OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: JANET RENO, ATTORNEY GENERAL, Appellant v. BOSSIER PARISH SCHOOL BOARD, ET AL. and GEORGE PRICE, ET AL., Appellants v. BOSSIER PARISH SCHOOL BOARD, ET AL.

CASE NO: No. 95-1455, No. 95-1508

PLACE: Washington, D.C.

DATE: Monday, December 9, 1996

PAGES: 1-57

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IN THE SUPREME COURT OF THE UNITED STATES

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JANET RENO, ATTORNEY GENERAL, :

Appellant :

v. : No. 95-1455

BOSSIER PARISH SCHOOL BOARD, :

ET AL.; :

and :

GEORGE PRICE, ET AL., :

Appellants :

v. : No. 95-1508

BOSSIER PARISH SCHOOL BOARD, :

ET AL. :

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Washington, D.C.

Monday, December 9, 1996

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:04 a.m.

APPEARANCES:

DEVAL L. PATRICK, ESQ., Assistant Attorney General, Department of Justice, Washington, D.C.; on behalf of the Federal Appellant.

JOHN W. BORKOWSKI, ESQ., New Orleans, Louisiana; on behalf of the Appellants Price, et al.

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APPEARANCES:

MICHAEL A. CARVIN, ESQ., Washington, D.C.; on behalf of the Appellees.

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PROCEEDINGS

(11:04 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument now in Number 94-1455, Janet Reno v. Bossier Parish School Board, and George Price v. Bossier Parish School Board.

How do you pronounce the name of this parish, do you know, Mr. Patrick?

MR. PATRICK: It -- we -- it is usually referred to and has been in the litigation as Bossier Parish, but in Louisiana it's Bossier.

CHIEF JUSTICE REHNQUIST: Bossier, okay.

MR. PATRICK: And if you say Bossier -- if you say Bossier in the course of this I'll probably be confused, so if you say Bossier it would be helpful.

CHIEF JUSTICE REHNQUIST: You would think in French it would be Bossier rather than Bossier.

MR. PATRICK: Bossier, oui.

CHIEF JUSTICE REHNQUIST: Very well, Mr. Patrick --

(Laughter.)

CHIEF JUSTICE REHNQUIST: -- you may proceed, whatever the name of the parish.

(Laughter.)

QUESTION: Allez-y.

MR. PRICE: Oui. Allons.

ORAL ARGUMENT OF DEVAL L. PATRICK

ON BEHALF OF THE FEDERAL APPELLANT

MR. PATRICK: Thank you, Mr. Chief Justice, and may it please the Court:

The Bossier Parish School Board adopted the redistricting plan at issue in this case with a discriminatory purpose, plain and simple, and in finding otherwise, the district court ignored evidence that this Court has required fact-finders to consider since its decision in the Arlington Heights case, evidence of racial block voting and of the recent history of discrimination in voting and otherwise in Bossier Parish, evidence that was undisputed, indeed was stipulated below.

QUESTION: Mr. Patrick, when you say the district court ignored the evidence, you don't mean that it excluded it as a matter of admission of evidence, but just that it refused to take it into consideration in making its conclusion?

MR. PATRICK: Frankly, Mr. Chief Justice, it's very hard to say. There was not an evidentiary ruling in the classic sense, in -- because all of the evidence came into the record by way of stipulation without objection by the parties, but what is plain is that the court did not even mention the Arlington Heights case or the Arlington Heights standards, and in one point in the decision went

so far as to say that it would not expressly consider the evidence of the history of discrimination in the school board, and when you -- excuse me, Mr. --

QUESTION: If it came in by stipulation, or it's not an evidentiary point, really, it's an argument that the court's refusal to take it into consideration makes its findings clearly erroneous or wrong as a matter of law, I --

MR. PATRICK: Well, as a matter of law in the first instance, Your Honor, because under Arlington Heights, which requires that in making a determination of purposeful discrimination that the court take into account the totality of the circumstances, and where Rogers v. Lodge has said that this specific kind of evidence is important to a determination of purposeful discrimination, we argue in the first instance that there was a violation of -- that there is a legal error and, indeed, when you take --

QUESTION: How do we know that they didn't take that into account?

MR. PATRICK: Because they did not, in the first instance, even cite the Arlington Heights precedent. They did not indicate what standard was being used in the -- if you look at the analysis

QUESTION: I'm talking about particular

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evidence. What particular evidence do you maintain they did not take account of --

MR. PATRICK: It's --

QUESTION: -- and how do you know that they didn't take account of it?

MR. PATRICK: There are two kinds of evidence that bends to the question, Your Honor, about how we know they didn't take account of it. First of all, the evidence of racial bloc voting. This is a community where the parties have stipulated that 80 percent of the voters in the parish will not vote for a candidate of a race different than them. That is stipulated at 122a of the record.

QUESTION: But didn't the -- I mean, the response that's made by the appellee here is that the court -- that all that that would prove is that therefore, since there was bloc voting, it would advantage the black voters if there were majority black districting, but didn't the court assume that to be true?

MR. PATRICK: No, Your Honor. I don't think --

QUESTION: It didn't assume that -- I thought it --

MR. PATRICK: I -- excuse me. Did you -- I'm sorry.

QUESTION: Yes. I thought that the court's

discussion just takes as a given that it would be to the benefit of the blacks if they had a majority-minority district.

MR. PATRICK: I'm not sure that we can fairly assume that from the district court's opinion. What the district court said is that evidence of this kind is relevant to section 2, there's no question about that.

But we contend, and Arlington Heights supports us, that it is independently relevant to the question of purposeful discrimination. There is no evidence, in fact, on this record which is relevant to the one question, the section 2 question, but not relevant to the purpose determination in the case and, indeed, the court expressly refused in its opinion at 34a, footnote 18, the evidence that the board itself was in violation of the Federal desegregation order with respect to the schools, so that when you take into account the evidence that was excluded and the -- both the racial bloc voting and the history of discrimination, all of which is stipulated and uncontested below, and you think -- and you consider that in light of the other evidence that was considered, that the plan --

QUESTION: Well, the evidence wasn't so much excluded as not considered --

MR. PATRICK: I think that's --

QUESTION: -- in the technical sense here.

MR. PATRICK: I think that's fair to say.

When I think of excluded as a trial lawyer I think of a --

QUESTION: Evidentiary rule, yes.

MR. PATRICK: Of a rule of evidence -- that's right, and because all of the stipulations came into the record without objection on relevance or any other grounds, I think Your Honor is right.

