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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

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ALABAMA LEGISLATIVE BLACK CAUCUS ET AL. *v.* ALABAMA ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

No. 13–895. Argued November 12, 2014—Decided March 25, 2015*

In 2012 Alabama redrew the boundaries of the State's 105 House districts and 35 Senate districts. In doing so, while Alabama sought to achieve numerous traditional districting objectives—*e.g.,* compactness, not splitting counties or precincts, minimizing change, and protecting incumbents—it placed yet greater importance on two goals: (1) minimizing a district's deviation from precisely equal population, by keeping any deviation less than 1% of the theoretical ideal; and (2) seeking to avoid retrogression with respect to racial minorities' "ability to elect their preferred candidates of choice" under §5 of the Voting Rights Act of 1965, 52 U. S. C. §10304(b), by maintaining roughly the same black population percentage in existing majority-minority districts.

Appellants—Alabama Legislative Black Caucus (Caucus), Alabama Democratic Conference (Conference), and others—claim that Alabama's new district boundaries create a "racial gerrymander" in violation of the Fourteenth Amendment's Equal Protection Clause. After a bench trial, the three-judge District Court ruled (2 to 1) for the State. It recognized that electoral districting violates the Equal Protection Clause when race is the "predominant" consideration in deciding "to place a significant number of voters within or without a particular district," *Miller* v. *Johnson*, 515 U. S. 900, 913, 916, and the use of race is not "narrowly tailored to serve a compelling state interest," *Shaw* v. *Hunt*, 517 U. S. 899, 902 (*Shaw II*).

In ruling against appellants, it made four critical determinations:

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*Together with No. 13–1138, *Alabama Democratic Conference et al.* v. *Alabama et al.*, also on appeal from the same court.

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(1) that both appellants had argued "that the Acts *as a whole* constitute racial gerrymanders," and that the Conference had also argued that the State had racially gerrymandered Senate Districts 7, 11, 22, and 26; (2) that the Conference lacked standing to make its racial gerrymandering claims; (3) that, in any event, appellants' claims must fail because race "was not the predominant motivating factor" in making the redistricting decisions; and (4) that, even were it wrong about standing and predominance, these claims must fail because any predominant use of race was "narrowly tailored" to serve a "compelling state interest" in avoiding retrogression under §5.

Held:

1. The District Court's analysis of the racial gerrymandering claim as referring to the State "as a whole," rather than district-by-district, was legally erroneous. Pp. 5–12.

(a) This Court has consistently described a claim of racial gerrymandering as a claim that race was improperly used in the drawing of the boundaries of one or more *specific electoral districts*, see, *e.g.*, *Shaw* v. *Reno*, 509 U. S. 630, 649 (*Shaw I*), and has described the plaintiff's evidentiary burden similarly, see *Miller*, *supra*, at 916. The Court's district-specific language makes sense in light of the personal nature of the harms that underlie a racial gerrymandering claim, see *Bush* v. *Vera*, 517 U. S. 952, 957; *Shaw I, supra,* at 648. Pp. 5–6.

(b) The District Court found the fact that racial criteria had not predominated in the drawing of some Alabama districts sufficient to defeat a claim of racial gerrymandering with respect to the State *as an undifferentiated whole*. But a showing that race-based criteria did not significantly affect the drawing of *some* Alabama districts would have done little to defeat a claim that race-based criteria predominantly affected the drawing of *other* Alabama districts. Thus, the District Court's undifferentiated statewide analysis is insufficient, and the District Court must on remand consider racial gerrymandering with respect to the individual districts challenged by appellants. Pp. 7–8.

(c) The Caucus and the Conference did not waive the right to further consideration of a district-by-district analysis. The record indicates that plaintiffs' evidence and arguments embody the claim that individual majority-minority districts were racially gerrymandered, and those are the districts that the District Court must reconsider. Although plaintiffs relied heavily upon statewide evidence to prove that race predominated in the drawing of individual district lines, neither the use of statewide evidence nor the effort to show widespread effect can transform a racial gerrymandering claim about a set of individual districts into a separate, general claim that the leg-

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islature racially gerrymandered the State "as" an undifferentiated "whole." Pp. 8–12.

