Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GEORGIA *v.* ASHCROFT, ATTORNEY GENERAL, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 02–182. Argued April 29, 2003—Decided June 26, 2003

Georgia's 1997 State Senate districting plan is the benchmark plan for this litigation. That plan drew 56 districts, 11 of them with a total black population of over 50%, and 10 of them with a black voting age population of over 50%. The 2000 census revealed that these numbers had increased so that 13 districts had a black population of at least 50%, with the black voting age population exceeding 50% in 12 of those districts. After the 2000 census, the Georgia General Assembly began redistricting the Senate once again. It is uncontested that a substantial majority of Georgia's black voters vote Democratic, and that all elected black representatives in the General Assembly are Democrats. The Senator who chaired the subcommittee that developed the new plan testified he believed that as a district's black voting age population increased beyond what was necessary to elect a candidate, it would push the Senate more toward the Republicans, and correspondingly diminish the power of African-Americans overall. Thus, part of the Democrats' strategy was not only to maintain the number of majority-minority districts and increase the number of Democratic Senate seats, but also to increase the number of so-called "influence" districts, where black voters would be able to exert a significant—if not decisive—force in the election process. The new plan therefore "unpacked" the most heavily concentrated majority-minority districts in the benchmark plan, and created a number of new influence districts, drawing 13 districts with a majority-black voting age population, 13 additional districts with a black voting age population of between 30%–50%, and 4 other districts with a black voting age population of between 25%–30%. When the Senate adopted the new plan, 10 of the 11 black Senators voted for it. The Georgia House of Representatives passed the plan with 33 of the 34

black Representatives voting for it. No Republican in either body voted for the plan, making the votes of the black legislators necessary for passage. The Governor signed the Senate plan into law in 2001.

Because Georgia is a covered jurisdiction under §5 of the Voting Rights Act of 1965, it must submit any new voting "standard, practice, or procedure" for preclearance by either the United States Attorney General or the District Court for the District of Columbia in order to ensure that the change "does not have the purpose [or] effect of denying or abridging the right to vote on account of race or color," 42 U. S. C. §1973c. No change should be precleared if it "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States,* 425 U. S. 130, 141. In order to preclear its 2001 plan, Georgia filed suit in the District Court seeking a declaratory judgment that the plan does not violate §5. To satisfy its burden of proving nonretrogression, Georgia submitted detailed evidence documenting, among other things, the total population, total black population, black voting age population, percentage of black registered voters, and the overall percentage of Democratic votes in each district; evidence about how each of these statistics compared to the benchmark districts; testimony from numerous participants in the plan's enactment that it was designed to increase black voting strength throughout the State as well as to help ensure a continued Democratic majority in the Senate; expert testimony that black and nonblack voters have equal chances of electing their preferred candidate when the black voting age population of a district is at 44.3%; and, in response to the United States' objections, more detailed statistical evidence with respect to three proposed Senate districts that the United States found objectionable—Districts 2, 12, and 26—and two districts challenged by the intervenors—Districts 15 and 22. The United States argued that the plan should not be precleared because the changes to the boundaries of Districts 2, 12, and 26 unlawfully reduced black voters' ability to elect candidates of their choice. The United States' evidence focused only on those three districts and was not designed to permit the court to assess the plan's overall impact. The intervenors, four African-Americans, argued that retrogression had occurred in Districts 15 and 22, and presented proposed alternative plans and an expert report critiquing the State's expert report. A three-judge District Court panel held that the plan violated §5, and was therefore not entitled to preclearance.

Held:

1. The District Court did not err in allowing the private litigants to intervene. That court found that the intervenors' analysis of the plan identifies interests not adequately represented by the existing par-

ties. Private parties may intervene in §5 actions assuming they meet the requirements of Federal Rule of Civil Procedure 24, *NAACP* v. *New York,* 413 U. S. 345, 365, and the District Court did not abuse its discretion in allowing intervention in this case, see *id.,* at 367. *Morris* v. *Gressette,* 432 U. S. 491, 504–505, in which the Court held that that the decision to object belongs only to the Attorney General, is distinguished because it concerned the administrative, not the judicial, preclearance process. *Morris* itself recognized the difference between the two. See *id.,* at 503–507. Pp. 11–13.

2. The District Court failed to consider all the relevant factors when it examined whether Georgia's Senate plan resulted in a retrogression of black voters' effective exercise of the electoral franchise. Pp. 11–27.