QUESTION: Has this Court applied Arlington Heights in a section 5 determination, do you know?

MR. PATRICK: What this Court has done --

QUESTION: I thought we had not, but what do you rely on for that?

MR. PATRICK: I rely on Rogers v. Lodge, which is a -- which, as you know, is a case where the court has said that the Arlington Heights factors are probative of the judgment about whether there's purposeful discrimination under the Voting Rights Act.

I think what is key in your analysis and consideration of this case is that you bear in mind all of the facts, as Arlington Heights requires, all of the facts and circumstances known to the board at the time, and ask yourself, does it add up?

This is a plan, you understand, that is against the school board's own interests, both its districting and

its governance interests. This is a school board that is typically concerned about distributing the schools among the school districts, and yet adopted a plan that has some school districts with no schools in it at all. That is stipulated at 112a and 73a of the record. It --

QUESTION: Mr. Patrick, would you clarify for me what you think the legal standard is before we go much further into the argument?

That is, we know that the effect, what they call the effect problem of section 5 is about retrogression.

MR. PATRICK: Yes.

QUESTION: What does the purpose -- what does it mean? What does the statute mean when it says, shall not have the purpose of denying the right to vote on account of race?

MR. PATRICK: We take that to mean that the factors -- that the school board has to show a nondiscriminatory purpose within the meaning of Arlington Heights by taking into account the totality of the circumstances, looking at the actions and inactions in this case of the school board, in reaching the conclusion they did, all the facts and circumstances known to the board at the time.

QUESTION: And that it has the burden of proof on that point.

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MR. PATRICK: That's right.

I was saying that the -- about the plan that they did adopt that this is a plan which it is conceded does not respect school attendance zones. That's also stipulated in this record, at 112a.

It pits incumbents against each other. The way the district court put it was that it wreaks havoc on incumbent -- incumbency. That's 28a in the court's opinion. About half of the parish was placed in one district. That's also at 120a, and in other places it fractures neighborhoods, 110a to 111a. These are all stipulated facts.

QUESTION: Mr. Patrick, would it have been open or was it open at the district court to accept all of this and say, look, all of this evidence does point in the direction of intent to discriminate, but there's a piece of counterevidence here and that is, the moment at which the board seemed to turn around and suddenly embrace the police district plan, which it did not originally want, was the moment at which it became apparent that there was going to be a fight about this. It was the moment following the NAACP's submission, I think, of a couple of plans.

And it is findable on this record that what the board wanted to do was to avoid 7 years of litigation, and

basically the board said, look, we'll take peace, even though we don't like the way we're getting it. We'll take peace with all of these defects.

If that was the court's reasoning process, would that have been clearly erroneous, or, indeed, was that clearly erroneous?

MR. PATRICK: It was clearly erroneous. It's not entirely clear that that was the court's --

QUESTION: I realize that.

MR. PATRICK: -- the court's reasoning. What the court said was that it might be a legitimate reason to seek easy preclearance. What Your Honor's question implies is that the reason was that they wanted to avoid a controversy with the black citizens, but --

QUESTION: Well, they wanted to avoid litigation, and they could see it coming.

MR. PATRICK: If that's what it was.

I do think Your Honor is right that the process and the sequence of events leading up to the decision is extremely telling and, indeed, Arlington Heights requires that that be considered as well.

This was a process that was undertaken more than 3 years before they needed the plan.

QUESTION: So if we didn't have the process and the sequence, if we just had a lazy school board that

said, oh, the police jury got this plan, and it was precleared, so we'll take it with all its faults, if it hadn't been that, would this -- would it have been okay?

MR. PATRICK: I think it would be a very different case.

Clearly, the -- that's not the case we have here, because we have a board that expected to draw a plan different from the police jury plan at the outset. That is stipulated, too, as well in the record and, indeed, we have a board that had a different plan from the police jury for a decade or more before they were faced with the redistricting considerations.

This is a board that hired a cartographer with the expectation he would spend 200 -- 250 hours drawing a plan different from the police jury and went about that at a leisurely pace for over a year.

Everything changed when the black citizens came forward and asked that they be fairly represented in the districting --

QUESTION: Are you --

MR. PATRICK: -- process.

QUESTION: Are you certain that the district court here meant to exclude evidence that he called relevant to the section 2, meant to -- was he saying, I'm not even going to consider that when I think about whether

section 5 is violated, or is he saying, you can't build a section 5 case out of only that?

MR. PATRICK: Well, we're certainly not contending that you can build a section 5 out of only -- section 5 case out of only that, but frankly there is no way to understand the district court's opinion by saying that it won't consider for section 5 purposes evidence that's relevant to section 2 on a record where all of the evidence is relevant both to section 2 and section 5, as other than -- meaning the purpose prong of section 5 as other than --

QUESTION: What is the evidence -- and this was what Justice Scalia asked at the very first, and --

MR. PATRICK: Yes.

QUESTION: -- I wasn't sure that you completed your answer, and it's relevant to what you're discussing now with Justice Breyer.

What is the evidence, other than bloc voting, that should have been considered and that was not?

MR. PATRICK: That no black person had ever been elected to the school board. That's stipulated at 115a. That there had never been more than one black member of the police jury. That's in the joint appendix at 55 to 60. That blacks had rarely been elected anywhere in the parish at the time. That's stipulated at 127a --

QUESTION: Those are all subsidiary elements of the bloc voting.

MR. PATRICK: That's right, and then in terms of the history of discrimination, at the time of the decision this board was in violation of its duty to redress school segregation under Brown. That was noted by the district court, to be sure, in footnote 2 of --

QUESTION: All right. So again, most of these things are in the record. It's just not clear that the --

MR. PATRICK: Well, they're all --

QUESTION: -- district court weighed them in a section 2 context.

MR. PATRICK: They're --

QUESTION: Is that a fair statement?

MR. PATRICK: You're right that they're all in the record, Justice Kennedy, there's no question about that.

What is apparent, however, is that the district court was not taking them into account as is required by Arlington Heights in making its judgment about purposeful discrimination.

And with respect to the history of discrimination, remember, this is a school board that stipulated on the record that segregation has increased since the court -- since they've been under Federal court

order and, indeed, that they were assigning teachers to schools on racial grounds.

This is a -- the district court said expressly in footnote 18 of its opinion that it would not consider evidence that the board itself was in violation of its duties under the Federal court order to desegregate the schools. That's the evidence that was not considered.

That is the evidence that should have been considered under the Arlington Heights standard, and if you add to that, and I'm going to come back to the sequence issues in just a moment, but if you add to that that this is a school board that came before the United States district court, to say nothing of the Attorney General, and urged false reasons -- false reasons for why it was -- why it made the decision it did, I -- we submit that a jurisdiction with a clean, nondiscriminatory motive does not come to the United States District Court and urge false reasons, and --

QUESTION: Mr. Patrick, here's what footnote 18 says. It seems to me entirely reasonable. Defendant mentions the continuing duty of the --

QUESTION: Where are you reading?

QUESTION: It's on page 34a of the appendix to the jurisdictional statement.

Defendant mentions the continuing duty of the

school board to "remedy any remaining vestiges of the dual school system under the order in Lemon v. Bossier Parish School Board, citing in particular the school board's failure to maintain a biracial committee. We fail to see how this can be in any way related to the school board's purpose in adopting the police jury plan."

I don't -- that seems to me quite reasonable.

MR. PATRICK: Well, Your Honor, it --

QUESTION: The court considered it, but in its judgment did not find it to be related. Now --

MR. PATRICK: Well --

QUESTION: -- must the court find that it proves what you want it to prove in order to comply with the law? It seems to me the court need only consider it, and then it's a matter of judgment whether it shows the animus or not.

MR. PATRICK: What weight it's given is a matter of judgment, guided by the precedents of this Court, but whether it relates has been resolved by this Court. That's what Arlington Heights is about. Arlington Heights says --

QUESTION: I take it, can be in any way related, means whether it has anything to do with as a factual matter.

MR. PATRICK: That's right, and Arlington

Heights says that it does have something to do with the determination about whether there was or was not purposeful discrimination.

Legislative or administrative history at 268 of the Arlington Heights opinion was specifically noted and, indeed, the Rogers v. Lodge case states that that evidence, evidence of this very kind, bears heavily on the issue of purposeful discrimination, is, indeed, important evidence of purposeful exclusion.

I'd like to reserve the balance of my time for rebuttal, if I may.

QUESTION: Very well, Mr. Patrick.

MR. PATRICK: Thank you.

QUESTION: Mr. Borkowski, we'll hear from you.

ORAL ARGUMENT OF JOHN W. BORKOWSKI

ON BEHALF OF THE APPELLANTS PRICE, ET AL.

MR. BORKOWSKI: Mr. Chief Justice, and may it please the Court:

I'd like to start with the question Justice Scalia just asked about footnote 18, because that shows very clearly, I think, what has been going on in Bossier Parish.

The evidence that the court didn't look at that dealt with the board's exclusion, admitted exclusion of blacks from educational policy issues. The court had

ordered that a committee be established to allow blacks to have an opportunity for input into school board issues. This is the kind of nonresponsiveness, the kind of exclusion that is exactly what happened in the redistricting process.

QUESTION: Well, if we're -- if you're going to get into the sort of detail that you say Arlington Heights requires us to get into, I would think that it would be important to know whether the school board's failure to maintain a biracial committee was the result of hostility to the idea, neglect, maybe unable to have the funds, maybe just got lost in the shuffle.

In other words, just saying it failed to maintain a biracial committee, if we're going to get into the sort of textual detail that Arlington Heights says, you have to know more about it than that.

MR. BORKOWSKI: That's absolutely right, and the facts on this record are that the board admitted in the direct testimonies of Mr. Musgrove and Mr. Myrick, the two board members who testified, that when this committee started getting into educational policy issues, they disbanded, because they did not want this committee having a role in it.

QUESTION: Well, was the committee set up to deal with educational policy issues?

MR. BORKOWSKI: Yes, it was. The consent decree established it for that purpose, and the representations to the contrary, as we point out in our reply brief, in the appellee's brief, are simply false, and the record bears that out. The --

QUESTION: And your position is that all these matters and many others like them must become a part of a section 5 case and must be resolved under section 2 standards before there can be -- the preclearance decision can be made?

MR. BORKOWSKI: These facts only become relevant in a purpose determination. Had the board come forward and not -- and been able to show legitimate reasons, and there were not these -- not this pattern there, this evidence wouldn't come in. This is an unusual case. In this purpose determination these factors have to be considered. Justice O'Connor --

QUESTION: Well, but I thought there were two points. One is that it may be relevant to purpose. The other is that there must be a specific ruling on whether there is or is not a section 2 violation. Don't you have -- don't you make both arguments here?

MR. BORKOWSKI: I'm focusing here on the purpose argument only, and Justice O'Connor asked whether the Arlington Heights standard was the standard for section 5,

and in Pleasant Grove even the dissenters, who did not find discriminatory purpose, cited Arlington Heights as the proper standard to apply, and decisions that this Court has affirmed -- Busbee v. Smith and Port Arthur -- also apply to Arlington Heights, and it's the constitutional standard, and -- so I'm just talking at this point about the purpose argument.

All of these factors under Arlington Heights are relevant to showing discriminatory purpose, and the court erred in excluding it.

As Justice Scalia asked, how do we know that the court did this? Well, the court said we will not permit section 2 evidence to prove discriminatory dis --

QUESTION: Where are you reading from, Mr. Borkowski?

MR. BORKOWSKI: Twenty-four a, in the appendix to the jurisdictional statement. On 23a the court said we must -- it's argued that we must consider --

QUESTION: Whereabouts on 23a, so we can follow you when you read.

MR. BORKOWSKI: On 23a and 24a, the court at three different times says that it's not going to consider this evidence.

QUESTION: Well, point out at least one of them, will you?

MR. BORKOWSKI: Twenty-three a, at the beginning of the first paragraph, we -- it's argued that we must still consider evidence of a section 2 violation as evidence of a discriminatory purpose under section 5. We again disagree.

At the bottom of that paragraph, and Miller forecloses the permitting of section 2 evidence in a section 5 case, and then, at the end of that section, in 24a, we will not permit section 2 evidence to prove discriminatory purpose under section 5.

Judge Kessler, in dissent, in footnote 4 --

QUESTION: Well, excuse me. I took that -- evidence of a violation, I took that to mean evidence that a violation existed, rather than evidence which could be used to show a violation for the one could be used to show a violation for the other.

I took that to mean, we reject the notion that you can come in and say, the district is in violation of section 2, and you quarrel with that statement, too. You would allow a section 2 violation to be brought in.

