The Burger Court Opinion Writing Database

United Jewish Organizations of Williamsburgh, Inc. v. Carey

430 U.S. 144 (1977)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

January 3, 1977

Re: 75-104 - United Jewish Organizations of Williamsburg, Inc. v. Carey

Dear Byron:

I have experienced difficulty - which is not surprising - in this very difficult case. I hope to circulate a memo articulating my problems with any fixed "numbers" which seem to give tacit approval to a "quote" concept. We unanimously rejected racial balance in school desegregation in Swann and I fear the proposed disposition seems counter to that in spirit.

I will have my thoughts ready this week.

Regards,

WEB

Mr. Justice White

Copies to the Conference

To: Mr. Justice [illegible]
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: JAN 4 1977

Recirculated: _____

75-104 - United Jewish Organizations of Williamsburg, Inc. v. Carey

In my view, the State of New York has engaged in a very questionable type of legislation in which literal discrimination -- the establishment of racial or ethnic quotas is used. It has done so on the basis of assumptions not supported by the record and thereby achieved what, for me, is a very questionable result. We have recognized that as a starting point a court may properly look to whether impermissible considerations were employed as a basis of decision. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

(1) Racial Quotas.

However, the record in this case cannot be read as showing that the New York legislature considered racial composition as "merely one of several political characteristics" in drawing up the 1974 reapportionment scheme. Race appears to be the one and only criterion applied.

As noted by the Court's opinion, after the 1972 apportionment plan was rejected, a New York official inquired of the Justice Department as to how the plan could be modified to obtain the Attorney General's approval. This official testified that he

To: Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: FEB 17 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1977]

MR. CHIEF JUSTICE BURGER, dissenting.

The question presented in this difficult case is whether New York violated the rights of the petitioners under the Fourteenth and Fifteenth Amendments by direct reliance on fixed racial percentages in its 1974 redistricting of Kings County. For purposes of analysis I will treat this in two steps: (1) Is the state legislative action constitutionally permissible absent any special considerations raised by the federal Voting Rights Act; and (2) does New York's obligation to comply with the Voting Rights Act permit it to use these means to achieve a federal statutory objective?

(1)

I begin with this Court's holding in *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960), the first case to strike down a state attempt at racial gerrymandering. If *Gomillion* teaches anything, I had thought it was that drawing of political boundary lines with the sole, explicit objective of reaching a predetermined racial result cannot ordinarily be squared with the Constitution. The record before us reveals—and it is not disputed—that this is precisely what took place here. In drawing up the 1974 reapportionment scheme, the New York Legislature did not consider racial composition as merely *one* of several political characteristics; on the contrary, race appears to have been the one and only criterion applied.

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

CHAMBERS OF
JUSTICE WM J. BRENNAN, JR.

December 3, 1976

RE: No. 75-104 United Jewish Organizations, etc. v. Carey

Dear Byron:

I agree with the basic approach of your present circulation because I think we ought to avoid if possible reaching the broader question of the constitutionalty of "quotaizing" districts in the reapportionment process. I am preparing a concurrence elaborating my views but also hope I may be able to join your circulation.

Sincerely,

Mr. Justice White

cc: The Conference

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

December 9, 1976

RE: No. 75-104 United Jewish Organizations of Williamsburgh, Inc. v. Hugh L. Carey, et al.

Dear Byron:

I've mentioned to you that I favor your approach to this case and want if possible to join your opinion. If you find the following suggestions addressed to your second draft acceptable, I can, as stated in the enclosed concurrence, join you. I'm not generally circulating the concurrence until you let me have your reaction.

(1) P. 10: Could you delete "nor is it even a case of 'remedial' discrimination designed to eliminate the effects of past discrimination" from lines 3-5, and also delete "not at curing the effects of past discrimination" from lines 12-13. For me, much of the Act's strength is derived from its justifiable and obvious remedial goals.

(2) P. 14: Could you delete the sentence in lines 10-14, "Furthermore, there is no evidence . . . elucidated in Beer." I am puzzled how or why Beer is pertinent in this case, especially inasfar as the state complied without objection to the Attorney General's preceptings and never relied upon Beer as a defense. Am I wrong in not reading Beer to fix an upper limit of remedial action --- e.g., "exceeded the standard" --- in a case where the state cooperates with the Justice Department?

(3) PP. 14-15: As my original vote in conference indicated, I may be more troubled than you by the absence of any specified justification for the 65% quota. I thought that pp. 15-18 of your first circulation resolved enough of my misgivings. The carry-over paragraph starting at the bottom of 14 doesn't resolve them. Would you consider restoring pages 15-18 of your first draft (adding only some reference to the fact that the Attorney General has not attempted to justify this particular chosen number)?

