SUPREME COURT OF THE UNITED STATES

Nos. 98–405 and 98–406

JANET RENO, ATTORNEY GENERAL, APPELLANT
98–405 *v.*
BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS
98–406 *v.*
BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[January 24, 2000]

JUSTICE SCALIA delivered the opinion of the Court.

These cases present the question whether §5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U. S. C. §1973c, prohibits preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose.

I

This is the second time the present cases are before us, and we thus recite the facts and procedural history only in brief. Like every other political subdivision of the State of Louisiana, Bossier Parish, because of its history of discriminatory voting practices, is a jurisdiction covered by §5 of the Voting Rights Act. See 42 U. S. C. §§1973c, 1973b(a), (b); 30 Fed. Reg. 9897 (1965). It is therefore prohibited from enacting any change in "voting qualification

or prerequisite to voting, or standard, practice, or procedure with respect to voting," without first obtaining either administrative preclearance from the Attorney General or judicial preclearance from the United States District Court for the District of Columbia. 42 U. S. C. §1973c.

Bossier Parish is governed by a 12-member Police Jury elected from single-member districts for 4-year terms. In the early 1990s, the Police Jury set out to redraw its electoral districts in order to account for demographic changes reflected in the decennial census. In 1991, it adopted a redistricting plan which, like the plan then in effect, contained no majority-black districts, although blacks made up approximately 20% of the parish's population. On May 28, 1991, the Police Jury submitted its new districting plan to the Attorney General; two months later, the Attorney General granted preclearance.

The Bossier Parish School Board (Board) is constituted in the same fashion as the Police Jury, and it too undertook to redraw its districts after the 1990 census. During the course of that redistricting, appellant-intervenor George Price, president of the local chapter of the National Association for the Advancement of Colored People (NAACP), proposed that the Board adopt a plan with majority-black districts. In the fall of 1992, amid some controversy, the Board rejected Price's suggestion and adopted the Police Jury's 1991 redistricting plan as its own.

On January 4, 1993, the Board submitted its redistricting plan to the Attorney General for preclearance. Although the Attorney General had precleared the identical plan when submitted by the Police Jury, she interposed a formal objection to the Board's plan, asserting that "new information"– specifically, the NAACP plan proposed by appellant-intervenor Price– demonstrated that "black residents are sufficiently numerous and geographically compact so as to constitute a majority in two single-member

districts." App. to Juris. Statement in No. 98–405, p. 235a. The Attorney General disclaimed any attempt to compel the Board to "adopt any particular plan," but maintained that the Board was "not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice." *Ibid*.

After the Attorney General denied the Board's request for reconsideration, the Board filed the present action for judicial preclearance of the 1992 plan in the United States District Court for the District of Columbia. Section 5 of the Voting Rights Act authorizes preclearance of a proposed voting change that "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U. S. C. §1973c. Before the District Court, appellants conceded that the Board's plan did not have a prohibited "effect" under §5, since it did not worsen the position of minority voters. (In *Beer* v. *United States*, 425 U. S. 130 (1976), we held that a plan has a prohibited "effect" only if it is retrogressive.) Instead, appellants made two distinct claims. First, they argued that preclearance should be denied because the Board's plan, by not creating as many majority-black districts as it should create, violated §2 of the Voting Rights Act, which bars discriminatory voting practices. Second, they contended that, although the Board's plan would have no retrogressive effect, it nonetheless violated §5 because it was enacted for a discriminatory "purpose."

The District Court granted preclearance. *Bossier Parish School Bd*. v. *Reno*, 907 F. Supp. 434 (DC 1995). As to the first of appellants' two claims, the District Court held that it could not deny preclearance of a proposed voting change under §5 simply because the change violated §2. Moreover, in order to prevent the Government "[from doing] indirectly what it cannot do directly," the District Court stated that it would "not permit section 2 evidence to prove discriminatory purpose under section 5." *Id*., at 445.

