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**MILLER v. JOHNSON**


In *Miller v. Johnson*, the Supreme Court overturned Georgia's Eleventh Congressional District, which was nowhere near as ill-compact as North Carolina's Twelfth Congressional District challenged in *Shaw v. Reno* (1993) [II] but whose creation could be laid almost entirely to insistence by the U.S. Department of Justice that Georgia create two additional black-majority congressional districts. Writing for the majority, Justice ANTHONY M. KENNEDY [I,II] asserted that the Department of Justice had made improper use of its preclearance authority under section 5 of the VOTING RIGHTS ACT OF 1965 [II,IV] [as amended] in pursuit of a policy of maximizing the number of black-majority districts, and that racial considerations were predominant in the creation of the Eleventh District. *Miller* demonstrated that even districts that were not especially ill-compact or in blatant violation of traditional districting criteria could be struck down under the Shaw standard if the Court majority were convinced that existing irregularities could only be explained in racial terms. *Miller* also showed the importance of the views of Justice SANDRA DAY O'CONNOR [II,III] as a pivotal vote. O'Connor, in addition to joining the MAJORITY OPINION [I], wrote a two-paragraph concurring opinion in which she sought to reassure critics of Shaw that the Court was not going throw out all use of race as a districting criterion. In particular, she asserted that the Shaw test was "a demanding one," and that to invoke STRICT SCRUTINY [IV], "a plaintiff must show that the State has relied on race in substantial disregard of customary and traditional districting practices." However, what this latter phrase means in practice seems very much in the eyes of the beholder. The DISSenting OPINION [II], written by Justice RUTH BADER GINSBURG [II] (and joined in whole or part by three other Justices), in effect denied that the district violated this test.

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(SEE ALSO: Electoral Districting, I [II]; Electoral Districting, II [II]; Voting Rights [IV,IV].)

Bibliography