Name _____ Date _____ Class _____

Supreme Court Case Study 31

The Court's Role in State Apportionment

Baker v. *Carr*, 1962

★★★★★★★★★★★★★★★★ Background of the Case ★★★★★★★★★★★★★★★★

One issue throughout the history of the Supreme Court is that of how far the federal government may infringe on state matters. Early on, the Court was reluctant to allow federal authorities to "intrude" in state matters. However, for a considerable period of time in the 1900s, the issue was decided in favor of the federal government.

The constitution of the state of Tennessee provided for reapportionment of state legislative districts every ten years based on the United States census. Many people of Tennessee had moved from rural to urban and suburban districts since 1901, but no redistricting had been done. Voters in city districts felt they were second-class citizens whose needs were being neglected by the state legislature.

In 1959 Baker brought suit on his own behalf and that of other Tennessee voters to force reapportionment. He sued various Tennessee state officials in federal court for relief from denial of equal protection of the law under the Fourteenth Amendment. The court dismissed the case because it presented a political question beyond the competence of the judiciary.

Constitutional Issue ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

The central issue in the *Baker* case concerned the applicability of Article III, Section 2, of the Constitution, which deals with the power of the federal courts. The question the Supreme Court had to resolve was whether federal courts had jurisdiction to consider cases of state reapportionment.

★★★★★★★★★★★★★ The Supreme Court's Decision ★★★★★★★★★★★★★

The Court voted 6 to 2 (one justice did not participate in the decision) in favor of the federal district's jurisdiction. Justice William Brennan wrote the decision of the Court. He dealt simply with the question of jurisdiction. The federal district court had claimed it had no jurisdiction because the case would involve impermissible political questions. Since no political questions were present, the matter therefore had to be subject to judicial inquiry—it qualified as a case or controversy arising under the Constitution in accord with Article III, Section 2.

In addition, Brennan explained, the matter under consideration was justiciable—that is, the subject of the case was something that could be decided by a court. "The mere fact that the suit seeks protection of a political right," Brennan noted, "does not mean it presents a political question."

Brennan gave as examples of nonjudiciable political questions matters concerning Native American nations, foreign relations, and, in general, matters that are properly the concern of the executive or legislative branches under the separation of powers.

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Supreme Court Case Study 31 *(continued)*

"The question here," Brennan went on to state, "is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government co-equal with this Court. . . . Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which the judicially manageable standards are lacking. Judicial standards under the equal protection clause are well-developed and familiar. . . ."

★★★★★★★★★★★★★★★★★ Dissenting Opinion ★★★★★★★★★★★★★★★★★

Justice Felix Frankfurter wrote a vigorous dissenting opinion. He wrote, "In effect, today's decision empowers the courts of the country to devise what should constitute the proper composition of the legislatures of the fifty states." He said that if the state courts could not solve this question, the ruling in this case now made the Supreme Court ultimately the decision-maker in such cases.

He went on, "The Framers carefully and with deliberate forethought refused to so enthrone the judiciary. In this situation . . . appeal for relief does not belong here. Appeal must be to an informed, civically militant electorate." In summary, Frankfurter felt that the Supreme Court should not be the source of decisions about state legislative reapportionment. He felt that there was no constitutional justification for the Court's decision in this case and that the ruling would send the lower courts into a "mathematical quagmire."

Chief Justice Warren called the *Baker* case the most important of the Warren court. The decision was the first to hold that federal courts could hear suits challenging voting district apportionment, and in a short time thirty-nine states started legal action to challenge local apportionment practices.

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. On what grounds did the Supreme Court claim it had a right to rule in the *Baker* case?
2. What practice did the *Baker* decision address?
3. If you felt that the legislature in your state did not reflect the population distribution of the state, what did the *Baker* decision say you could successfully do?
4. Do you agree with Justice Brennan's majority opinion or Justice Frankfurter's dissent? Give reasons for your answer.
5. Why do you think Chief Justice Warren called the *Baker* decision the most important of his court?

Name _____ Date _____ Class _____

Supreme Court Case Study 36

One Person, One Vote

Reynolds v. *Sims*, 1964

★★★★★★★★★★★★★★★★ **Background of the Case** ★★★★★★★★★★★★★★★★

Alabama was divided into voting districts for the election of 35 senators and 106 representatives to the state legislature. Each voting district consisted of a county in the state. The Alabama constitution of 1901 established district boundaries and allocated senators and representatives, with each senatorial and house district being as nearly equal as possible. As no reapportionment of voting districts had been made for sixty years, there was a vast discrepancy in the size of the population in the voting districts. The proportion of population of largest to smallest districts was about 41 to 1.