As to the second of appellants' claims, the District Court concluded that the Board had borne its burden of proving that the 1992 plan was adopted for two legitimate, nondiscriminatory purposes: to assure prompt preclearance (since the identical plan had been precleared for the Police Jury), and to enable easy implementation (since the adopted plan, unlike the NAACP's proposed plan, required no redrawing of precinct lines). *Id.*, at 447. Appellants filed jurisdictional statements in this Court, and we noted probable jurisdiction. *Reno* v. *Bossier Parish School Bd.*, 517 U. S. 1232 (1996).

On appeal, we agreed with the District Court that a proposed voting change cannot be denied preclearance simply because it violates §2, but disagreed with the proposition that *all* evidence of a dilutive (but nonretrogressive) effect forbidden by §2 was irrelevant to whether the Board enacted the plan with a retrogressive purpose forbidden by §5. *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 486–487 (1997) *(Bossier Parish I).* Since some language in the District Court's opinion left us uncertain whether the court had in fact applied that proposition in its decision, we vacated and remanded for further proceedings as to the Board's purpose in adopting the 1992 plan. *Id.*, at 486. In light of our disposition, we left open the additional question of "whether the §5 purpose inquiry ever extends beyond the search for retrogressive intent." *Ibid.* "The existence of such a purpose," we said, "and its relevance to §5, are issues to be decided on remand." *Ibid.*

On remand, the District Court, in a comparatively brief opinion relying on, but clarifying, its extensive earlier opinion, again granted preclearance. 7 F. Supp. 2d 29 (DC 1998). First, in response to our invitation to address the existence of a discriminatory but nonretrogressive purpose, the District Court summarily concluded that "the record will not support a conclusion that extends beyond the presence or absence of retrogressive intent." *Id.*, at 31.

It noted that one could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory, purpose,' but those imagined facts are not present here." *Ibid.* The District Court therefore left open the question that we had ourselves left open on remand: namely, whether the §5 purpose inquiry extends beyond the search for retrogressive intent.

Second, the District Court considered, at greater length, how any dilutive impact of the Board's plan bore on the question whether the Board enacted the plan with a retrogressive intent. It concluded, applying the multifactor test we articulated in *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252 (1977), that allegations of dilutive effect and of discriminatory animus were insufficient to establish retrogressive intent. 7 F. Supp. 2d, at 31–32.

In their jurisdictional statements in this Court, appellants contended, first, that the District Court's conclusion that there was no evidence of discriminatory but nonretrogressive purpose was clearly erroneous, and second, that §5 of the Voting Rights Act prohibits preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. Appellants did not challenge the District Court's determination that there was no evidence of retrogressive intent. We again noted probable jurisdiction. 525 U. S. 1118 (1999).

II

Before proceeding to the merits, we must dispose of a challenge to our jurisdiction. The Board contends that these cases are now moot, since its 1992 plan "will never again be used for any purpose." Motion to Dismiss or Affirm 9. Under Louisiana law, school board members are elected to serve 4-year terms. La. Rev. Stat. Ann. §17:52(A) (West 1995). One month after appellants filed the jurisdictional statements for this appeal, the sched-

uled 1998 election for the Board took place. The next scheduled election will not occur until 2002, by which time, as appellants concede, the data from the upcoming decennial census will be available and the Board will be required by our "one-man-one-vote" precedents to have a new apportionment plan in place. Accordingly, appellee argues, the District Court's declaratory judgment with respect to the 1992 plan is no longer of any moment and the dispute no longer presents a live "case or controversy" for purposes of Article III of the Constitution. *Preiser* v. *Newkirk*, 422 U. S. 395, 401 (1975); *Mills* v. *Green*, 159 U. S. 651, 653 (1895).