MR. BORKOWSKI: Yes.

QUESTION: What we're discussing here is whether evidence that would go to show a violation may be brought in, and I don't see this as contradicting that.

MR. BORKOWSKI: Well, there are three different

statements, and one of the statements that -- the statement you referred to could be interpreted that way, but Judge Kessler in dissent says to the -- says in footnote 4 on page 42a that the majority is not considering this evidence, and the majority never says it is.

If you look at the evidence the majority analyzes, it only analyzes two types of evidence, and doesn't look at all sorts of evidence.

You asked what was excluded. The fact that the board's plan fractures black neighborhoods, the same neighborhoods that the school board members consciously kept together in drawing 75-percent black school attendance boundaries were fractured by the plan. That's a -- those are stipulated, unrebutted facts on this record that appear nowhere in the majority's discussion of discriminatory intent, because they would also be relevant to section 2.

There are communities of interest that our clients have and other black voters in Bossier Parish have that are established by the testimony. That is nowhere discussed in the majority's opinion. The -- what this Court has called the inexorable zero, the fact that no blacks have ever been elected to the school board, is nowhere discussed in the analysis of the board's purpose,

and we think these -- this kind of evidence cannot logically be excluded just because it's also relevant to a section 2 --

QUESTION: Well, when you say excluded, you mean the court may not fail to consider it.

MR. BORKOWSKI: Yes. I'm sorry, I misspoke there.

All of this evidence is stipulated facts, is testimony admitted into the record before this Court. It's just not considered in the majority opinion.

QUESTION: Did -- isn't mentioned in the majority opinion. Suppose the court considered it but didn't mention it in its opinion. Is it -- is the judgment invalid because it was not mentioned in the opinion?

MR. BORKOWSKI: No.

QUESTION: I mean, there are two different points. Number 1 is that the court didn't even consider it, and if I agree with your interpretation of the language we were just discussing, then you would have established that the court didn't even consider it, but arguably the court could have considered it but not have thought it germane enough or significant enough to be mentioned in its opinion. Would that also be a violation?

MR. BORKOWSKI: I don't believe it would be a

violation per se simply not to mention evidence that is considered. The point here is that if the court actually did consider this evidence, which in every category of evidence in Arlington Heights shows discriminatory purpose, it could not have reached the conclusion that it reached.

As Judge Kessler said in dissent, this is -- the evidence is far from being equally convincing on either side. If you look at all of the stipulated and unrebutted evidence, this is not a close case.

The problem here with the majority's approach, and the problem in -- if this Court would affirm the majority's decision, is that it would effectively eviscerate the purpose prong of section 5.

It would mean that the only kind of discriminatory purpose that would be reachable under section 5 would be publicly admitted or covertly tape recorded discriminatory purpose, because every other category of evidence that this Court has said in Arlington Heights requires a sensitive inquiry is here.

QUESTION: So what would you say is the instruction, on your view of this case, that the district court should be given were we to remand? We'd say, district court, you did wrong, and this is what you should do.

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MR. BORKOWSKI: I believe that on this record the Court should not -- should simply remand with instructions that preclearance be denied, because the record here overwhelmingly establishes discriminatory purpose. There's no way, unless --

QUESTION: But if we don't agree with you on that and we think that the first shot, anyway, should be -- or the second -- done by the district court, what then?

MR. BORKOWSKI: Then I would say that you would have to remand with instructions to apply Arlington Heights and to look at all of the evidence that this Court in the voting context, in section 5 cases, in school cases, in all cases where intent is an issue, to look at that evidence in all of those categories, keeping in mind that the burden of proof is on the school board here.

There was also evidence that the court considered that the court offered its own explanations for, which we cite in our briefs as another legal error. The only evidence, contemporaneous, direct evidence of the board's intent are admissions that tend to show discriminatory purpose.

There are no contemporaneous minutes offering nonracial reasons for why the board did what it did. There's no legislative history indicating nonracial

reasons. There are statements that some board members are hostile to black --

QUESTION: Thank you, Mr. Borkowski.

Mr. Carvin, we'll hear from you.

ORAL ARGUMENT OF MICHAEL A. CARVIN

ON BEHALF OF THE APPELLEES

MR. CARVIN: Mr. Chief Justice, and may it please the Court:

Let me begin by focusing on the standard that the district court actually did apply in assessing the evidence.

Appellants would have this Court believe that the district court had in front of it a body of evidence that it considered probative to the question of purpose, and it sifted through that evidence and threw out all the evidence that it also thought was relevant to section 2, but of course the district court did not say that, and did not do that.

QUESTION: Well, my difficulty --

MR. CARVIN: What -- excuse me.

QUESTION: My -- I'm sorry. My difficulty with that argument is -- goes to a statement which the court made back on 23a, which we were referring to a moment ago, in the appendix. Do you have that handy?

MR. CARVIN: Yes, I do.

QUESTION: Okay. I will agree that some of the court's statement about what it was doing with evidence perhaps were ambiguous and lent themselves to your interpretation, but at the bottom of the page the court quotes from --

QUESTION: Twenty-three a?

QUESTION: Yes, page 23a. The court quotes from a panel opinion of a different panel but at the same court, and this is what it says:

As the panel noted, the court in Miller reaffirmed that the purpose prong of section 5 must be analyzed within the context of section 5's purpose, which has always been to ensure that no voting procedure changes would be made that would lead to a retrogression in the position of racial minorities.

Now, it seems to me that the court is there making it clear that the only purpose evidence it would consider was evidence of purpose to effect a retrogression, as opposed to a broader purpose to discriminate. Isn't that fairly clear?

MR. CARVIN: No, it's not, Your Honor.

QUESTION: Then explain that.

MR. CARVIN: First of all, the case he is citing from did not -- was making the point that in analyzing purpose you must look at the limited purpose of section 5

and not get into these additional section 2 issues that the Justice Department had urged upon the court in Texas and was also urging upon the court here.

But more directly to answer your question, of course, it was stipulated in this case that there was no retrogressive effect of the plan, so under your understanding of the district court opinion, the district court would have only been looking at, at did they have a purpose to effect a retrogression? This would have been a very short opinion indeed if that had been its analysis.

It did not look at the purpose of the new plan compared to the status quo ante. It looked at the purpose of the new plan as compared to the maximization alternative proposed by the NAACP.

