

14-1504 WITTMAN V. PERSONHUBALLAH

DECISION BELOW: 2015 WL 3604029

LOWER COURT CASE NUMBER: 3:13cv678

QUESTION PRESENTED:

On remand from this Court, the two-judge majority below again held that Virginia Congressional District 3, which perpetuates a district created as a *Shaw v. Reno* remedy, now violates *Shaw*. The majority, however, never found that "race *rather than* politics" predominates in District 3, or required Plaintiffs to prove "at the least" that the General Assembly could have "achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles" and bring about "significantly greater racial balance" than the Enacted Plan. *Easley v. Cromartie*, 532 U.S. 234, 243, 258 (2001) (emphasis original). Instead, the majority held that race predominated because the legislative sponsor of the redistricting plan correctly noted that Section 5 of the Voting Rights Act prohibited "retrogression [of] minority influence" in District 3, and that this federal-law mandate was "paramount" over "permissive" state-law traditional districting principles. J.S. App. 2a. Judge Payne dissented because the majority failed to show that Plaintiffs had carried their "demanding burden" to prove that race predominated in the drawing of District 3. *Id.* 47a.

The questions presented are:

1. Did the court below err in failing to make the required finding that race rather than politics predominated in District 3, where there is no dispute that politics explains the Enacted Plan?

2. Did the court below err in relieving Plaintiffs of their burden to show an alternative plan that achieves the General Assembly's political goals, is comparably consistent with traditional districting principles, and brings about greater racial balance than the Enacted Plan?

3. Regardless of any other error, was the court below's finding of a *Shaw* violation based on clearly erroneous fact-finding?

4. Did the majority err in holding that the Enacted Plan fails strict scrutiny because it increased District 3's black voting-age population percentage above the benchmark percentage, when the undisputed evidence establishes that the increase better complies with neutral principles than would reducing the percentage and no racial bloc voting analysis would support a reduction capable of realistically securing Section 5 preclearance?

IN ADDITION TO THE QUESTIONS PRESENTED BY THE PETITION, THE PARTIES ARE DIRECTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: WHETHER APPELLANTS LACK STANDING BECAUSE NONE RESIDE IN OR REPRESENT THE ONLY CONGRESSIONAL DISTRICT WHOSE CONSTITUTIONALITY IS AT ISSUE IN THIS CASE.

JURISDICTION POSTPONED 11/13/2015