Appellants posit several contingencies in which the Board's 1992 plan would be put to use– including resignation or death of one of the 12 Board members before 2002, and failure to agree upon a replacement plan for the 2002 election. They also assert that, if we were to hold preclearance improper, they "could seek" an injunction voiding the elections held under the 1992 plan and ordering a special election, Brief for Appellants Price *et al.* Opposing Motion to Dismiss or Affirm 3, and "might be entitled" to such an injunction, Brief for Appellant Reno in Opposition to Motion to Dismiss or Affirm 2. We need not pause to consider whether the possibility of these somewhat speculative and uncertain events suffices to keep these cases alive, since in at least one respect the 1992 plan will have probable continuing effect: Absent a successful subsequent challenge under §2, it, rather than the 1980 predecessor plan– which contains quite different voting districts– will serve as the baseline against which appellee's next voting plan will be evaluated for the purposes of preclearance. Whether (and precisely how) that future plan represents a change from the baseline, and, if so, whether it is retrogressive in effect, will depend on whether preclearance of the 1992 plan was proper.

We turn, then, to the merits.

III

Appellants press the two claims initially raised in their jurisdictional statements: first, that the District Court's factual conclusion that there was no evidence of discriminatory but nonretrogressive intent was clearly erroneous, and second, that §5 of the Voting Rights Act prohibits preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. Our resolution of the second claim renders it unnecessary to address the first. When considered in light of our longstanding interpretation of the "effect" prong of §5 in its application to vote dilution claims, the language of §5 leads to the conclusion that the "purpose" prong of §5 covers only retrogressive dilution.

As noted earlier, in order to obtain preclearance under §5, a covered jurisdiction must demonstrate that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U. S. C. §1973c. A covered jurisdiction, therefore, must make two distinct showings: first, that the proposed change "does not have the purpose . . . of denying or abridging the right to vote on account of race or color," and second, that the proposed change "will not have the effect of denying or abridging the right to vote on account of race or color." The covered jurisdiction bears the burden of persuasion on both points. See *Bossier Parish I*, 520 U. S., at 478 (judicial preclearance); 28 CFR §51.52(a) (1999) (administrative preclearance).

In *Beer* v. *United States*, 425 U. S. 130 (1976), this Court addressed the meaning of the no-effect requirement in the context of an allegation of vote dilution. The case presented the question whether a reapportionment plan that would have a discriminatory but nonretrogressive effect on the rights of black voters should be denied preclearance. Reasoning that §5 must be read in light of its purpose of

"insur[ing] that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," we held that "a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of §5." *Id.*, at 141. In other words, we concluded that, in the context of a §5 challenge, the phrase "denying or abridging the right to vote on account of race or color"– or more specifically, in the context of a vote-dilution claim, the phrase "abridging the right to vote on account of race or color"– limited the term it qualified, "effect," to retrogressive effects.

Appellants contend that in qualifying the term "purpose," the very same phrase does *not* impose a limitation to retrogression– *i.e.*, that the phrase "abridging the right to vote on account of race or color" means retrogression when it modifies "effect," but means discrimination more generally when it modifies "purpose." We think this is simply an untenable construction of the text, in effect recasting the phrase "does not have the purpose and will not have the effect of *x*" to read "does not have the purpose of *y* and will not have the effect of *x*." As we have in the past, we refuse to adopt a construction that would attribute different meanings to the same phrase in the same sentence, depending on which object it is modifying. See *BankAmerica Corp.* v. *United States*, 462 U. S. 122, 129 (1983) (declining to give different meanings to the phrase "other than" when it modified "banks" and "common carriers" in the same clause).

Appellants point out that we did give the purpose prong of §5 a broader meaning than the effect prong in *Richmond* v. *United States*, 422 U. S. 358 (1975). That case involved requested preclearance for a proposed annexation

that would have reduced the black population of the city of Richmond, Virginia, from 52% to 42%. We concluded that, although the annexation may have had the effect of creating a political unit with a lower percentage of blacks, so long as it "fairly reflect[ed] the strength of the Negro community as it exist[ed] after the annexation" it did not violate §5. *Id.*, at 371. We reasoned that this interpretation of the effect prong of §5 was justified by the peculiar circumstances presented in annexation cases:

> "To hold otherwise would be either to forbid all such annexations or to require, as the price for approval of the annexation, that the black community be assigned the same proportion of council seats as before, hence perhaps permanently overrepresenting them and underrepresenting other elements in the community, including the nonblack citizens in the annexed area. We are unwilling to hold that Congress intended either consequence in enacting §5." *Ibid.*

We refused, however, to impose a similar limitation on §5's purpose prong, stating that preclearance could be denied when the jurisdiction was acting with the purpose of effecting a percentage reduction in the black population, even though it could not be denied when the jurisdiction's action merely had that effect. *Id.*, at 378–379.

