SUPREME COURT OF THE UNITED STATES

Nos. 01–1437 and 01–1596

BEATRICE BRANCH, ET AL., APPELLANTS
01–1437 *v.*
JOHN ROBERT SMITH ET AL.

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01–1596 *v.*
BEATRICE BRANCH ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

[March 31, 2003]

JUSTICE KENNEDY, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join as to Part II, concurring.

I

I join the Court's opinion and the plurality opinion in Parts III–B and IV. The Court's opinion makes clear why the District Court was correct to enjoin the redistricting plan developed by the Mississippi State Chancery Court as not precleared under §5 of the Voting Rights Act of 1965, 42 U. S. C. §1973c. *Ante*, at 5–9. The Court then vacates the District Court's alternative holding that the state-court plan violated Article I, §4, of the United States Constitution. *Ante*, at 9.

II

It seems appropriate to explain why, in my view, our ruling vacating the judgment is mandated by our earlier cases. There is precedent for our ruling. See *Connor* v. *Waller,* 421 U. S. 656 (1975) *(per curiam); United States* v.

Board of Supervisors of Warren Cty., 429 U. S. 642, 646–647 (1977) *(per curiam); Connor* v. *Finch*, 431 U. S. 407, 412 (1977); *Wise* v. *Lipscomb*, 437 U. S. 535, 542 (1978) (opinion of White, J.); see also *post*, at 1 (O'CONNOR, J., concurring in part and dissenting in part). Once the District Court found no preclearance, it was premature, given this statutory scheme, for the court to consider the constitutional question. Where state reapportionment enactments have not been precleared in accordance with §5, the district court "err[s] in deciding the constitutional challenges" to these acts. *Connor* v. *Waller,* at 656.

The rule prescribed by *Connor* reflects the purposes behind the Voting Rights Act. Concerned that "covered jurisdictions would exercise their ingenuity to devise new and subtle forms of discrimination, Congress prohibited those jurisdictions from implementing any change in voting procedure without obtaining preclearance under §5." *Hathorn* v. *Lovorn*, 457 U. S. 255, 268 (1982). A jurisdiction covered by §5 must seek approval of either the Attorney General of the United States or the United States District Court for the District of Columbia. See, *e.g., Clark* v. *Roemer,* 500 U. S. 646, 652 (1991); *Lopez* v. *Monterey County,* 519 U. S. 9, 12 (1996). Absent preclearance, a voting change is neither effective nor enforceable as a matter of federal law. *Connor* v. *Waller*, *supra*, at 656; *Board of Supervisors*, *supra*, at 645; *Finch*, *supra*, at 412; *Wise*, *supra*, at 542; *Hathorn*, *supra*, at 269; *Clark*, *supra*, at 652; *post*, at 17–18 (O'CONNOR, J., concurring in part and dissenting in part). The process, in particular the administrative scheme, is designed to "'giv[e] the covered State a rapid method of rendering a new state election law enforceable.'" *Georgia* v. *United States,* 411 U. S. 526, 538 (1973) (quoting *Allen* v. *State Bd. of Elections,* 393 U. S. 544, 549 (1969)). To be consistent with the statutory scheme, the district courts should not entertain constitutional challenges to nonprecleared voting changes and in this way anticipate

a ruling not yet made by the Executive. The proposed changes are not capable of implementation, and the constitutional objections may be resolved through the preclearance process.

The constitutional challenge presented to the District Court here fell within the ambit of the *Connor* rule. Our previous cases addressed contentions that the state reapportionment plan violated the one-person, one-vote principle or diluted minority voting strength. *Connor* v. *Waller*, 396 F. Supp. 1308, 1309 (SD Miss. 1975), rev'd, 421 U. S. 656 (1975) *(per curiam); Board of Supervisors*, *supra*, at 643–644; *Wise*, *supra*, at 538–539. In this litigation, appellees objected to the constitutionality of the state court's assumption of authority to devise a redistricting plan. The fact that appellees framed their constitutional argument to the state court's authority to pass a redistricting plan rather than to the plan's components does not make their claim reviewable. The plan was not yet precleared and so could not cause appellees injury through enforcement or implementation.

In deciding to address the constitutional challenge the District Court was motivated by the commendable purpose of enabling this Court to examine all the issues presented by the litigation in one appeal. This approach, however, forces the federal courts to undertake unnecessary review of complex constitutional issues in advance of an Executive determination and so risks frustrating the mechanism established by the Voting Rights Act. In these cases, for instance, the District Court's decision led to a delay in preclearance because the United States Attorney General (whether or not authorized to do so by the statute) refused to consider the state-court plan while the constitutional injunction remained in place. App. 28–29. The advance determination, moreover, can risk at least the perception that the Executive is revising the judgment of an Article III court. Adherence to the rule of *Connor* provides States

covered by §5 with time to remedy constitutional defects without the involvement of federal courts. Given the statutory command of direct review to this Court, it also helps to ensure that only constitutional issues necessary to the resolution of the electoral dispute are brought to us.