(3) P.15: Would you consider adding, "and motivated alone by a racial objective" after "wholly aside from the Voting Rights Act" in line 8 of the last paragraph? So revised I believe the sentence accurately expresses the argument of the Solicitor General and State. Moreover, that addition complements the reasoning of my enclosed concurrence.

Sincerely,

W.J.B.Jr.

Mr. Justice White

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

Circulated: 12/9/76

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[December —, 1976]

MR. JUSTICE BRENNAN, concurring.

The Court effectively demonstrates that prior cases unquestionably establish the Attorney General's expansive authority to oversee legislative redistricting under § 5 of the Voting Rights Act. See, *e. g.*, *Georgia* v. *United States*, 411 U. S. 526, 532 (1973); *Allen* v. *State Board of Elections*, 393 U. S. 544, 566, 569 (1969). Yet this is only the first step to analysis, for, however expansive, the breadth of that authority is not without limits with respect to its effect on white voters. Therefore, although I can subscribe to the Court's opinion, I add these words to indicate that I find the roadblocks to its reseult somewhat more difficult to overcome.

The one starkly clear fact of this case is that an overt racial number was employed to effect petitioners' assignment to voting districts. In brief, following the Attorney General's refusal to certify the 1972 reapportionment under his § 5 powers, unnamed Justice Department officials made known that satisfaction of the Voting Rights Act in Brooklyn would necessitate creation by the state legislature of 10 state Assembly and Senate districts with threshold nonwhite populations of 65%. Prompted by the necessity of preventing interference with the upcoming 1974 election, state officials complied. Thus, even though the Court correctly notes that

P10

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Just.

Circulated: ____

3rd DRAFT

Recirculated: 12/17

SUPREME COURT OF THE UNITED STATES

No. 75-104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[December —, 1976]

MR. JUSTICE BRENNAN, concurring.

The Court effectively demonstrates that prior cases unquestionably establish the Attorney General's expansive authority to oversee legislative redistricting under § 5 of the Voting Rights Act. See, *e. g., Georgia* v. *United States,* 411 U. S. 526, 532 (1973); *Allen* v. *State Board of Elections,* 393 U. S. 544, 566, 569 (1969). Yet this is only the first step to analysis, for, however expansive, the breadth of that authority is not without limits with respect to its effect on white voters. Therefore, although I join the Court's opinion, I add these words to indicate that I find the roadblocks to its result somewhat more difficult to overcome.

The one starkly clear fact of this case is that an overt racial number was employed to effect petitioners' assignment to voting districts. In brief, following the Attorney General's refusal to certify the 1972 reapportionment under his § 5 powers, unnamed Justice Department officials made known that satisfaction of the Voting Rights Act in Brooklyn would necessitate creation by the state legislature of 10 state Assembly and Senate districts with threshold nonwhite populations of 65%. Prompted by the necessity of preventing interference with the upcoming 1974 election, state officials complied. Thus, even though the Court correctly notes that

1, 3-4, 10

To: The Chief Jus
Mr. Justice S
Mr. Justice W
Mr. Justice
Mr.
Mr.
Mr.
Mr.

Recd Pr

Circulated:

Recirculated: 2-2-77

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[December —, 1976]

MR. JUSTICE BRENNAN, concurring.

I join Parts I, II, and III of Mr. JUSTICE WHITE's opinion. Part II effectively demonstrates that prior cases firmly establish the Attorney General's expansive authority to oversee legislative redistricting under § 5 of the Voting Rights Act. See, *e. g., Georgia* v. *United States,* 411 U. S. 526, 532 (1973); *Allen* v. *State Board of Elections,* 393 U. S. 544, 566, 569 (1969). Part III establishes to my satisfaction that as a method of securing compliance with the Voting Rights Act, the 65% rule applied to Brooklyn in this instance was not arbitrarily or casually selected. Yet, because this case carries us further down the road of race-centered remedial devices than we have heretofore traveled—with the serious questions of fairness that attend such matters—I offer this further explanation of my position.

The one starkly clear fact of this case is that an overt racial number was employed to effect petitioners' assignment to voting districts. In brief, following the Attorney General's refusal to certify the 1972 reapportionment under his § 5 powers, unnamed Justice Department officials made known that satisfaction of the Voting Rights Act in Brooklyn would necessitate creation by the state legislature of 10 state Assembly and Senate districts with threshold nonwhite populations of 65%. Prompted by the necessity of preventing

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: NOV 30 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[December —, 1976]

MR. JUSTICE STEWART, concurring.