Two different reapportionment plans had passed the legislature in 1962 for the 1966 election. Neither one, however, would result in a majority of the state's population being able to elect a majority of the legislators in either house.

A group of citizens and taxpayers sued to have the reapportionment plans declared unsatisfactory. After a district court had approved temporary use of portions of both plans, the citizens appealed to the United States Supreme Court.

Constitutional Issue ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

The question before the Court was whether or not the apportionment plans for the Alabama legislature violated the equal protection clause of the Fourteenth Amendment. In 1962 the Court had held in *Baker* v. *Carr* that voting districts must be substantially equal in numbers of voters. Once the Supreme Court had established its right to rule on the validity of state legislative districting, over thirty cases challenging existing state apportionments were filed in federal court. What the *Baker* case left unanswered was the question of the proper remedy in malapportionment cases. The Court now had to decide whether the equal protection clause implied that both houses of a state legislature must reflect equal numbers of people in voting districts.

★★★★★★★★★★★★★ **The Supreme Court's Decision** ★★★★★★★★★★★★★

The Court ruled 8 to 1 that the equal protection clause had been violated. Chief Justice Earl Warren wrote for the Court.

Warren wrote that "legislators are elected by voters, not farms or cities or economic interests." If voters in one area have votes whose numbers would have a disproportionately large impact in the election of representatives, then the votes of people in other areas become that much less effective. Warren held that "full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature." Otherwise his vote is debased, and he is that much less a full citizen, explained Warren. The weight of a vote cannot depend on whether the voter resides in a sparsely populated rural district or a thickly populated urban area.

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Name ______________________ Date ______________ Class __________

Supreme Court Case Study 36 *(continued)*

Lawyers for Alabama had defended the state's plan by using the United States Senate as an example of voting districts of unequal populations. The Court rejected this analogy to the Senate. In the first place, the arrangement whereby each state gets an equal number of senators was "conceived out of compromise and concession indispensable to the founding of our federal republic." Warren explained that whereas the United States is a collection of independent and sovereign entities—states—the counties were never independent governments. Warren noted that the national government was created by the states; the states, however, were not created by the counties. Counties were and remain subordinate governments with no independent rights.

Following this reasoning, the Court said, "We hold that, as a basic constitutional standard, the equal protection clause requires that seats in both houses of a bicameral state legislature must be apportioned on a population basis."

The precise arrangements for this requirement could vary, Warren explained. The two houses could represent different constituencies. The two houses could be of different sizes; the two houses could be elected on different timetables for different lengths of terms. All, however, must be worked out in lower courts, which would make adjustments according to local complexities.

This decision by the Court is often described in abbreviated fashion as the "one person, one vote" principle.

Dissenting Opinion

In his dissent, Justice John Marshall Harlan based his objection on his view that state legislative apportionments are wholly free of constitutional limitations. He expressed the view that the Constitution guarantees only that each state have a republican form of government and that the judiciary should not decide issues of individual state legislative apportionments.

Although the public in general welcomed the Court's decision in the *Reynolds* case, many politicians were dismayed by the ruling. They anticipated losing their seats, and many foresaw that representatives from rural districts would lose their power. One United States Senator, Everett Dirksen of Illinois, proposed a constitutional amendment that would withdraw federal courts' jurisdiction over reapportionment cases. The proposal did not pass either house of Congress.

Case Analysis Questions

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. What decision did the Supreme Court have to make in *Reynolds* v. *Sims*?

2. Why did the Court reject Alabama's comparison of its system to that of the United States Senate?

3. Under the Court's ruling in this case, what changes would the states have to make?

4. If you lived in an Alabama city, how would you have reacted to the Court's decision?

5. In what way is the "one person, one vote" principle a victory for democracy?

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Supreme Court Case Study 37

Legislative Districting

Wesberry v. *Sanders*, 1964

★★★★★★★★★★★★★★★★ Background of the Case ★★★★★★★★★★★★★★★★

Like other congressional districts in Georgia, the Fifth District elected one representative to Congress. The Fifth District, however, had two to three times the population of other Georgia districts. Contending that this situation made his vote worth much less than the votes of some other Georgia citizens, Wesberry, a Georgia citizen, brought suit against Sanders, the governor of Georgia. The suit asked that Sanders be prevented from holding elections under Georgia's statutes governing congressional district apportionment.