2. The District Court also erred in deciding, *sua sponte,* that the Conference lacked standing. It believed that the "record" did "not clearly identify the districts in which the individual members of the [Conference] reside." But the Conference's post-trial brief and the testimony of a Conference representative support an inference that the organization has members in all of the majority-minority districts, which is sufficient to meet the Conference's burden of establishing standing. At the very least, the Conference reasonably believed that, in the absence of a state challenge or a court request for more detailed information, it need not provide additional information such as a specific membership list. While the District Court had an independent obligation to confirm its jurisdiction, in these circumstances elementary principles of procedural fairness required the District Court, rather than acting *sua sponte*, to give the Conference an opportunity to provide evidence of member residence. On remand, the District Court should permit the Conference to file its membership list and the State to respond, as appropriate. Pp. 12–15.

3. The District Court also did not properly calculate "predominance" in its alternative holding that "[r]ace was not the predominant motivating factor" in the creation of any of the challenged districts. It reached its conclusion in part because it placed in the balance, among other nonracial factors, legislative efforts to create districts of approximately equal population. An equal population goal, however, is not one of the "traditional" factors to be weighed against the use of race to determine whether race "predominates," see *Miller*, *supra*, at 916. Rather, it is part of the redistricting background, taken as a given, when determining whether race, or other factors, predominate in a legislator's determination as to *how* equal population objectives will be met. Had the District Court not taken a contrary view of the law, its "predominance" conclusions, including those concerning the four districts that the Conference specifically challenged, might well have been different. For example, there is strong, perhaps overwhelming, evidence that race did predominate as a factor when the legislature drew the boundaries of Senate District 26. Pp. 15–19.

4. The District Court's final alternative holding—that "the [challenged] Districts would satisfy strict scrutiny"—rests upon a misperception of the law. Section 5 does not require a covered jurisdiction to maintain a particular numerical minority percentage. It requires the jurisdiction to maintain a minority's ability to elect a preferred candidate of choice. Pp. 19–23.

(a) The statute's language, 52 U. S. C. §§10304(b), (d), and Department of Justice Guidelines make clear that §5 is satisfied if mi-

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nority voters retain the ability to elect their preferred candidates. The history of §5 further supports this view, as Congress adopted the language in §5 to reject this Court's decision in *Georgia* v. *Ashcroft*, 539 U. S. 461, and to accept the views of Justice Souter's dissent—that, in a §5 retrogression case, courts should ask whether a new voting provision would likely deprive minority voters of their ability to elect a candidate of their choice, and that courts should not mechanically rely upon numerical percentages but should take account of all significant circumstances, *id.,* at 493, 498, 505, 509. Here, both the District Court and the legislature relied heavily upon a mechanically numerical view as to what counts as forbidden retrogression. Pp. 19–22.

(b) In saying this, this Court does not insist that a state legislature, when redistricting, determine *precisely* what percent minority population §5 demands. A court's analysis of the narrow tailoring requirement insists only that the legislature have a "strong basis in evidence" in support of the (race-based) choice that it has made. Brief for United States as *Amicus Curiae* 29. Here, however, the District Court and the legislature both asked the wrong question with respect to narrow tailoring. They asked how to maintain the present minority percentages in majority-minority districts, instead of asking the extent to which they must preserve existing minority percentages in order to maintain the minority's present ability to elect the candidate of its choice. Because asking the wrong question may well have led to the wrong answer, the Court cannot accept the District Court's conclusion. Pp. 22–23.

989 F. Supp. 2d 1227, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

Nos. 13–895 and 13–1138

ALABAMA LEGISLATIVE BLACK CAUCUS, ET AL., APPELLANTS
13–895 *v.*
ALABAMA ET AL.

ALABAMA DEMOCRATIC CONFERENCE, ET AL., APPELLANTS
13–1138 *v.*
ALABAMA ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

[March 25, 2015]

JUSTICE BREYER delivered the opinion of the Court.

The Alabama Legislative Black Caucus and the Alabama Democratic Conference appeal a three-judge Federal District Court decision rejecting their challenges to the lawfulness of Alabama's 2012 redistricting of its State House of Representatives and State Senate. The appeals focus upon the appellants' claims that new district boundaries create "racial gerrymanders" in violation of the Fourteenth Amendment's Equal Protection Clause. See, *e.g.*, *Shaw* v. *Hunt*, 517 U. S. 899, 907–908 (1996) (*Shaw II*) (Fourteenth Amendment forbids use of race as "'predominant'" district boundary-drawing "'factor'" unless boundaries are "narrowly tailored" to achieve a "'compelling state interest'" (citations omitted)). We find that the

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