The question presented for decision in this case is whether New York's use of racial criteria in redistricting Kings County violated the Fourteenth or Fifteenth Amendments. The petitioners' contention is essentially that racial awareness in legislative reapportionment is unconstitutional *per se*. Acceptance of their position would mark an egregious departure from the way this Court has in the past analyzed the constitutionality of claimed discrimination in dealing with the elective franchise on the basis of race.

The petitioners have made no showing that a racial criterion was used as a basis for denying them their right to vote, in contravention of the Fifteenth Amendment. See *Gomillion* v. *Lightfoot*, 364 U. S. 339. They have made no showing that the redistricting scheme was employed as part of a "contrivance to segregate"; to minimize or cancel out the voting strength of a minority class or interest; or otherwise to impair or burden the opportunity of affected persons to participate in the political process. See *Wright* v. *Rockefeller*, 376 U. S. 52, 58; *White* v. *Regester*, 412 U. S. 755; *Louisiana* v. *United States*, 380 U. S. 145; *Fortson* v. *Dorsey*, 379 U. S. 433.

The record here cannot support a finding that the redistricting plan undervalued the political power of white voters relative to their numbers in Kings County. Cf. *City of*

1, 2

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: JAN 8

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[December —, 1976]

MR. JUSTICE STEWART, concurring.

The question presented for decision in this case is whether New York's use of racial criteria in redistricting Kings County violated the Fourteenth or Fifteenth Amendments. The petitioners' contention is essentially that racial awareness in legislative reapportionment is unconstitutional *per se*. Acceptance of their position would mark an egregious departure from the way this Court has in the past analyzed the constitutionality of claimed discrimination in dealing with the elective franchise on the basis of race.

The petitioners have made no showing that a racial criterion was used as a basis for denying them their right to vote, in contravention of the Fifteenth Amendment. See *Gomillion* v. *Lightfoot*, 364 U. S. 339. They have made no showing that the redistricting scheme was employed as part of a "contrivance to segregate"; to minimize or cancel out the voting strength of a minority class or interest; or otherwise to impair or burden the opportunity of affected persons to participate in the political process. See *Wright* v. *Rockefeller*, 376 U. S. 52, 58; *White* v. *Regester*, 412 U. S. 755; *Louisiana* v. *United States*, 380 U. S. 145; *Fortson* v. *Dorsey*, 379 U. S. 433.

Under the Fourteenth Amendment the question is whether the reapportionment plan represents purposeful discrimination against white voters. *Washington* v. *Davis*, 426 U. S.

To: The Chief Justice
Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]

From: Mr. Justice Stewart

Circulated: FEB 17 1977

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

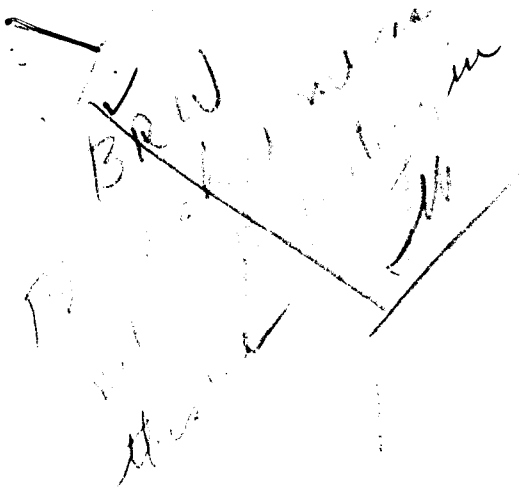
[December —, 1976]

MR. JUSTICE STEWART, with whom MR. JUSTICE POWELL joins, concurring in the judgment.

The question presented for decision in this case is whether New York's use of racial criteria in redistricting Kings County violated the Fourteenth or Fifteenth Amendments. The petitioners' contention is essentially that racial awareness in legislative reapportionment is unconstitutional *per se*. Acceptance of their position would mark an egregious departure from the way this Court has in the past analyzed the constitutionality of claimed discrimination in dealing with the elective franchise on the basis of race.

The petitioners have made no showing that a racial criterion was used as a basis for denying them their right to vote, in contravention of the Fifteenth Amendment. See *Gomillion* v. *Lightfoot*, 364 U. S. 339. They have made no showing that the redistricting scheme was employed as part of a "contrivance to segregate"; to minimize or cancel out the voting strength of a minority class or interest; or otherwise to impair or burden the opportunity of affected persons to participate in the political process. See *Wright* v. *Rockefeller*, 376 U. S. 52, 58; *White* v. *Regester*, 412 U. S. 755; *Louisiana* v. *United States*, 380 U. S. 145; *Fortson* v. *Dorsey*, 379 U. S. 433.