The federal district court which heard the case denied Wesberry's claim. It ruled that Wesberry's claim presented a nonjusticiable political question—one that is for the political branches rather than the courts to decide. The case reached the United States Supreme Court for decision.

Constitutional Issue ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

Wesberry's suit raised questions under various sections of the Fourteenth Amendment and Article I, Section 2, of the Constitution. This article provides that "the House of Representatives shall be composed of members chosen . . . by the people of several states." The Court's decision was confined to a consideration of Article I and of *Baker* v. *Carr* (1962), in which the Court had ruled that voter district apportionment could be subject to judicial review.

In the case of *Baker* v. *Carr* the Supreme Court held that legislative districting by the states was a controversy in which the Court could get involved. The case assigned the federal district courts the task of policing the time and speed with which the redistricting was to take place. But the case left unanswered the question of the basis on which legislative districts were to be judged as meeting constitutional standards. Without such guidelines, many federal district courts had to turn to the Supreme Court for answers.

★★★★★★★★★★★★★ The Supreme Court's Decision ★★★★★★★★★★★★★

Justice Hugo L. Black wrote for a 6 to 3 majority. The Court held that Georgia's districting statute did violate Article I, Section 2, of the Constitution. Since the federal district court had refused to intervene in what it held to be a political question, Black's first task was to address that view. The Court rejected that position because of the *Baker* decision, which had stated that "the right to vote is too important in our free society to be stripped of judicial protection . . . on the ground of 'nonjusticiability.' "

Next, the Court announced that "in its historical context, the command of Article I, Section 2, . . . means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." The remainder of the decision spells out the historical context.

Reviewing the debates of the Constitutional Convention, Black wrote that "it would defeat the principle solemnly embodied in the Great Compromise—equal representation in the House

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Supreme Court Case Study 37 *(continued)*

of equal numbers of people—for us to hold that, within the States, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others."

Black's review continued. He quoted James Madison, Charles Cotesworth Pinckney, and James Wilson, all of whom had attended the Constitutional Convention, to the effect that the Founders intended equally-sized congressional voting districts. So, in Wilson's words, "in this manner, the proportion of the representatives and of the constituents will remain invariably the same."

The Court's final conclusion was that "while it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. That is the high standard of justice and common sense which the Founders set for us."

★★★★★★★★★★★★★★★★★★ Dissenting Opinion ★★★★★★★★★★★★★★★★★★

Justice John Marshall Harlan argued in his dissent that, first, "congressional Representatives are to be apportioned among the several States largely, but not entirely, according to population"; second, that the states have the power to choose "any method of popular election they please, subject only to the supervisory power of Congress"; and third, "the supervisory power of Congress is exclusive."

Above all, Harlan could find no justification for interpreting the phrase "by the people" in Article I, Section 2, as a requirement for equally proportioned voting districts. In support of his view, Harlan noted that all states, no matter how sparsely settled, are granted one representative in Congress, and that the three-fifths clause of Article I originally provided precisely for weighing some votes by three-fifths of the enslaved population. Harlan concluded: "The unstated premise of the Court's conclusion quite obviously is that the Congress has not dealt, and the Court believes it will not deal, with the problem of congressional apportionment in accordance with what the Court believes to be sound political principles. . . . The Court is not simply undertaking to exercise a power which the Constitution reserves to the Congress; it is also overruling a congressional judgment."

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. Suppose in your state one congressional district had 250,000 residents, while another had 500,000 people. What effect would the Court's *Wesberry* decision have on this situation?
2. What did Justice Black say is the meaning of Article I, Section 2, of the Constitution?
3. According to Justice Black, what did some of the Founders say about equal representation?
4. What would Justice Harlan say about the population distribution mentioned in question 1 above?
5. Do you agree with the Court's decision? Why or why not?

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Supreme Court Case Study 46

A Woman's Right to Abortion

Roe v. *Wade*, 1973

★★★★★★★★★★★★★★★★ Background of the Case ★★★★★★★★★★★★★★★★

One of the most widely debated issues in recent times has been over whether a woman may legally have an abortion. Many religious groups have vigorously opposed abortion, while women's rights organizations and civil libertarians, as well as many unaffiliated individuals, have supported that right.

