

18-281 VIRGINIA HOUSE OF DELEGATES V. GOLDEN BETHUNE-HILL

DECISION BELOW: 326 F.Supp.3d 128

LOWER COURT CASE NUMBER: 3:14cv852

QUESTION PRESENTED:

1. Whether the district court conducted a proper "holistic" analysis of the majority-minority Virginia House of Delegates districts under the prior decision in this case, *Bethune-Hill v. Va. State Bd. of Elections*,

137 S. Ct. 788, 799 (2017), even though it ignored a host of evidence, including:

a. the overwhelming majority of district lines, which were carried over unchanged from the prior map;

b. the geographic location of population disparities, which imposed severe redistricting constraints and directly impacted which voters were moved into and out of the majority-minority districts; and

c. the degree of constraint the House's Voting Rights Act compliance goals imposed in implementation, which was minimal.

2. Whether the *Bethune-Hill* "predominance" test is satisfied merely by a lengthy description of ordinary Voting Rights Act compliance measures.

3. Whether the district court erred in relying on expert analysis it previously rejected as unreliable and irrelevant and expert analysis that lacked any objective or coherent methodology.

4. Whether the district court committed clear error in ignoring the entirety of the House's evidentiary presentation under the guise of credibility determinations unsupported by the record and predicated on expert testimony that should not have been credited or even admitted.

5. Whether Virginia's choice to draw 11 "safe" majority-minority districts of around or above 55% black voting-age population ("BVAP") was narrowly tailored in light of:

a. the discretion the Voting Rights Act afforded covered jurisdictions to "choose to create a certain number of 'safe' districts, in which it is highly likely that minority voters will be able to elect the candidate of their choice," *Georgia v. Ashcroft*, 539 U.S. 461, 480 (2003), or

b. the requirement the Voting Rights Act, as amended, imposed on covered jurisdictions "to prove the absence of racially polarized voting" to justify BVAP reductions towards or below 50% BVAP, *id.* at 500 n.3 (Souter, J., dissenting).

6. Whether the district court erred in ignoring the district-specific evidence before the House in 2011 justifying safe districts at or above 55% BVAP.

JURISDICTION POSTPONED.

IN ADDITION TO THE QUESTIONS PRESENTED BY THE JURISDICTIONAL STATEMENT, THE PARTIES ARE DIRECTED TO FULLY BRIEF THE FOLLOWING QUESTION: WHETHER APPELLANTS HAVE STANDING TO BRING THIS APPEAL.

JURISDICTION POSTPONED 11/13/2018