Under the Fourteenth Amendment the question is whether the reapportionment plan represents purposeful discrimination against white voters. *Washington* v. *Davis*, 426 U. S.



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

From: Mr. Justice White

Circulated: 11-22-76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[November —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 5 of the Voting Rights Act prohibits a state or political subdivision subject to § 4 of the Act from implementing a legislative reapportionment unless it has obtained a declaratory judgment from the District Court for the District of Columbia, or a ruling from the Attorney General of the United States, that the reapportionment "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . ."[1]

[1] Section 5 of the Voting Rights Act, 42 U. S. C. § 1973c, provides in pertinent part:

"Whenever . . . a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the second sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, stand-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 2, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-104 - United Jewish Organizations v. Carey

The risk of circulating a draft in this case with a rationale for which there was little enthusiasm at conference has perhaps been verified. Although shortly there will be another circulation taking essentially the same course, but with modifications, it is doubtful that it will garner the necessary votes. In that event, I shall redo the opinion and reflect what I understand to be the majority view--which I share--that a State may, without relying on the Voting Rights Act, use racial considerations in districting at least to the extent necessary to validate New York's actions in this case.

B.R.W.

pp 14-15

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

From: Mr. Justice White

Circulated: _____

2nd DRAFT

Recirculated: 12-7-76

SUPREME COURT OF THE UNITED STATES

No. 75-104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[November —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 5 of the Voting Rights Act prohibits a state or political subdivision subject to § 4 of the Act from implementing a legislative reapportionment unless it has obtained a declaratory judgment from the District Court for the District of Columbia, or a ruling from the Attorney General of the United States, that the reapportionment "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . ."[1]

[1] Section 5 of the Voting Rights Act, 42 U. S. C. § 1973c, provides in pertinent part:

"Whenever . . . a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the second sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, stand-

Parts II & III substantially revised; Part IV added.

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

From: Mr. Justice White

Circulated: _____

Recirculated: 12-8-77

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[November —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 5 of the Voting Rights Act prohibits a state or political subdivision subject to § 4 of the Act from implementing a legislative reapportionment unless it has obtained a declaratory judgment from the District Court for the District of Columbia, or a ruling from the Attorney General of the United States, that the reapportionment "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . ."[1]

[1] Section 5 of the Voting Rights Act, 42 U. S. C. § 1973c, provides in pertinent part:

"Whenever . . . a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the second sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, stand-

pp 1, 17, 19, 22

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

From: Mr. Justice White

Circulated: _____

Recirculated: 2-16-77

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-104

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1977]

MR. JUSTICE WHITE announced the judgment of the Court and filed an opinion, all of which is joined by MR. JUSTICE STEVENS, Parts I, II, and III of which are joined by MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN, and Parts I and IV of which is joined by MR. JUSTICE REHNQUIST.

Section 5 of the Voting Rights Act prohibits a state or political subdivision subject to § 4 of the Act from implementing a legislative reapportionment unless it has obtained a declaratory judgment from the District Court for the District of Columbia, or a ruling from the Attorney General of the United States, that the reapportionment "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . ."[1]

[1] Section 5 of the Voting Rights Act, 42 U. S. C. § 1973c, provides in pertinent part:

"Whenever . . . a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the second sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or pro-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 22, 1976

Re: No. 75-104, United Jewish Organizations of Williamsburgh, Inc. v. Carey

Dear Byron:

Please show me as not participating in this one.

Sincerely,

T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 8, 1976

Re: No. 75-104 - United Jewish Organizations v. Carey

Dear Byron:

Please join me in your circulation of December 7.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 7, 1977

Re: No. 75-104 - United Jewish Organizations v. Carey

Dear Byron:

This note relates to your recirculation of January 28. Will you please show that I join Parts I, II and III of the opinion and in the judgment of the Court.

Should your opinion contain a final note to the effect that Thurgood is not participating?

Sincerely,

Harry

Mr. Justice White
cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 7, 1977

Re: No. 75-104 - United Jewish Organizations v. Carey

Dear Byron:

This note relates to your recirculation of January 28. Will you please show that I join Parts I, II and III of the opinion and in the judgment of the Court.

Should your opinion contain a final note to the effect that Thurgood is not participating?

Sincerely,

Harry

Mr. Justice White
cc: The Conference

P.S. (to BRW only)

Dear Byron:

My clerk has discussed with yours a minor change in the paragraph beginning at the bottom of page 16. It is my understanding that this change will be effected.

H.A.B.

January 5, 1976

No. 75-104 United Jewish Organization
v. Carey

Dear Potter:

Subject to a possible major restructuring of Byron's opinion, I will join your concurrence.