A unmarried pregnant woman, Jane Roe (a pseudonym), brought suit against District Attorney Wade of Dallas County, Texas. She challenged a Texas statute that made it a crime to seek or perform an abortion except when, in a doctor's judgment, abortion would be necessary to save the mother's life. Because Roe's life had not been threatened by her pregnancy, she had not been able to obtain an abortion in Texas.

Constitutional Issue ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

Roe argued that her decision to obtain an abortion should be protected by the right of privacy, a right that stemmed from the Bill of Rights generally, and from the liberty interests guaranteed by the Fourteenth Amendment's due process clause. The state argued that the protection of life granted by the Fourteenth Amendment could not be applied to a fetus because a fetus was not a person in the eyes of the law.

★★★★★★★★★★★★★ The Supreme Court's Decision ★★★★★★★★★★★★★

The Court decided in Roe's favor. Justice Harry A. Blackmun wrote for the Court.

The Court, with one dissent, approached its decision by acknowledging the delicacy and depth of the issue before it. Nevertheless, it was the Court's task "to resolve the issue by constitutional measurement free of emotion and of predilection."

Justice Blackmun reaffirmed that there was a right to privacy that could be inferred from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. He said that "the right has some extension to activities relating to marriage . . ., procreation . . ., (and) contraception. . . ." Accordingly, "the right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Although specific and direct medical injury might follow a denial of choice, other injuries as well could result from an unwanted pregnancy. These include "a distressful life and future, psychological harm," and also the "distress . . . associated with the unwanted child, and . . . the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it." Yet the Court concluded that the privacy right was not absolute; accordingly, the right could not support an absolute right to choose abortion and "must be [balanced] against important state interests in regulation."

The Court then turned to the question of whether a fetus is a person within the meaning of the Fourteenth Amendment. The Court decided that a fetus was not a person under the

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Supreme Court Case Study 46 *(continued)*

Fourteenth Amendment. In reaching this conclusion, Justice Blackmun wrote, "We need not resolve the difficult question of when life begins. . . . The judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." Nonetheless, the state has valid interests to protect. One is "preserving and protecting the health of the pregnant woman" and the other is "in protecting the potentiality of human life."

To satisfy both sets of interests, the Court divided the term of pregnancy into two parts, based on medical knowledge. The first part is the first trimester, or three-month period of pregnancy. The Court identified this period as the point up to which fewer women died from abortions than in normal childbirth. In order to preserve and protect women during this period, a state may regulate abortion procedures in such areas as doctors' qualifications and licensing of facilities. Beyond that, however, the state may not go. In the first trimester, the abortion decision belongs to the woman and her doctor.

The point at which the state's compelling interest in preserving potential life begins is when that life is viable, or capable of living outside the womb. During this period, approximately the third trimester, the state may constitutionally regulate and even forbid abortion, except when necessary to preserve a woman's life or health. Between the end of the first trimester and the beginning of the point of viability—not specified, but usually around the beginning of the third trimester—the state may "if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health," the Court concluded.

★★★★★★★★★★★★★★★★★ Dissenting Opinion ★★★★★★★★★★★★★★★★★

In Justice William H. Rehnquist's dissent, he questioned whether any constitutional right to privacy or liberty could be so broad as to include the complete restriction of state controls on abortion during the first trimester. In his view, the Court's opinion will accomplish the seemingly impossible feat of leaving this area of the law more confused than it found it.

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. In what way did the Court break new ground in its ruling in the *Roe* case?
2. Explain the role of the state in abortion matters under the Court's ruling.
3. How did medical science play a role in the Court's ruling?
4. Where did Justice Rehnquist stand on the right to abortion?
5. Justice Rehnquist said the decision left the abortion area of the law more confused than it found it. What do you think he meant by that statement?

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Supreme Court Case Study 48

Constitutionality of the Death Penalty

Gregg v. *Georgia*, 1976

★★★★★★★★★★★★★★★★ **Background of the Case** ★★★★★★★★★★★★★★★★

The constitutionality of the death penalty is one of the most hotly debated issues the Supreme Court has dealt with because the Constitution does not directly address capital punishment. In fact, until well into the nineteenth century, capital punishment was widely accepted, and U.S. courts placed virtually no constitutional restrictions on the death penalty.