It must be acknowledged that *Richmond* created a discontinuity between the effect and purpose prongs of §5. We regard that, however, as nothing more than an *ex necessitate* limitation upon the effect prong in the particular context of annexation– to avoid the invalidation of all annexations of areas with a lower proportion of minority voters than the annexing unit. The case certainly does not stand for the proposition that the purpose and effect prongs have fundamentally different meanings– the latter requiring retrogression, and the former not– which is what is urged here. The approved *effect* of the redistrict-

ing in *Richmond*, and the hypothetically disapproved *purpose, were both retrogressive.* We found it necessary to make an exception to normal retrogressive-*effect* principles, but not to normal retrogressive-*purpose* principles, in order to permit routine annexation. That sheds little light upon the issue before us here.

Appellants' only textual justification for giving the purpose and effect prongs different meanings is that to do otherwise "would reduce the purpose prong of Section 5 to a trivial matter," Brief for Federal Appellant on Reargument 13; would "effectively delet[e] the 'purpose' prong," Reply Brief for Appellants Price *et al.* on Reargument 3; and would give the purpose prong "a trivial reach, limited to the case of the incompetent retrogressor," Reply Brief for Federal Appellant 9. If this were true– and if it were adequate to justify giving the very same words a different meaning when qualifying "purpose" than when qualifying "effect"– one would expect appellants to cite at least some instances in which this Court applied such muscular construction to the innumerable statutes barring conduct with a particular "purpose or effect." See, *e.g.*, 7 U. S. C. §192(d) (prohibiting sale of any article "for the purpose or with the effect of manipulating or controlling prices" in the meatpacking industry); 12 U. S. C. §1467a(c)(1)(A) (barring savings and loan holding companies from engaging in any activity on behalf of a savings association subsidiary "for the purpose or with the effect of evading any law or regulation applicable to such savings association"); 47 U. S. C. §541(b)(3)(B) (1994 ed., Supp. III) (prohibiting cable franchising authorities from imposing any requirement "that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof"). They cite not a single one, and we are aware of none.

It is true enough that, whenever Congress enacts a

statute that bars conduct having "the purpose or effect of *x*," the purpose prong has application entirely separate from that of the effect prong only with regard to unlikely conduct that has "the purpose of *x*" but fails to have "the effect of *x*"– in the present context, the conduct of a so-called "incompetent retrogressor." The purpose prong has *value and effect*, however, even when it does not cover additional conduct. With regard to conduct that has both "the purpose of *x*" and "the effect of *x*," the Government need only prove that the conduct at issue has "the purpose of *x*" in order to prevail. In the specific context of §5, where the covered jurisdiction has the burden of persuasion, the Government need only refute the covered jurisdiction's *prima facie* showing that a proposed voting change does not have a retrogressive purpose in order for preclearance to be denied. When it can do so, it is spared the necessity of countering the jurisdiction's evidence regarding actual retrogressive effect– which, in vote-dilution cases, is often a complex undertaking. This advantage, plus the ability to reach malevolent incompetence, may not represent a massive addition to the effect prong, but it is enough to justify the separate existence of the purpose prong in this statute, and is no less than what justifies the separate existence of such a provision in many other laws.[1]

At bottom, appellants' disagreement with our reading of §5 rests not upon textual analysis, but upon their opposition to our holding in *Beer*. Although they do not explicitly

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[1] JUSTICE SOUTER criticizes us for "assum[ing] that purpose is easier to prove than effect . . . in voting rights cases." *Post*, at 19, n. 10 (opinion dissenting in part). As is obvious from our discussion in text, we do not suggest that purpose is *always* easier to prove, but simply that it may *sometimes* be (which suffices to give force to the "purpose" prong without the necessity of doing violence to the English language). Indeed, JUSTICE SOUTER acknowledges that "intent to dilute is conceptually simple, whereas a dilutive abridgment-in-fact is not readily defined and identified independently of dilutive intent." *Post*, at 28.

contend that *Beer* should be overruled, they all but do so by arguing that it would be "untenable" to conclude (as we did in *Beer*) that the phrase "abridging the right to vote on account of race or color" refers only to retrogression in §5, Reply Brief for Federal Appellant on Reargument 1, in light of the fact that virtually identical language elsewhere in the Voting Rights Act– and indeed, in the Fifteenth Amendment– has never been read to refer only to retrogression. See §2(a) of the Voting Rights Act, 42 U. S. C. §1973(a) ("No voting [practice] shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . ."); U. S. Const., Amdt. 15, §1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude").[2] The

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[2] Appellants also cite §3(c) of the Voting Rights Act, which provides, with regard to a court that has found a violation of the right to vote guaranteed by the Fourteenth or Fifteenth Amendment, that "the court . . . shall retain jurisdiction for such period as it may deem appropriate and during such period no voting [practice] different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court ? nds that such [practice] does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . . ." 42 U. S. C. §1973a(c). This provision does not assist appellants' case because it is not at all clear that it confers the power to deny approval to nonretrogressive redistricting. That is to say, it may well contemplate that, once a court has struck down an unconstitutional practice and granted relief with regard to that practice, it may assume for that jurisdiction a function identical to that of the District Court for the District of Columbia in §5 preclearance proceedings. This is suggested by the fact that the State may avoid the court's jurisdiction in this regard by obtaining preclearance from the Attorney General; and that §3(c), like §5, explicitly leaves open the possibility that a proposed change approved by the court can be challenged as unconstitutional in a "subsequent action." *Ibid.* We of course intimate no holding on this point, but limit our conclusion to the

term "abridge," however– whose core meaning is "shorten," see Webster's New International Dictionary 7 (2d ed. 1950); American Heritage Dictionary 6 (3d ed. 1992)– necessarily entails a comparison. It makes no sense to suggest that a voting practice "abridges" the right to vote without some baseline with which to compare the practice. In §5 preclearance proceedings– which uniquely deal only and specifically with *changes* in voting procedures– the baseline is the status quo that is proposed to be changed: If the change "abridges the right to vote" relative to the status quo, preclearance is denied, and the status quo (however discriminatory *it* may be) remains in effect. In §2 or Fifteenth Amendment proceedings, by contrast, which involve not only changes but (much more commonly) the status quo itself, the comparison must be made with an hypothetical alternative: If the *status quo* "results in [an] abridgement of the right to vote" or "abridge[s] [the right to vote]" relative to what the right to vote *ought to be*, the status quo itself must be changed. Our reading of "abridging" as referring only to retrogression in §5, but to discrimination more generally in §2 and the Fifteenth Amendment, is faithful to the differing contexts in which the term is used.[3]

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nonprobative character of §3(c) with regard to the issue in the present cases.

[3] Even if §5 did not have a different baseline than the Fifteenth Amendment, appellants' argument that §5 should be read in parallel with the Fifteenth Amendment would fail for the simple reason that we have never held that vote dilution violates the Fifteenth Amendment. See *Voinovich* v. *Quilter*, 507 U. S. 146, 159 (1993) (citing *Beer* v. *United States*, 425 U. S. 130, 142–143, n. 14 (1976)). Indeed, contrary to JUSTICE SOUTER'S assertion, *post*, at 20, n. 11 (opinion dissenting in part), we have never even "suggested" as much. *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960), involved a proposal to redraw the boundaries of Tuskegee, Alabama, so as to exclude all but 4 or 5 of its 400 black voters without excluding a single white voter. See *id*., at 341. Our

In another argument that applies equally to our holding in *Beer*, appellants object that our reading of §5 would require the District Court or Attorney General to preclear proposed voting changes with a discriminatory effect or purpose, or even with both. That strikes appellants as an inconceivable prospect only because they refuse to accept the limited meaning that we have said preclearance has in the vote-dilution context. It does *not* represent approval of the voting change; it is nothing more than a determination that the voting change is no more dilutive than what it replaces, and therefore cannot be stopped in advance under the extraordinary burden-shifting procedures of §5, but must be attacked through the normal means of a §2 action. As we have repeatedly noted, in vote-dilution cases §5 prevents nothing but backsliding, and preclearance under §5 affirms nothing but the absence of backsliding. *Bossier Parish I*, 520 U. S., at 478; *Miller* v. *Johnson*, 515 U. S. 900, 926 (1995); *Beer*, 425 U. S., at 141.[4]

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conclusion that the proposal would deny black voters the right to vote in municipal elections, and therefore violated the Fifteenth Amendment, had nothing to do with racial vote-dilution, a concept that does not appear in our voting-rights opinions until nine years later. See *Allen* v. *State Bd. of Elections*, 393 U. S. 544, 569 (1969). As for the other case relied upon by JUSTICE SOUTER, the plurality opinion in *Mobile* v. *Bolden*, 446 U. S. 55 (1980), not only does that not suggest that the Fifteenth Amendment covers vote dilution, it suggests the opposite, rejecting the appellees' vote-dilution claim in the following terms: "The answer to the appellees' argument is that . . . their freedom to vote has not been denied or abridged by anyone. The Fifteenth Amendment does not entail the right to have Negro candidates elected . . . . Having found that Negroes in Mobile 'register and vote without hindrance,' the District Court and Court of Appeals were in error in believing that the appellants invaded the protection of that Amendment in the present case." *Id*., at 65; see also *id*., at 84, n. 3 (STEVENS, J., concurring in judgment) (characterizing plurality opinion as concluding that "the Fifteenth Amendment applies only to practices that directly affect access to the ballot").

[4]In search of support for the argument that §5 prevents not just

This explains why the sole consequence of failing to obtain preclearance is continuation of the status quo. To deny preclearance to a plan that is *not* retrogressive– *no matter how unconstitutional it may be*– would risk leaving in effect a status quo that is even worse. For example, in the case of a voting change with a discriminatory but nonretrogressive purpose and a discriminatory but ameliorative effect, the result of denying preclearance would be to preserve a status quo with more discriminatory effect than the proposed change.

In sum, by suggesting that §5 extends to discriminatory but nonretrogressive vote-dilutive purposes, appellants ask us to do what we declined to do in *Bossier Parish I*: to blur the distinction between §2 and §5 by "shift[ing] the focus of §5 from nonretrogression to vote dilution, and . . . chang[ing] the §5 benchmark from a jurisdiction's existing plan to a hypothetical, undiluted plan." 520 U. S., at 480. Such a reading would also exacerbate the "substantial" federalism costs that the preclearance procedure already exacts, *Lopez* v. *Monterey County*, 525 U. S. 266, 282 (1999), perhaps to the extent of raising concerns about §5's constitutionality, see *Miller*, *supra*, at 926–927. Most importantly, however, in light of our holding in *Beer*, appel-

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backsliding on vote dilution but all forms of vote dilution, JUSTICE SOUTER embarks upon a lengthy expedition into legislative history. *Post*, at 23–27 (opinion dissenting in part). He returns empty-handed, since he can point to nothing suggesting that the Congress thought §5 covered both retrogressive and nonretrogressive *dilution*. Indeed, it is doubtful whether the Congress that passed the 1965 Voting Rights Act even had the practice of racial vote-dilution in mind. As JUSTICE SOUTER acknowledges, this Court did not address the concept until 1969, see *post*, at 25, n. 13, and the legislative history of the 1969 extension of the Act, quoted by JUSTICE SOUTER, see *post*, at 25, refers to at-large elections and consolidation of counties as "new, unlawful ways to diminish the Negroes' franchise" developed since passage of the Act. H. R. Rep. No. 91–397, pp. 6–7 (1969).

lants' reading finds no support in the language of §5.[5]