The plan adopted had no black majority districts. The NAACP plan had two black majority districts. The district court spent its entire opinion analyzing, did the board do that -- it's decision because of its negative impact on minority voters or in spite of it? Did it have legitimate nondiscriminatory motives for rejecting the NAACP plan, or was it motivated by a racial reason?

QUESTION: Then why did it quote what I just read?

MR. CARVIN: Again --

QUESTION: I mean, it doesn't -- the quotation doesn't seem to make any sense on your theory of the court's view of purpose.

MR. CARVIN: No, but in isolation it may not, but the context is this, Your Honor. You have five section 5 courts who were trying to analyze why did the submitting jurisdiction make a change? What was the purpose behind that change? And they are examining all the circumstantial and direct evidence relating to the change.

The Justice Department in all five of those cases and here says, don't just look at what was motivating the board at the time. We also want you to consider all of this additional section 2 evidence, as they're arguing here. We want you to consider racial bloc voting in prior elections. And the district courts in section 5 cases have consistently responded to the Justice Department, section 5 has a much more limited purpose.

QUESTION: Well, what is your position here? Is it your position here that the only purpose that is relevant under section 5 is purpose to cause retrogression, as distinct from purpose to discriminate by effecting a purposeful dilution?

MR. CARVIN: Oh, no. No, not at all. I think that decision, the Court's decision in Richmond and

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Pleasant Grove has already decided that issue and, indeed, since it was stipulated that it didn't even have the effect of retrogression, you can obviously assume they didn't have the purpose to retrogress, and this would have been a one-paragraph opinion.

QUESTION: But there could have been a purpose to dilute.

MR. CARVIN: Yes. That's the whole point.

QUESTION: Yes.

MR. CARVIN: Even though you're not making things worse. We can conceive of circumstances where there's a fully reasonable alternative put in front of you that preserves black concentrations pursuant to traditional districting principles, but nonetheless, because you are a racist school board you say, no, we're not going to do that.

QUESTION: So if everybody agrees on that, if everybody agrees that the purpose is really the purpose to cause discrimination, not just the purpose not to retrogress, if everybody agrees at least sometimes a lot of this section 2 evidence in this case would be relevant, if not dispositive -- not necessarily dispositive but relevant to showing that, and all we're arguing about is how ambiguous the district court's opinion is, why don't we just send it back to the district court to work it out

and say, be clear, take it into account and do it?

MR. CARVIN: There is no dispute as to what the district court did. Appellants have now changed their opinion as to the legal standard applying.

Let me proceed in two steps. The district court, in analyzing whether or not two nonretrogressive plans reflect discriminatory purposes, compares the maximizing alternative to the plan adopted and again asks, do we have a legitimate, nondiscriminatory purpose? There is an impact here. One's got black majority districts, one does not.

Now, what the appellants are asking the district court to do is, after they've figured out whether that impact is motivated by a discriminating purpose, go ahead and analyze racial bloc voting.

Well, what would that show you? All racial bloc voting is relevant to is whether the black majority districts have an impact.

If you have no racial bloc voting, if you have no history of discrimination that currently excludes blacks, then there's no difference, as this Court noted in Johnson v. DeGrandy, between white majority districts and black majority districts. Blacks can be elected in both districts.

So if the district court had gone on this detour

that appellants insist they -- insist it do, and agreed with them entirely, it would have returned to precisely the place it started, which is, yes, the NAACP plan, the failure to adopt it has an impact, but the relevant question under section 5 is whether that was motivated by a discriminatory purpose.

You see, all of the confusion comes here is because they keep quoting cases where plaintiffs, minority plaintiffs have the burden and, of course, in section 5 the burden is reversed.

So yes, in Rogers v. Lodge and Gingles and all of those cases, plaintiffs must prove racial bloc voting. They must prove that you can create a compact black majority district, and then they must show that the failure to do so has an effect, and as Justice Brennan noted quite clearly in Gingles, it only has an effect if there is racial bloc voting.

So that is plaintiff's burden and, if they had the burden in the court below, they would have had to show that, but we had the burden, and we were making a much simpler argument. We were saying, fine, the plan has an impact, but that's not the reason it did it -- didn't -- took the police jury plan over the NAACP plan. We took the police jury plan over the NAACP plan because the NAACP plan clearly and irretrievably violated State law.

QUESTION: But this other evidence not only shows impact, it also shows what you might call disposition. Doesn't the evidence of a violation on racial grounds of section 2 show that you're talking about people here who are likely to discriminate on the basis of race --

MR. CARVIN: Oh, I --

QUESTION: -- and isn't that relevant to the section 5 determination?

MR. CARVIN: Your Honor, again, as appellants have correctly pointed out, the board was aware of the impact of this plan. I mean, they can count. They knew that the NAACP plan had two black majority districts and their plan had none. Nobody's disputing that they were aware of the impact of this plan.

QUESTION: No, but the question goes to --

QUESTION: I'm not talking about awareness.

MR. CARVIN: Yes, but -- okay.

QUESTION: I'm talking about intent.

MR. CARVIN: Right.

QUESTION: I'm talking about disposition.

MR. CARVIN: Right.

QUESTION: I'm talking about the character of the people who made the decision.

MR. CARVIN: And how would that inquiry be aided

by looking at regression analysis of racial elections that was done 3 years after the board's decision? They brought in an expert to go through and produce this evidence of racial bloc voting which, by the way, it failed to produce and, of course, this plan has elected two black people --

QUESTION: Well, I suppose the answer is that people haven't changed that much over the course of 3 years.

MR. CARVIN: Well, I think --

QUESTION: Do you dispute the fact that evidence of bloc voting, which, in fact, is evidence which discloses an intent, is irrelevant --

MR. CARVIN: No.

QUESTION: -- to evidence of intent under section 5?

MR. CARVIN: No. Again, it is not irrelevant, particularly when plaintiffs have a burden, but it adds nothing to what --

QUESTION: You're saying it was just cumulative, is that it?

MR. CARVIN: It was superfluous and cumulative because racial bloc voting only tells you, again, whether black majority districts have an impact.

QUESTION: So -- but if I may just --

MR. CARVIN: Sure.

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QUESTION: -- get clear on this, it would have been perfectly proper for the court to say, we will consider this evidence for the section 5 purpose issue. That would have been legally correct.

MR. CARVIN: Oh, sure, and remember the issue here is whether the court committed legal error.

QUESTION: Did the court ever say that the reason it was keeping it out was that it was superfluous and cumulative?

MR. CARVIN: It said, I am considering evidence that is relevant to purpose. No, Your Honor, it didn't say what it's implicit assumptions were, just like this Court in Miller.