By the early twentieth century, the states had adopted laws requiring juries that found defendants guilty of murder to choose between life and death. Until the 1960s death sentences were rather common, numbering about 200 a year. However, by then a large number of people began to raise moral and political questions about the death penalty and brought these concerns to the courts. In a 1972 case the Court held that the death penalty as administered in the cases before it was unconstitutional, relying on the Eighth Amendment, which clearly forbids cruel and unusual punishment. In *Gregg* v. *Georgia* (1976), however, the Court, for the first time, concluded that the death penalty was not cruel and unusual.

Troy Leon Gregg and Floyd Allen, two hitchhikers, were picked up by Fred Simmons and Bob Moore. Later, the bodies of Moore and Simmons were discovered in a ditch. Following a description provided by a third hitchhiker who had been in the car for part of the journey, police found and arrested Gregg and Allen, who were driving Simmons's car. The .25 caliber pistol used in the slayings was found in Gregg's pocket.

Allen told the police that Gregg had intended to rob the two men all along, and that Gregg had done so after killing them. In his defense, Gregg claimed that he had fired in self-defense when he and Allen had been attacked by Moore and Simmons. A Georgia jury found Gregg guilty of armed robbery and murder.

In Georgia, persons convicted of murder and armed robbery were given presentencing hearings during which a jury would hear any "evidence in extenuation, mitigation, and aggravation of punishment . . .," including a previous criminal record or its absence. If the sentence was death, an appeals process was provided for, including expedited appeal to the Georgia Supreme Court. That court had to consider whether the death penalty had been imposed "under the influence of passion, prejudice or any other arbitrary factor," and whether the sentence was "excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant."

The Georgia Supreme Court upheld Gregg's death sentence for murder, but not for armed robbery. Gregg petitioned the United States Supreme Court for review of his case.

Constitutional Issue ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

The question before the Supreme Court was whether Georgia's death penalty statute amounted to "cruel and unusual punishment" under the Eighth and Fourteenth Amendments.

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★★★★★★★★★★★★★ The Supreme Court's Decision ★★★★★★★★★★★★★

The Court upheld Georgia's statute by a 7-to-2 vote, although a majority of justices could not agree on any one opinion. Justice Potter Stewart announced the Court's judgment. Stewart wrote that those who drafted the Eighth Amendment were primarily concerned ". . . with proscribing [banning] 'tortures' and other 'barbarous' methods of punishment." They did not, however, place the death penalty in these categories. Early Court decisions agreed: "the constitutionality of the sentence of death itself was not at issue. . . ." In fact, Stewart observed, the death penalty has long been accepted under United States law, and "it is apparent from the text of the Constitution itself that the existence of capital punishment was accepted by the Framers."

Stewart held that a death penalty conviction must accord with the "dignity of man" and must not be "excessive." Stewart continued: "First the punishment must not involve the unnecessary and wanton infliction of pain. . . . Second, the punishment must not be grossly out of proportion to the severity of the crime." The Court held that the death penalty still serves the socially necessary function of retribution. "This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs."

Finally, Justice Stewart was unable to say that the death penalty is a disproportionate punishment. "When a life has been taken deliberately by the offender, we cannot say that the punishment is invariably disproportionate to the crime," he concluded. Given the carefully legislated guidelines under which Georgia imposes a capital sentence, the Court found that Gregg's death sentence was constitutional.

★★★★★★★★★★★★★★★★★ Dissenting Opinion ★★★★★★★★★★★★★★★★★

In one of two dissents, Justice Thurgood Marshall wrote that he would be willing to allow executions if they could show some useful purpose, such as deterring others from committing capital crimes. However, executing a criminal simply because society demands retribution is to deny him his "dignity and worth."

Justice William J. Brennan, in a second dissent, wrote that the death penalty treats "members of the human race as nonhumans, as objects to be toyed with and discarded."

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. What fate did Troy Leon Gregg face after the Supreme Court's decision in his case?
2. Under the Georgia statute, what would be one example of an aggravating circumstance?
3. Why is the *Gregg* case important in the history of the Supreme Court?
4. With what criteria did the Court find the death penalty to be valid?
5. Although two justices dissented, they did so for different reasons. Which of the dissents do you find more persuasive?

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Supreme Court Case Study 49

Limitation on Affirmative Action

Regents of the University of California v. *Bakke*, 1978

★★★★★★★★★★★★★★★★ Background of the Case ★★★★★★★★★★★★★★★★

In the 1960s many organizations established programs, called affirmative action, to improve opportunities for minorities and the disadvantaged. Objections to affirmative action arose when organizations, such as universities and colleges, set aside a certain number of places for minorities or disadvantaged persons. The question of the constitutionality of such practices came before the United States Supreme Court in the *Regents of the University of California* v. *Bakke* case.

In 1973 the Medical School of the University of California at Davis admitted 16 minority students through a special admissions process. This group of minority students collectively had substantially lower science grade point averages and Medical College Aptitude Test scores than those in the other group.

Alan Bakke, a white applicant, had a grade point average slightly below all the regular admission applicants, but his aptitude tests were substantially higher. When Bakke's 1973 and 1974 applications to the medical school were rejected, he sued the Regents, the university's governing board, for a place at the medical school. The California Superior Court found that the school's special admissions program violated the federal and state constitutions, Title VI, and the Civil Rights Act of 1964, but it declined to order Bakke admitted to the school, holding that Bakke had not proven that he "would have been admitted but for the existence of the special program."

Bakke appealed the decision to the California Supreme Court. Citing the equal protection clause of the Fourteenth Amendment, the court ordered him admitted to the medical school. The Regents then took their case to the United States Supreme Court.

Constitutional Issue ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

The Supreme Court had to resolve two questions. First, did the establishment of special admissions criteria for minority students violate the equal protection clause of the Fourteenth Amendment? Second, are racial preference considerations always unconstitutional?

★★★★★★★★★★★★★ The Supreme Court's Decision ★★★★★★★★★★★★★

The Court held that the university's special admissions program for minorities violated the equal protection clause of the Fourteenth Amendment, although Justice Powell indicated that a properly devised program might well be constitutionally valid. Justice Lewis F. Powell, Jr., wrote for each of the two different five-member lineups.

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Supreme Court Case Study 49 *(continued)*

Powell explained that it is "no longer possible to peg the guarantees of the Fourteenth Amendment to the struggle for equality of one racial minority. . . . Although many of the Framers of the Fourteenth Amendment conceived of its primary function as bridging the vast distance between members of the Negro race and the white 'majority,' the Amendment itself was framed in universal terms, without reference to color, ethnic origins, or condition of prior servitude." He stated, "The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal."

The Court refused to adopt the view that unless it could be shown that some proven constitutional or statutory violation existed, or that the government had some compelling justification in inflicting a burden on one individual in order to help another, the Court concluded, "the preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids."

The University program failed this test because it "imposes disadvantages upon persons like respondent [Bakke], who bear no responsibility for whatever harm the beneficiaries of the special program are thought to have suffered." On the other hand a university might well use racial criteria in an effort to insure diversity in its student body. Racial identity, however, could not be the sole criterion for admission. The University would still be free to devise an admissions program "involving the competitive consideration of race and ethnic origin" by making race one factor among others in the competition for all available places.

The Court concluded, "the fatal flaw in the petitioner's preferential program is its disregard of individual rights as guaranteed by the Fourteenth Amendment. Such rights are not absolute. But when a State's distribution of benefits or imposition of burdens hinges on ancestry or the color of a person's skin, that individual is entitled to a demonstration that the challenged classification is necessary to promote a substantial state interest."

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. On what grounds did the Court reject the university's affirmative action program?
2. What did the Court suggest as a way for the university to use racial criteria and not violate the Constitution?
3. Was the Court ruling a victory for Bakke? Explain.
4. If you were an African American applying for admission to the university's medical school, would you stand a better chance for admission under the system that Bakke attacked or under the program suggested by the Court? Explain.
5. Some people complained that the Court's ruling in the *Bakke* case marked the end of affirmative action. Do you agree with this judgment? Give reasons for your answer.

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Supreme Court Case Study 61

Race-based Congressional Districts

Shaw v. *Reno*, 1993

★★★★★★★★★★★★★★★★ Background of the Case ★★★★★★★★★★★★★★★★

From the earliest days of the federal republic, parties in power in state legislatures organized congressional districts in their states so that the parties would be certain to have their representatives elected to Congress. Manipulating the boundaries of congressional districts by the political party in power, or political gerrymandering as it came to be known, was accepted as a normal part of state politics.