(a) Georgia's argument that a plan should be precleared under §5 if it would satisfy §2 of the Voting Rights Act, 42 U. S. C. §1973, is rejected. A §2 vote dilution violation is not an independent reason to deny §5 preclearance, because that would inevitably make §5 compliance contingent on §2 compliance and thereby replace §5 retrogression standards with those for §2. *Reno* v. *Bossier Parish School Bd.,* 520 U. S. 471, 477. Instead of showing that its plan is nondilutive under §2, Georgia must prove that it is nonretrogressive under §5. Pp. 13–15.

(b) To determine the meaning of "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," *Beer*, *supra*, at 141, the statewide plan must first be examined as a whole: First, the diminution of a minority group's effective exercise of the electoral franchise violates §5 only if the State cannot show that the gains in the plan as a whole offset the loss in a particular district. Second, all of the relevant circumstances must be examined, such as minority voters' ability to elect their candidate of choice, the extent of the minority group's opportunity to participate in the political process, and the feasibility of creating a nonretrogressive plan. See, *e.g., Johnson* v. *De Grandy*, 512 U. S. 997, 1011–1012, 1020–1021. In assessing the totality of the circumstances, a minority group's comparative ability to elect a candidate of its choice is an important factor, but it cannot be dispositive or exclusive. See, *e.g., Thornburg*, 478 U. S., at 47–50. To maximize such a group's electoral success, a State may choose to create either 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, see, *e.g., id.,* at 48–49, or a greater number of districts in which it is likely, although perhaps not quite as likely as under the benchmark plan, that minority voters will be able to elect their candidates, see *e.g., id.,* at 88–89 (O'CONNOR, J., concurring in judgment). Section 5 does not dictate

that a State must pick one of these redistricting methods over the other. *Id.,* at 89. In considering the other highly relevant factor in a retrogression inquiry—the extent to which a new plan changes the minority group's opportunity to participate in the political process—a court must examine whether the plan adds or subtracts "influence districts" where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process, cf., *e.g., Johnson, supra,* at 1007. In assessing these influence districts' comparative weight, it is important to consider "the likelihood that candidates elected without decisive minority support would be willing to take the minority's interests into account." *Thornburg,* 478 U. S., at 100 (O'CONNOR, J., concurring in judgment). Various studies suggest that the most effective way to maximize minority voting strength may be to create more influence or coalitional districts. Section 5 allows States to risk having fewer minority representatives in order to achieve greater overall representation of a minority group by increasing the number of representatives sympathetic to the interests of minority voters. See, *e.g., id.,* at 87–89, 99. Another method of assessing the group's opportunity to participate in the political process is to examine the comparative position of black representatives' legislative leadership, influence, and power. See *Johnson, supra,* at 1020. Maintaining or increasing legislative positions of power for minority voters' representatives of choice, while not dispositive by itself, can show the lack of retrogressive effect. And it is also significant, though not dispositive, whether the representatives elected from the very districts created and protected by the Voting Rights Act support the new plan. Pp. 15–21.

(c) The District Court failed to consider all the relevant factors. First, although acknowledging the importance of assessing the statewide plan as a whole, the court focused too narrowly on proposed Senate Districts 2, 12, and 26, without examining the increases in the black voting age population that occurred in many of the other districts. Second, the court did not consider any factor beyond black voters' comparative ability to elect a candidate of their choice. It improperly rejected other evidence that the legislators representing the benchmark majority-minority districts support the plan; that the plan maintains those representatives' legislative influence; and that Georgia affirmatively decided that the best way to maximize black voting strength was to adopt a plan that "unpacked" the high concentration of minority voters in the majority-minority districts. In the face of Georgia's evidence of nonretrogression, the United States' only evidence was that it would be more difficult for minority voters to elect their candidate of choice in Districts 2, 12, and 26. Given the evidence submitted in this case, Georgia likely met its burden of

showing nonretrogression. Section 5 gives States the flexibility to implement the type of plan that Georgia has submitted for preclearance—a plan that increases the number of districts with a majority-black voting age population, even if it means that minority voters in some of those districts will face a somewhat reduced opportunity to elect a candidate of their choice. Cf. *Thornburg, supra*, at 89 (O'CONNOR, J., concurring). While courts and the Justice Department should be vigilant in ensuring that States neither reduce minority voters' effective exercise of the electoral franchise nor discriminate against them, the Voting Rights Act, as properly interpreted, should encourage the transition to a society where race no longer matters. Pp. 21–27.

(d) The District Court is in a better position to reweigh all the facts in the record in the first instance in light of this Court's explication of retrogression. P. 27.

195 F. Supp. 2d 25, vacated and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined. KENNEDY, J., and THOMAS, J., filed concurring opinions. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined.