The Burger Court Opinion Writing Database

White v. Weiser

412 U.S. 783 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

B

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 13, 1973

Re: 71-1623 - White v. Weiser

Dear Byron:

Please join me. I will also join in Lewis Powell's concurring opinion.

Regards,

LFB jr

Mr. Justice White

Copies to the Conference

E-30/

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 26, 1973

Re: Nos. 71-1623, 71-1476, 72-147, Bullock v. Weiser, Gaffney v. Cummings, and Bullock v. Regester

Dear Byron:

I think you have done an excellent job with all three of these cases. I gladly join Part I of your opinion in Bullock v. Weiser, and after I have had a chance for more reflection on Part II I may be with you entirely. (I am somewhat troubled by the argument that we need not decide whether the District Court should have adopted Plan C rather than Plan B since the Legislature retains the option of adopting the admittedly constitutional Plan B.) I also join Parts I, III, and IV of your opinion in Bullock v. Regester. As for the legislative apportionment questions at issue in Gaffney v. Cummings and Part II of Regester, I would apply the principles set forth in my dissenting opinion in Mahan v. Howell. Accordingly, in due course I will circulate an opinion dissenting from your resolution of those questions.

Sincerely,

Bill

Mr. Justice White

Copies to the Conference

WJB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 5, 1973

RE: No. 71-1623 - White v. Weiser

Dear Byron:

I have finally come to rest in the above and am glad to join Part II as well as Part I of your opinion. I am circulating today my concurrence and dissent in your other two cases - No. 71-1476 Gaffney v. Cummings and No. 72-147 White v. Regester.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 26, 1973

Re: No. 71-1623, Bullock v. Weiser

Dear Byron,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

WD

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 5, 1973

Re: No. 71-1623 - Bullock v. Weiser

Dear Chief:

Upon further reflection, I thought I should make it clear that I do not favor cutting back on Kirkpatrick in this case. I remain in the reverse column but as presently advised it is because the District Court adopted Plan C rather than Plan B.

Sincerely,

Byron

The Chief Justice

Copies to Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: White, J.

1st DRAFT

Circulated: 4-25-73

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 71-1623

Bob Bullock, Etc., Appellant,
v.
Dan Weiser et al.

On Appeal from the United States District Court for the Northern District of Texas.

[May —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case concerns the congressional reapportionment of the State of Texas.

On June 17, 1971, the Governor of the State of Texas signed into law Senate Bill One (S. B. 1), Tex. Acts, 62d Leg., 1st C. S., c. 12, p. 38, providing for the congressional redistricting of the State. S. B. 1 divided the State into 24 congressional districts for the ensuing decennium.[1] Based upon 1970 census figures, absolute population equality among the 24 districts would mean a population of 466,530 in each district. The districts created by S. B. 1 varied from a high of 477,856 in the 13th District to a low of 458,581 in the 15th District. The 13th District exceeded the ideal district by 2.43% and the 15th District was smaller by 1.7%. The population difference between the two districts was 19,275 persons, and their total percentage deviation was 4.1%. The ratio of the 13th District to the 15th was 1.04 to 1.

[1] Prior to the passage of S. B. 1, the Texas Senate had twice defeated redistricting bills, passed by the House, with total deviations smaller than the total deviation in S. B. 1.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: APR 30 1973

No. 71-1623

Recirculated: _____

Bob Bullock, Etc., Appellant, v. Dan Weiser et al. | On Appeal from the United States District Court for the Northern District of Texas.

[May —, 1973]

MR. JUSTICE MARSHALL concurring.

While I join Part I of the Court's opinion, I can agree with Part II wherein the Court reverses the District Court's selection of Plan C over Plan B only insofar as that determination rests upon the fact that Plan B comes closer than Plan C to achieving the goal of "precise mathematical equality," see *Kirkpatrick* v. *Preisler*, 394 U. S. 526, 530–531 (1969). See also *Wells* v. *Rockefellar*, 394 U. S. 542 (1969). Whatever the merits of the view that a legislature's reapportionment plan will not be struck down merely because "district boundaries may have been drawn in a way that minimizes the number of contests between incumbents," *Burns* v. *Richardson*, 384 U. S. 73, 89 n. 16 (1966), it is entirely another matter to suggest that a federal district court which has determined that a particular reapportionment plan fails to comport with the constitutional requirement of "one man, one vote" must, in drafting and adopting its own remedial plan, give consideration to the apparent desires of the controlling state political powers. In my opinion, the judicial remedial process in the reapportionment area—as in any area—should be a fastidiously neutral and objective one, free of all political considerations and guided only by the controlling constitutional principle of strict accuracy in representative apportionment. Here the District Court gave ample recognition to the legislature's

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 30, 1973

Re: No. 71-1623 - Bullock v. Weiser

Dear Byron:

Please join me. I would also go along, as I indicated at conference, with an addition of the kind suggested by Bill Rehnquist in his letter of this afternoon to you.

Sincerely,

Harry

Mr. Justice White

Copies to the Conference

June 15, 1973

Re: No. 71-1623 - White v. Weiser

Dear Byron:

I suppose you circulated the headnotes and lineups in the three reapportionment cases for a purpose. At least, I assume that we were meant to read them and report back to you.

The lineups seem right to me. I have a minor question about headnote 3 in No. 71-1623. It seems to me that this note does not read quite right when it says that a population variance is "especially noticeable in congressional districts with their substantial populations." Actually, the larger the district, the less effect a pure population variance has. As I read your opinion, pages 9-10, what is "especially noticeable" is percentage variance rather than population variance. In a large district a variance of one percentage point represents a lot more people than it does in a small district. But a flat number has less effect in a large district than in a small one. Perhaps what the headnote ought to say is "Percentage of population variances . . . . " or something to that effect.

Sincerely,

HAB

Mr. Justice White

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 1, 1973

Re: No. 72-1623 Bullock v. Weiser

Dear Byron:

This refers to Bill Rehnquist's note to you of April 30, with copies to the Conference, commenting on a couple of points in the above case.

Although I have not concluded my study of your draft opinions for the Court, I would welcome a clarification with respect to Kirkpatrick along the lines suggested by Bill. I think it fair to say that Kirkpatrick has had some salutary effects and I do not here suggest a reconsideration of it. I certainly agree that there are valid differences between congressional and state election reapportionments. But (for reasons so persuasively stated by Professor Charles Black in Bullock v. Weiser) I am not persuaded that either the Constitution or sound policy requires the mathematical exactitude which Kirkpatrick seems to affirm.

Accordingly, I join Bill Rehnquist in saying that I would like to leave open the question whether in a congressional reapportionment there may not be some relatively minimal percentage disparity which does not in itself constitute a prima facie case of constitutional violation.

Sincerely,

L.F.P.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 11, 1973

No. 71-1623 Bullock v. Weiser

Dear Byron:

This is the Texas congressional reapportionment case which we have discussed.

As I find it difficult to accept, either as constitutional doctrine or consistent with the necessity for some flexibility in any viable political system, the "mathematical exactitude" rule of Kirkpatrick, I am considering writing a dissent. It will take me some time to get to this.

Sincerely,

Lewis

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 5, 1973

No. 71-1623 White v. Weiser

Dear Byron:

Please join me in your opinion for the Court.

I am, however, circulating herewith a brief concurring opinion.

Sincerely,

L. Lewis

Mr. Justice White

CC: The Conference

lfp/gg

You have a concurrence in this

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 71-1623

Circulated: JUN 5 1973

Recirculated: _____

Mark White, Jr., Etc., Appellant, *v.* Dan Weiser et al.	On Appeal from the United States District Court for the Northern District of Texas.

[June —, 1973]

MR. JUSTICE POWELL, concurring.

Had I been a member of the Court when *Kirkpatrick* v. *Preisler*, 394 U. S. 526 (1969), and *Wells* v. *Rockefeller*, 394 U. S. 542 (1969), were decided, I would not have thought that the Constitution—a vital and living charter after nearly two centuries because of the wise flexibility of its key provisions—could be read to require a rule of mathematical exactitude in legislative reapportionment. Moreover, the dissenting opinions of Justices Harlan [1] and WHITE and the concurring opinion of Justice Fortas in those cases demonstrated well that the exactitude required by the majority displayed a serious misunderstanding of the practicalities of the legislative and reapportioning process. Nothing has transpired since *Kirkpatrick* and *Wells* to reflect adversely on the soundness, as I view it, of the dissenting perceptions. Indeed, the Court's recent opinions in *Mahan* v. *Howell*, — U. S. —, *Gaffney* v. *Cummings*, *ante*, p. —, and *Bullock* v. *Regester*, *ante*, p. —, strengthen the case against attempting to hold any reapportionment scheme—State or congressional—to slide-rule precision. These more recent cases have allowed modest variations from theo-

[1] MR. JUSTICE STEWART joined Justice Harlan's opinion.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1973

Re: No. 71-1623 - White v. Weiser

Dear Lewis:

Please join me in your concurring opinion.

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1973

Re: No. 71-1623 - White v. Weiser

Dear Byron:

Please join me in your opinion for the Court in this case. I am also writing Lewis today, advising him that I join his concurring opinion.

Sincerely,

WHR

Mr. Justice White

Copies to the Conference