS

21 MR. MURPHY: Thank you, Mr. Chief Justice, and
22 may it please the Court:

23 We have a county of 10,000 people. 70 percent
24 of the registered voters, black and white, are registered.
25 Voter registration is equal for both blacks and whites.

1 They vote equally in all elections, the same
2 percentages -- 29 to 30 to 31 percent. It's the same.
3 They have an equal opportunity to participate in that
4 county, whether they are voting for one sole commissioner,
5 one sheriff, or one school board district member.

6 We're not talking about benchmarking in order to
7 prove a section 2 claim. We're talking about
8 bootstrapping. In these other counties that went from one
9 to three -- one to three -- why didn't they go one to
10 five? Because three guaranteed proportional
11 representation. If five is the benchmark, these other
12 sole commissioner counties that have decided to change
13 should have gone to five.

14 If we're talking about benchmarking, should the
15 Texas legislature, which has only 31 members, be expanded
16 to meet the modal size of State legislatures in this
17 country? There are no workable limits if we start
18 changing or expanding the size of government to determine
19 a vote dilution claim. You look at the existing number of
20 seats.

21 This Court refused, in the Beens case referred
22 to by Mr. Coates, to order a reduction of 50 percent in
23 the State Senate of Minnesota and 25 percent in the House
24 of Representatives. This Court refused that change even
25 for a constitutional violation.

1 We are talking about a 500-percent change in the
2 size of the governing body for this small county. That is
3 not a minor change.

4 Mr. Coates also referred to sheriffs as having
5 executive authority, but sheriffs make many decisions
6 which affect minorities. Hiring minority deputies,
7 enforcing the laws as to minorities, providing patrols for
8 minority neighborhoods -- all of those actions affect
9 minority voters. You cannot --

10 QUESTION: Mr. Murphy, if we were to look at the
11 district court decision and go that far, reject your
12 argument as far as the district court did, what would your
13 argument be about what it would take to satisfy the
14 factors that the court of appeals found were not satisfied
15 in this case, the bloc voting and cohesiveness?

16 Let's say that you lose on your main argument,
17 and we're back in the district court, and the district
18 court says, in my view, this case fails for lack of proof
19 on those two items, what would be adequate proof?

20 MR. MURPHY: Adequate proof of political
21 cohesion would be proof that minorities get together to
22 sponsor candidates, that they run a candidate.

23 No minority has ever run for any county-wide
24 office in the 81-year history with the exception of one
25 election for a probate judge in 1984, but as long as no

1 minority runs for office in that county, then it's certain
2 that no minority will win election.

3 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Murphy.

4 MR. MURPHY: Thank you very much.

5 CHIEF JUSTICE REHNQUIST: The case is submitted.

6 (Whereupon, at 12:05 p.m., the case in the
7 above-captioned 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:

Jackie Holder, Ect v. E.K. Hall, Sr., Et Al

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

BY Ann Marie Federico

(REPORTER)

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