What would you think of including a reference to Washington v. Davis, and possibly Arlington Heights, which stands for the proposition that under the Fourteenth Amendment the alleged discrimination must be purposeful?

I enclose a revised draft of the third paragraph of your opinion that is one way this thought could be included.

Sincerely,

Mr. Justice Stewart

lfp/ss

Under the Fourteenth Amendment the question is whether the reapportionment plan represents purposeful discrimination against white voters. Washington v. Davis, 426 U.S. ___. Disproportionate impact may afford evidence that an invidious purpose was present. Arlington Heights. But the record here does not support a finding of such purpose or that the redistricting plan undervalued the political power of white voters relative to their numbers in Kings County. Cf. City of Richmond v. United States, 422 U.S. 358. The legislature was conscious of race when it drew the district lines, but such consciousness is not the equivalent of discriminatory intent. The clear purpose with which the New York legislature acted - in response to the position of the United States Department of Justice under the Voting Rights Act - forecloses any finding that it acted with the invidious purpose of discriminating against the participation of white voters in the political process.*

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 6, 1977

No. 75-104 United Jewish Organizations v. Carey

Dear Byron:

I have continued to be in considerable doubt as to the rationale in the above case.

On the basis of what has been circulated to date, I have decided to join Potter's brief concurring opinion. I do this subject to possible reconsideration in the event you circulate a revised draft.

Sincerely,

Lewis

Mr. Justice White

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 16, 1977

No. 75-104 United Jewish Organization
v. Carey

Dear Potter:

Please join me in your concurring opinion.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

V

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 16, 1977

No. 75-104 United Jewish Organization
v. Carey

Dear Byron:

I have concluded that Potter's concurring opinion best reflects my thinking about this troublesome case. It also leaves me more options for the future.

Accordingly, I am asking Potter to join me in his concurrence.

I am not unaware of your substantial efforts to accommodate our divergent views. It will not afford you much comfort, but I do thank you.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 28, 1977

Re: No. 75-104 - United Jewish Organizations v. Carey

Dear Byron:

As one moves from Part I through Part IV of your third draft of this opinion, the Voting Rights Act undergoes much the same metamorphosis as did the Cheshire cat. This suits me fine, and if you could see your way clear to adopt the following suggestions, or their substance, so as to do away with even the grin in Part IV, I will join Parts I and IV.

In the second full paragraph on page 19 omit the reference to the fact that "New York was seeking to comply with the federal statute prohibiting racial discrimination in voting."

On page 22, omit the reference in the last full sentence "to comply with the Voting Rights Act prohibition against 'denying or abridging the right to vote on account of race or color.', and replace it with some sort of language such as "accomplish such a result".

Sincerely,

WHR

Mr. Justice White

Blind copy to: Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 14, 1977

Re: No. 75-104 - United Jewish Organizations v. Carey

Dear Byron:

Please join me in Parts I and IV of your current circulating opinion.

Sincerely,

WHR

Mr. Justice White

Copies to the Conference

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

1st DRAFT

From: Mr. Justice Stevens

SUPREME COURT OF THE UNITED STATES

Circulated: 11/30/76

No. 75–104

Recirculated: _____

United Jewish Organizations of Williamsburgh, Inc., et al., Petitioners, *v.* Hugh L. Carey et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[December —, 1976]

MR. JUSTICE STEVENS, concurring.

In my opinion this case raises a basic issue which cannot be avoided by placing decision on the Voting Rights Act.

New York has relied on racial factors in drawing voting district boundaries in three counties. This action is taken on the assumption that voters in these counties will tend to vote for candidates who are members of their own race. On that assumption, viewing the area as a whole, the plan minimizes the likelihood that black citizens will be underrepresented in the legislature; in this sense, it is designed to avoid a discriminatory effect on this class of citizens.

On the other hand, again making the assumption that votes will be cast along racial lines, viewing the problem from the point of view of particular white voters in the district in which these petitioners reside, the plan minimizes the likelihood that they will be represented by a member of their own race. Therefore, the plan is designed to have a discriminatory effect on particular citizens in these districts. The basic question raised by this case is whether that deliberate discrimination on account of race is constitutional.

Because race is merely one of several political characteristics that responsible legislators will inevitably consider when drawing political boundaries, I am satisfied that a plan is not automatically invalidated by showing that racial factors were

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 31, 1977

Re: 75-104 - United Jewish Organizations, etc.
v. Cary et al.

Dear Byron:

Your third draft takes care of my problems. I am pleased to join it and will withdraw my separate opinion.

Respectfully,

John

Mr. Justice White

Copies to the Conference