This Court in Miller analyzed a section 5 purpose case, and it compared the legitimate nondiscriminatory reasons for adopting the plan with less majority black districts than the plan with more majority black districts. The Justice Department in that brief urged upon them to -- in this Court to independently consider the stark evidence of racial bloc voting in Georgia and the history of discrimination and all those sorts of things.

Now, the Court didn't do that because, like the court below, it assumed that --

QUESTION: Well --

MR. CARVIN: -- the absence of the majority districts had an impact.

QUESTION: Mr. Carvin, I just don't think the court's opinion on page 23a is consistent with what you're saying.

MR. CARVIN: Well --

QUESTION: Go up to the top of that first full paragraph.

MR. CARVIN: Right.

QUESTION: The court summarizes the argument that it's responding to.

Defendant argues that even if we decide that a section 2 action cannot be brought in a section 5 preclearance proceeding, we must still consider evidence of a section 2 violation as evidence of discriminatory purpose under section 5. Again, we disagree. As we have said, the statutory language sets forth differing standards for the two sections.

Isn't that, when read in relation to the quote that I started from, the bloc vote from the earlier opinion, isn't that a pretty clear indication that what the court was finding was, or assuming was, not that this evidence was cumulative or superfluous, but that it was irrelevant?

MR. CARVIN: Well, it --

QUESTION: And you have conceded that it was relevant.

MR. CARVIN: Well -- well, but in that technical sense, as this Court has already pointed out, the court didn't rule it was irrelevant. It admitted it into evidence, and --

QUESTION: Well, it says the two sections have different purposes, and the argument was that you must consider the evidence that might go to section 2 for section 5 purpose, and the court says we disagree.

MR. CARVIN: Right. You must still consider evidence of a section 2 violation.

Now, that means that section 5 courts trying to figure out the purpose of this discrete change must engage in the amorphous and very complicated analysis of whether -- not, the change is purposefully discriminatory, but whether the underlying electoral system has the result of discriminating. It therefore must analyze racial bloc --

QUESTION: But that is not what the court said.

MR. CARVIN: Yes --

QUESTION: The court says, these two sections have different purposes.

QUESTION: Let Justice Souter finish his question --

MR. CARVIN: Sorry.

QUESTION: -- before you answer, Mr. Carvin.

QUESTION: It says, these two sections have different purposes.

MR. CARVIN: And, of course, they do.

QUESTION: They do, but they also have a purpose in common, don't they --

MR. CARVIN: Sure.

QUESTION: -- because intent to cause dilution is relevant under section 2 and under section 5.

MR. CARVIN: Absolutely.

QUESTION: And doesn't the court's explanation indicate that that's not what the court thought?

MR. CARVIN: If the court had said, we are not going to consider evidence that is relevant to both section 2 and section 5, you would be correct. But what the court said was, we'll consider evidence that's relevant to section 5 but not relevant only to a section 2 violation.

How do the two statutes differ? One has a purpose standard, and one has a result standard. Some evidence of section --

QUESTION: No, they both have purpose standards.

MR. CARVIN: Yes, they both have that in common, but how do they differ?

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They differ because section 2 can be violated wholly without regard to purpose and, therefore, the evidence for a section 2 violation has been consciously constructed to focus the court's inquiry not on the purpose for adopting this plan but on the results of the system, racial bloc voting and those sorts of things, and it was that subset of evidence that the court clearly said was the only evidence it wasn't --

QUESTION: But on your own argument, as I understand it, there was an error there, because evidence of racial bloc voting would indeed go to purpose, wouldn't it?

MR. CARVIN: The error has -- no.

QUESTION: Didn't -- I thought you agreed that that was so --

MR. CARVIN: No.

QUESTION: -- and that the reason it was kept out was cumulativeness.

MR. CARVIN: The argument was, in that court and this Court --

QUESTION: What is your position? Do you think -- you agree, don't you --

MR. CARVIN: We --

QUESTION: -- that evidence of racial bloc voting would be relevant evidence under the purpose prong

of section 5, don't you?

MR. CARVIN: It would be relevant but superfluous. Therefore, what section 5 courts should do is not exclude it as a matter of law, but pay attention to it only if it furthers the inquiry.

What appellants are asking this Court to do is to rule as a matter of law that they must always consider racial bloc voting, and my question again is, how does that further the analysis?

You have just gone through a comparison of a plan that you assume is better for black voters compared to one that you have assumed is not good for black voters, and you've found it is legal because it's not motivated by a discriminatory purpose.

Now, you could spend 20 or so pages discussing the extraordinarily voluminous evidence showing that, indeed, plans with black majority districts are better for black voters, but I don't think that this Court as a matter of law should rule that section 5 courts must engage in that sort of thing.

QUESTION: Well, what do we do if we're truly, at the end of the day, uncertain what it is the district court really excluded from consideration, if it's unclear to us?

MR. CARVIN: I think --

QUESTION: Don't we have to remand?

MR. CARVIN: Your Honor, I had understood this Court's rule to be that ambiguities would be resolved in favor of district courts. Rogers v. Lodge is a perfect example of that.

Rogers v. Lodge did not apply this Court's subsequent decision in Mobile v. Bolden, but the Court did a very searching analysis and said, could the district court have applied the purpose test under Mobile v. Bolden, and therefore it gave it the benefit of the doubt.

I would submit, however, in the context, and given the language, that this Court did not make the ruling that appellants said. I --

QUESTION: May I ask you a question?

MR. CARVIN: Sure.

QUESTION: I think I understand your theory, and your argument's been very helpful to me, I might say. But say there is in the record evidence that they drew boundary lines to segregate blacks when they were working out school districts and just the opposite kind of lines when they were doing voting districts. Under your argument, that would be relevant and should have been considered?

MR. CARVIN: Yes, Your Honor, of course.

QUESTION: Yes. Because that goes to purpose.

MR. CARVIN: Of course.

QUESTION: And if there's evidence in the record that that happened, and there's nothing -- no mention of it in the opinion, doesn't that lend some support to the view that the court took a different line of reasoning than you're advocating?

MR. CARVIN: Your Honor, if there was any evidence of fracturing in this case, I think that would not be my reasonable inference. There was no evidence of fracturing based -- Your Honor, if they had fractured black concentrations in Bossier Parish to create -- to fail to create the black majority districts, then obviously appellants' job would be real easy. All they would have to do is re -- undo the fracture, and redraw the lines to create the black majority districts.