The physical size and shape of congressional districts became an issue after the Voting Rights Act of 1965 and its later amendments. The act had been passed to eliminate the practices that had kept African Americans and other minorities from voting. In the South particularly, registration by African Americans increased dramatically as a result of the act. Nevertheless, the impact of increased voting by African Americans tended to be diluted by including African American voters in congressional districts that were heavily white. As a result, relatively few African Americans were elected to Congress from states with large African American populations.

States covered by the Voting Rights Act—such as North Carolina—cannot change any electoral practice, i.e., they cannot redistrict, without receiving preapproval from either the attorney general or the United States District Court for the District of Columbia. When the state became entitled to a twelfth congressional district as a result of the 1990 census, it needed preapproval in order to redraw its congressional map to reflect 12 rather than 11 districts.

The North Carolina legislature adopted a redistricting plan in which 1 of the 12 congressional districts had a majority African American voting population. The state submitted this plan to the attorney general for preapproval. However, the attorney general declined to approve the plan because he believed that North Carolina should create 2 majority African American congressional districts rather than 1.

The North Carolina legislature responded by enacting a redistricting plan which contained 2 majority African American districts—Districts 1 and 12. Five white North Carolinians sued the state and federal governments over the design of the Twelfth District. The district spanned 160 miles in a snake-like pattern to include exclusively African American neighborhoods along Interstate 85. The five whites argued that the white population's constitutional rights had been violated under the redistricting.

Constitutional Issue ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

The legality of the redistricting turned on the Fourteenth Amendment's equal protection clause. The people who filed the suit believed that the way the Twelfth District was redrawn was a racial gerrymander and violated their right to equal protection under the law.

Name ______________________ Date ______________ Class __________

Supreme Court Case Study 61 *(continued)*

★★★★★★★★★★★★★★★ The Supreme Court's Decision ★★★★★★★★★★★★★★★

The Supreme Court ruled in a 5-to-4 decision that states with irregularly shaped electoral districts, drawn with the intention of creating minority districts, could be challenged on equal protection grounds. Justice Sandra Day O'Connor, writing for the Court, stated that the "bizarre" shape of the Twelfth District resembled the "most egregious racial gerrymanders of the past" which had excluded African Americans.

Justice O'Connor stated that there are legitimate reasons for states to provide minority districts. She believed, however, that "traditional districting principles" in regard to compactness, contiguity, and respect for political divisions must be utilized. The justice drew a comparison between linking a geographical area together on the basis of skin color to that of a "political apartheid." She was referring to the former policy of South Africa that was used to legally separate and discriminate the races.

★★★★★★★★★★★★★★★★★★★ Dissenting Opinion ★★★★★★★★★★★★★★★★★★★

The four dissenting justices believed that white voters had not been harmed by the redrawing of the Twelfth District. The dissent also criticized the emphasis on the shape of the district. They believed discriminatory gerrymandering could take place in a regularly shaped district as easily as in an oddly shaped district.

Justice John Paul Stevens stated that "the duty to govern impartially is abused when the group with power over the election process defines electoral boundaries to enhance its own political strength at the expense of any weaker groups. However, the duty to be impartial is not violated when the majority acts to facilitate the election of such a member of a group that lacks such power."

In another dissent, Justice David Souter held that legislators have to take race into account when drawing district lines in order to avoid the dilution of the minority vote. He believed that if redistricting harms participation in the election process, then the Fourteenth Amendment is violated. He held that because no one's participation had been harmed, the redrawing of the Twelfth District did not violate the Fourteenth Amendment.

Case Analysis Questions ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. Why had the Twelfth District been created by the state legislature?

2. What was the constitutional basis on which some white citizens of the Twelfth District brought the case to court?

3. What was the Court's position on redrawing congressional districts to promote minority interests?

4. On what grounds did Justice Stevens base his dissent?

5. What is your opinion of the practice of creating congressional districts to facilitate the election of minorities to Congress?

Name _____ Date _____ Class _____

Supreme Court Case Study 64

Campaign Finance Reform

McConnell v. *Federal Election Commission*, 2003

★★★★★★★★★★★★★★★★ Background of the Case ★★★★★★★★★★★★★★★★

Running for political office in the United States is very expensive. Candidates in recent presidential and congressional elections spent over $3 billion. In 2002 Congress passed the Bipartisan Campaign Reform Act, also known as the McCain-Feingold law after the two senators who sponsored it. The law banned individuals, corporations, labor unions, and interest groups from making unlimited contributions to political parties to use in supporting their candidates. This so-called "soft money" had been the major source of unregulated money for modern campaigns. In addition, the law prohibited labor unions and corporations from using soft money to broadcast issue ads within 60 days prior to a general election and 30 days prior to a primary election. Issue ads are ads that claim to be about a political issue but often attack or support a particular candidate for office.

The McCain-Feingold law aimed to limit the amount of money flowing into election politics. Opponents of the law argued that political contributions are like an expression of speech. They quickly challenged the new law in court as a violation of the First Amendment right of free speech and association. In a 1976 decision, *Buckley* v. *Valeo*, the Supreme Court had accepted the idea that campaign donations are similar to speech and thus protected to a certain extent by the First Amendment. However, the Court also said that it was in the public interest to put some limits on the size of campaign contributions to political parties and candidates for public office. Regulations, the Court held, were needed to stop corruption or even the appearance of corruption in election politics.

Constitutional Issue ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

The question before the Court was whether the main provisions of the McCain-Feingold law violated the First Amendment guarantees of free speech and association.

★★★★★★★★★★★★★ The Supreme Court's Decision ★★★★★★★★★★★★★

By a vote of 5 to 4, the Court ruled that all the major provisions of the Bipartisan Campaign Reform Act were constitutional. Thus, the majority found that the need to prevent corruption justified the law's ban on soft-money contributions, even if such campaign contributions are a form of speech. Further, the majority said that the Constitution's guarantee of free speech did not prevent Congress from banning the use of union and corporate money to pay for issue ads aired close to Election Day.

Justices Stevens and O'Connor wrote the opinion for the majority. "The question," they stated, "is whether large soft-money contributions to national party committees have a corrupting influence or give rise to the appearance of corruption. Both common sense and the ample record in these cases confirm Congress's belief that they do."

(continued)

Name _____ Date _____ Class _____

Supreme Court Case Study 64 *(continued)*

Four justices dissented. Justice Scalia said, "This is a sad day for freedom of speech. . . . The use of corporate wealth (like individual wealth) to speak to the electorate is unlikely to 'distort' elections." The dissenters argued that corruption meant trading votes for dollars or something very similar to that. The majority, however, rejected such a definition of corruption. They argued, "Our cases have firmly established that Congress's legitimate interest extends beyond preventing simple cash-for-votes corruption. . . . This crabbed [narrow] view of corruption, and particularly of the appearance of corruption, ignores precedent, common sense, and the realities of political fund-raising."

Supporters of the law hailed the Court's decision. Senator Russ Feingold (D-Wisconsin), one of the law's authors, said, "The soft-money system had turned the political parties into giant money-raising machines that forgot the people who created them. This [ruling] returns the parties to their proper role." One member of the Federal Election Commission (FEC) said, "This ruling really is a victory for the average citizen. It gives them a sense that their voice is going to be heard in the halls of Congress, that it's not just a system where groups that spend a lot of money are going to get their foot in the door."

Few political observers, however, believed the Court's decision would actually stop the flow of big money into political campaigns. Senator Mitch McConnell (R-Kentucky), who led the effort to challenge the law in court, said "This law will not remove one dime from politics." McConnell added, "Soft money is not gone, it has just changed its address." Even Justice O'Connor admitted, "We are under no illusion that [McCain-Feingold] will be the last congressional statement on the matter. Money, like water, will always find an outlet."

Still, no one doubted that the Court's decision would significantly alter how political fundraising would operate in future elections. The Court's decision had no sooner been announced than lobbyists, interest groups, and political parties were exploring new ways to raise and spend money for campaigns. The leader of the National Rifle Association, for example, vowed that his group would not be silenced by the decision. "We are going to be heard, I promise that," he said. "We have new lines on the football field, but the game is still going to be played."

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. Did the Court's decision affirm or alter the 1976 ruling in *Buckley* v. *Valeo*? Explain your response.
2. What arguments did the dissenting justices present?
3. Senator Feingold said that the reform law "returns the parties to their proper role." What do you think he believes is the proper role of political parties?
4. Do you think that unlimited soft-money donations corrupted or hindered the election process? Give reasons for your answer.
5. Do you agree with the majority or dissenting justices' decision in this case? Give reasons for your answer.