

Miller vs. Johnson

no. 94-637

Opinion: **Kennedy, Rhenquist, O'Connor, Scalia, Thomas**
 Dissent: **Ginsberg, Stevens, Souter, Breyer**

The court ruled that Georgia's 11th congressional district is unconstitutional since it's borders were drawn with explicitly racial motives. The 11th district was created under orders from the Justice Department in accordance with the 1965 Voting Rights Act which stipulates that a voting population have adequate opportunity to effectively represent its interests at the federal state and local level through the political process. In this case, the intent was to increase the likelihood of the election of a black representative; Cynthia McKinney, a black Democrat elected in 1994, currently represents the district.



The District itself stretches along a 260 mile corridor from Atlanta to Savannah, connecting areas of predominantly black voters along the way. The court has previously ruled that districts with a "bizarre shape" are legally dubious (*Shaw vs. Reno, 1993*)

but in this case noted that shape was not the only problem with District 11, the motivation behind the chosen shape is also legally significant.

Justice Ginsberg's dissent strongly asserts that electoral districts drawn with racial considerations are neither unusual nor constitutionally improper if they serve to further the representative interests of the persons within the district.

Two similar cases, *Bush vs. Vera, No. 94-805* and *Gerrymander vs. North Carolina, No. 94-845* will be heard by the court in the coming fall term.

Today, a vigorous dispute exists between those who believe that electoral districts should be drawn so as to increase the representation of ethnic minorities, by creating districts with a majority of a specific ethnicity. Others argue that at-large voting better represents the interests of the average person regardless of race. Voting rights advocates have come to favor redrawing district lines so as to concentrate minority votes into a large bloc and to prevent them from being isolated and diluted within the majority voting districts. Proponents of at large voting, on the one hand, hold too the principle of one person, one vote and reject the notion of organizing blocs of voters based on racial or other socio-economic characteristics or to serve social interests. They propose that at large voting more accurately and fairly represents the interests of the voting population than artificially created blocs or groupings.

Check the Federal Courts Page of Informed ReSource for further information about this case including complete texts of the opinion and dissent, hearing transcripts, and relevant commentary.

The Infamous Gerrymander

The term "Gerrymandering" is used to describe the drawing of electoral districts with the intent of achieving specific electoral objectives. The term comes from the 1812 districting struggle in Massachusetts. Governor William Gerry redrew the state's electoral districts in an attempt to assure the victory of his party in the coming election. He presumed that areas which had voted for his party in the past would continue to do so, the same goes for those who voted against him. By concentrating and isolating voters based on their preferences he was able to nearly assure his party's victory. Since one of the new districts looked like a salamander, a pun-happy newspaper editor coined the word "Gerrymander" to describe what the governor had created. The word quickly came into use as a verb to describe such wrangling of political districts.

Governor Gerry is in a bit of trouble...

The "O's" win two of the three current districts	Can you redistrict so the "O's" win the legislature?

His is a small state, with only 9 voters, grouped into three electoral districts. Each voter is shown on the map by how they voted last time, either for Gerry's "O" party or for the rival "Δ" party. The election for State Legislature is coming up next year and with the current districts, it looks like Gerry's Grand "O" Party will lose control- Districts 1 and 2 are likely to be won by the "Δ" candidate while only District 3 votes "O".

Can you redraw the district borders so that the "O's" can win the legislature? Remember that they only need to win two of the three districts to have a majority in the three person legislature.

Hanson vs. University of Virginia

Opinion: Kennedy, Rhenquist, O'Connor, Scalia, Thomas
Dissent: Souter, Stevens, Ginsberg, Breyer

The Supreme Court permitted government funding for a religious activity for the first time in ruling that the University of Virginia had violated the free speech rights of a student run Christian magazine by refusing to grant it a portion of school funds that support a variety of other campus activities and groups. Justice Souter's dissent argues that the majority opinion is in violation of the Establishment Clause as "The court is ordering an instrumentality of the state to support religious evangelism with direct funding." The Establishment Clause generally prohibits governmental funding for churches or other religious activity.

The first amendment states that "Congress shall make no law respecting an establishment of religion". "Establishment" in this case refers to any official relationship between a church and government whereby a church is funded by or otherwise beholden to the government (i.e. taxes used to support church activities) or a church exerts control over part of the government (i.e. church membership required of persons seeking public office).

This concern was seen to merit explicit mention in the Constitution due to the colonists' experiences with religious persecution at the hands of state supported religions in Europe. For example, the Church of England, (also known as Anglican or Episcopalian) is an official part of the British monarchy, with the king or queen serving as the head of both church and state.

Check *Informed ReSource* for further information including complete texts of the opinion and dissent, hearing transcripts, and relevant commentary.

Smith vs. Ohio

Opinion: Scalia, Rhenquist, O'Connor, Kennedy, Thomas
Dissent: Ginsberg, Stevens, Souter, Breyer

The court ruled that Ohio illegally barred the Ku Klux Klan from erecting a cross in a public park in front of the state capitol. The opinion rested on the argument that since other groups had held rallies,

displayed banners and erected a Menorah there, the cross could not be excluded simply because it was a religious symbol.

Justice Ginsberg's dissent noted that the prior display of religious symbols cited in the majority decision were also legally improper and thus should not be used as a basis for the court's decision in the present case.

Similar cases regarding the public display of religious symbols include *Baxter vs. Hamilton* and *James vs. Maryland* where the court held that the display of nativity scenes on public property were legal so long as public funds were not used for their installation or purchase.


In deciding cases, the Supreme Court often relies on previous decisions from similar cases and long-standing legal principles. Thus their decisions are almost always made on the grounds of precedent, that is to say, in accordance with decisions which have preceded the current case.

As most Supreme Court cases involve a complex balancing of interests and rights, many precedents are often referred to when deciding a single case. These multiple precedents often conflict with each other and with the individual justices' interpretations of the constitution. Occasionally, two Justices will draw different conclusions from the same precedent case. A good example can be found in the contrast between Justice Ginsberg's use of *Baxter vs. Hamilton* in her dissent, and Justice Scalia's use of the case in his majority opinion.

Check *Informed ReSource* for further information including complete texts of the opinion and dissent, hearing transcripts, and relevant commentary.

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Here's one simple solution (there are at least three others).

Note that the O party has only 44% of the total vote, but through clever districting can still win control of the legislature. You can make your own maps to try this exercise with different district sizes and total vote ratios. Can the O's win a legislature if they're down 6 to 9? 8 to 13? 12 to 18?

Consider the implications of districting for electoral outcomes. The house where you live is contained in many different electoral districts-- congressional districts, legislative districts, school board districts, etc. Who draws the lines that define these districts? What criteria do they use when deciding district boundaries?