But we know that's not what occurred because if you look at the maps, no one redrew --

QUESTION: But let me interrupt you with one other point there. I don't think our question is whether the court should have accepted the other proposed map. I agree with you, that isn't it. The question is whether it was correct to adopt the plan it did adopt.

MR. CARVIN: Right --

QUESTION: Yes.

MR. CARVIN: -- and the appellants try and make

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something very sinister about the adoption of the police jury plan. The consistent, contemporaneous evidence has been that they rejected the NAACP plan because it violated State law, and they adopted the police jury --

QUESTION: But Mr. Carvin, this -- clarify one thing about what you call the NAAC plan that was rejected. I didn't think that plan was put forward as a rival to some other plan. This case is not like the one we just heard in that regard. I thought that plan was just put forward to show that it would be possible to create minority districts, not that this was a finished plan that was a rival to some other plan.

MR. CARVIN: Well, whether it was a work in progress or a final plan, the point is that it is stipulated that it is impossible to create even a single black majority district without splitting a precinct, and it is also quite clear from Louisiana --

QUESTION: But splitting a precinct is something that even the jury -- the -- whatever it's called, the police jury did. Not terribly many, but they did for their plan, didn't they?

MR. CARVIN: Yes, and appellants have confused this issue, and it's very important that the Court be clear on it.

The police jury had no power under State law to

split any precincts. It was a facial violation for the police jury to split a precinct. It was a facial violation for the board to split a precinct. That is on joint appendix at 277. The law could not be clearer under Louisiana.

QUESTION: But you get permission to do it.

MR. CARVIN: No. No.

QUESTION: Well then, how was it done?

MR. CARVIN: Because from April 1, '91 through May 15, 1991 police juries can split precincts. The board here asked to work with the police jury at that time so they could split the precincts in April and May of 1991. That's stipulated. The police jury rejected the overture.

After May 15, 1991, it was impossible for the police jury to split precincts or the board to split precincts, and that is because that window of opportunity that the State legislature had consciously given to police juries so they could account for the '90 redistricting was now gone.

QUESTION: Where is that in the joint appendix? You gave a page number.

MR. CARVIN: Yes.

QUESTION: I didn't write it down.

MR. CARVIN: That's joint appendix 277, Justice Scalia, and it says, notwithstanding any other provision

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of the law, the precinct boundaries shall not be divided, abolished, consolidated, or the boundaries otherwise changed until after December 31, 1992.

Now, could the board have waited until after December 31, 1992 to do its redistricting as appellants contend? The answer to that is found at the joint appendix on page 65.

The United States' own chronology of events states quite explicitly at the top of 65, 12/31/92 -- of course, the same date -- date under Louisiana law by which school boards must reapportion.

So during the time that the school board was legally obliged to reapportion, the police jury and the board were legally prohibited from splitting a single precinct.

That law is not, unfortunately, in the joint appendix, but it is Louisiana Revised Statutes at 17:71.5A.

QUESTION: Is that law consistent with one-person-one-vote requirements, do you think?

MR. CARVIN: Your Honor, because of the window of opportunity. You see, the logic of the law is this. You get --

QUESTION: I'm sorry, I don't understand. Is such a State law consistent with the requirements of one

person, one vote in drawing districts?

MR. CARVIN: I took your question to mean, could they make adjustments for the 1990 census, but I may be misunderstanding --

QUESTION: Well, I'm asking, this Court has had several opinions that have required the utilization of the principle of one person, one vote in districting for whatever purpose, if it's for voting, a police jury or a school board that votes, and so forth, so is it consistent with that principle for a State law to say, you can't ignore a precinct boundary? What if you have to in order to --

MR. CARVIN: Oh, in order to -- I now understand. In order to achieve --

QUESTION: -- draw equal districts and achieve that requirement?

MR. CARVIN: Right, but there was no violation, I don't believe, of the one-person-one-vote constitutional standard.

QUESTION: I'm asking, if it were, do you think that State law could prevail?

MR. CARVIN: Oh, I believe there's an exception in the law for boards with different numbers of members than police juries to -- they may split a precinct to come within plus or minus five in terms of ideal population

deviation, but there was no argument --

QUESTION: Has this Court said plus or minus five is okay?

MR. CARVIN: I thought Mahan v. Howe used that as even just a presumptive guideline. In congressional redistricting you must be much clearer.

I had understood this Court's decisions in Mahan and others to give local and State jurisdictions much broader discretion. As long as within -- it was within -- roughly within 10 percent, then everything was okay, and even -- I think Mahan went to about 16.4, and they did that to preserve the town boundary and here, so if you have to preserve a precinct boundary I think you'd also be okay under law, now that I understand your question, Justice O'Connor.

QUESTION: Why doesn't your -- your argument, which is a very good argument as to why there was no purpose that violated section 5, not show -- in order to see whether you're right or not we ought to introduce all the other evidence. I mean --

MR. CARVIN: Well --

QUESTION: -- on the other side they say that here are all these people on this board, which at that time had had only a black member for a very short period of time. They didn't want the police jury district

because they'd have to run against each other.

MR. CARVIN: Mm-hmm.

QUESTION: And they didn't want the police district for some reasons that then later on they just ignored, and what happened in between? What happened in between was that the NAACP got busy and began to talk about a more proportionate system, so why isn't whether there could have been a more proportionate system or had to be a more proportionate system highly relevant?

MR. CARVIN: It is highly relevant. The court looked at the NAACP as an alternative, and then asked itself the question, the proportionate plan, was this alternative objectively reasonable, and was the board's rejection of it motivated by discriminatory purpose, and in doing so, just to eliminate any ambiguity on this, it went through precisely the analysis that this Court articulated in Arlington Heights.

It did not cite Arlington Heights by name, I agree. The court had noted earlier on in its opinion citing cases where minority plaintiffs have the burden makes it confusing when you're dealing with a section 5 case where, of course, the burden is on the other side, so it cited this Court's voting rights cases of City of Richmond and McCain v. Lybrand, the purpose cases under section 5.

But if I could briefly go through the Arlington Heights factors, did it look at the specific sequence of events?

There is a heading in the court's opinion that says, we'll now look at the specific sequence of events. Did it look at the contemporary statements of the affected board members? It spends about two pages walking through what it ultimately concluded were these ambiguous statements by other board members.

QUESTION: Mr. Carvin, I take it from what you said that you do accept that Arlington Heights is a relevant precedent.

MR. CARVIN: Sure.

QUESTION: Right, so you think that it was just so understood that the district court didn't need to mention it.

MR. CARVIN: Your Honor, to be candid, I don't think what people look at, what district courts look at in discriminatory purpose cases is a very complicated inquiry. I mean, I think they looked at the direct and circumstantial evidence of, why did the board do this, and do we believe them, and is it objectively reasonable?

QUESTION: The factors of Arlington Heights are not so arcane. If you asked somebody on the street, what would you look at, he'd probably come up with the same

things.

MR. CARVIN: So I really must insist that the appellants here are really seeking to elevate form over substance. They're seeking to require district courts to recite the blazingly obvious. We're now looking at the black majority district, and we're looking at the other plan. The black majority plan, if it's not chosen, has an impact.

The court didn't do that in Miller. I don't know of any purpose case that does --

QUESTION: If the appellants' argument is that the findings were clearly erroneous because there was so much other evidence pointing in the other direction, that isn't requiring the district court to put its opinion in some sort of procrustean bed. That's an ordinary clearly erroneous argument.

MR. CARVIN: Oh, sure, and -- but I don't think they think they can win the clearly erroneous argument, because no race-blind actor would have behaved in any way different from this board.

Again, the NAACP plan violated State law. The police jury plan did not. Even assuming there was this loophole that appellants talked about, you could only make the NAACP comply with State law by going to the police jury, taking some affirmative steps.

The argument to the police jury for complying with State law would have been objectively irrational. It would have been, we'd now like you to create 65 additional precincts in a district with 56 precincts.

No rational person would have taken the NAACP plan if you were blind to the racial composition, so their clearly erroneous case reduces to the proposition that it's not plausible to believe that this board did the only rational thing for rational reasons. You must conclude, as a matter of law, that this board did the rational thing for a racial purpose.

I concede that that is conceivable, but I don't think it's grounds for finding the district court's contrary conclusion clearly erroneous, particularly since, again, it was a facial violation.

QUESTION: Why was it rational to set up school districts with some districts that had a few schools, several schools, and some districts that had no schools at all? It just seems a very odd kind of a school districting.

MR. CARVIN: Your Honor, school districts represents parents and children, they don't represent buildings. It was never a redistricting criteria in Bossier Parish to have a school building in each district. Mrs. Jackson's testimony below was that under the 1980

plan, the old plan, she did not have a building in her district.

It is stipulated that well before the NAACP plan ever came into existence they did not provide their cartographer, Mr. Joiner, with school attendance zones, so --

QUESTION: But I thought that was one of the reasons why they were resisting the jury police --

MR. CARVIN: No --

QUESTION: -- plan originally.

MR. CARVIN: That is what the appellants are attributing to them, and there is a stipulation that school boards typically look at that, but the undisputed evidence is, this school board did not care about that, and we know that to a certainty, because it didn't give their line-drawer any evidence of where the school buildings were, so --

QUESTION: So are you saying that it was -- incumbency was the only thing that kept them from resisting the --

MR. CARVIN: And the incumbency paled in significance to the advantages of the police jury plan for guaranteeing preclearance.

Pairs of incumbents are, of course, only a problem if both incumbents are going to run again. There

was two pairs of incumbents here. But the evidence again, by Mr. Musgrove at trial, by Mr. Harvey at trial, and by Ms. Jackson, again in a deposition --

QUESTION: I think you've answered the question, Mr. Carvin. Thank you.

MR. CARVIN: Thank you.

QUESTION: Mr. Patrick, you have 5 minutes remaining.

REBUTTAL ARGUMENT OF DEVAL L. PATRICK

ON BEHALF OF THE FEDERAL APPELLANT

MR. PATRICK: Thank you, and if the -- Mr. Chief Justice, if the Court please, I'd just like to return to a question I didn't answer very well from Justice O'Connor.

You asked about cases where the Court has, in the section 5 context, reflected its respect for the Arlington Heights standards, and they -- those cases are cited -- they're beyond Rogers v. Lodge. They're cited in the first full paragraph on page 17 of our brief. I'm sorry it wasn't very complete earlier.

Also, there was a statement made about precinct changes and precinct-splitting that was -- has been argued by the parish. In fact, precincts could be split, indeed, were split by the police jury. They split 20 precincts. You'll see that on -- stipulated at 88a and 88 -- 89a.

The only argument is, the only --

QUESTION: Did they do that within the window that the legislature gave them?

MR. PATRICK: I believe they did, yes, and the only argument, Justice Kennedy, is that the school board could not split precincts without the police jury's permission. The school board never tried to get the police jury's permission. They expected to do so. They set out to draw a different plan --

QUESTION: No, the argument's a little further than that, as I understood the last argument. That is, even the police jury itself could not do it once the window of opportunity had closed.

MR. PATRICK: Well, but the window of opportunity opens again on -- after the 1st of January, 1993, and that's important. That was known to the school board at the time --

QUESTION: But they had -- but again, the argument made was that they had an obligation to come up with districts before then.

MR. PATRICK: Well, that's right. They -- I understand that argument, but what we do know is that --

QUESTION: Is it wrong? Did they have no obligation to come up with --

MR. PATRICK: I'm not convinced it's right, Justice Scalia, but what is clear is that consolidation

after the window opened again has happened in Bossier Parish.

It was done by the police jury and could have been done, and indeed the record indicates that the school board could have drawn a plan with two majority-minority districts in it that ended up with fewer precincts in it than the police jury plan.

The other point I wanted to make is that the Court needs to understand that this is not a choice. This case is not about a choice between the plan they adopted and the NAACP alternative. That is a -- that's a ruse.

It's very important to understand that this is about the school board's unwillingness to consider any alternative at all to the plan that they knew at the time was dilutive, and which they admit on the record at the time they knew they could have drawn one with two reasonably compact majority-minority districts.

It is not maximizing for the Department of Justice to question a jurisdiction that draws a plan which hardly serves its own interests, that pits incumbents against each other, that distributes the schools in irrational ways, and is dilutive, rather than adopting a plan that is fair, and that is really what this case is about.

If there are no other questions --

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Patrick.

MR. PATRICK: Thank you.

CHIEF JUSTICE REHNQUIST: The case is submitted.

(Whereupon, at 12:02 p.m., the case in the above-entitled matter was submitted.)

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CASE NO. No. 95-1455,95-1508

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

BY Ann Nicoli Federico

(REPORTER)