IV

Notwithstanding the fact that *Bossier Parish I* explicitly "le[ft] open for another day" the question whether §5 extends to discriminatory but nonretrogressive intent, see 520 U. S., at 486, appellants contend that two of this Court's prior decisions have already reached the conclusion that it does. First, appellants note that, in *Beer*, this Court stated that "an ameliorative new legislative apportionment cannot violate §5 unless the apportionment itself so discriminates on the basis of race or color as to violate the Constitution." 425 U. S., at 141. Appellants contend that this suggests that, at least in some cases in which the covered jurisdiction acts with a discriminatory but nonretrogressive dilutive purpose, the covered jurisdiction should be denied preclearance because it is acting unconstitutionally.

We think that a most implausible interpretation. At the time *Beer* was decided, it had not been established that discriminatory purpose as well as discriminatory effect

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[5] JUSTICE SOUTER asserts that "[t]he Justice Department's longstanding practice of refusing to preclear changes that it determined to have an unconstitutionally discriminatory purpose, both before and after *Beer*," is entitled to deference. *Post*, at 29 (opinion concurring in part and dissenting in part); accord, *post*, at 1 (STEVENS, J., dissenting). But of course before *Beer* the Justice Department took the position that even the *effects* prong was not limited, in redistricting cases, to retrogression. Indeed, that position had been the basis for its denial of preclearance in *Beer*, see 425 U. S., at 136, and was argued in its brief before us as the basis for sustaining the District Court's denial, see Brief for United States in *Beer* v. *United States*, O. T. 1975, No. 73–1869, pp. 17–18. We rejected that position as to the effects prong, and there is even more reason to reject it in the present case, whose outcome depends as much upon the implication of one of our prior cases (as to which we owe the Department no deference) as upon a raw interpretation of the statute.

was necessary for a constitutional violation, compare *White* v. *Regester*, 412 U. S. 755, 765–766 (1973), with *Washington* v. *Davis*, 426 U. S. 229, 238–245 (1976). If the statement in *Beer* had meant what appellants suggest, it would either have been anticipating (without argument) that later holding, or else would have been gutting *Beer*'s holding (since a showing of discriminatory but nonretrogressive effect *would* have been a constitutional violation and *would*, despite the holding of *Beer*, have sufficed to deny preclearance). A much more plausible explanation of the statement is that it referred to a constitutional violation *other than* vote dilution– and, more specifically, a violation consisting of a "denial" of the right to vote, rather than an "abridgement." Although in the context of denial claims, no less than in the context of abridgement claims, the antibacksliding rationale for §5 (and its effect of avoiding preservation of an even worse status quo) suggests that retrogression should again be the criterion, arguably in that context the word "deny" (unlike the word "abridge") does not import a comparison with the status quo.[6]

In any event, it is entirely clear that the statement in *Beer* was pure dictum: The Government had made no con-

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[6] JUSTICE BREYER suggests that "[i]t seems obvious . . . that if Mississippi had enacted its 'moral character' requirement in 1966 (after enactment of the Voting Rights Act), a court applying §5 would have found 'the purpose . . . of denying or abridging the right to vote on account of race,' even if Mississippi had intended to permit, say, 0.4%, rather than 0.3%, of the black voting age population of Forrest County to register." *Post*, at 3–4 (dissenting opinion). As we note above, however, our holding today does not extend to violations consisting of an outright "denial" of an individual's right to vote, as opposed to an "abridgement" as in dilution cases. In any event, if Mississippi had attempted to enact a "moral character" requirement in 1966, it would have been precluded from doing so under §4, which bars certain types of voting tests and devices altogether, and the issue of §5 preclearance would therefore never have arisen. See 42 U. S. C. §§1973b(a)(1), (c).

tention that the proposed reapportionment at issue was unconstitutional. *Beer*, *supra*, at 142, n. 14. And though we have quoted the dictum in subsequent cases, we have never actually applied it to deny preclearance. See *Bossier Parish I*, *supra*, at 481; *Shaw* v. *Hunt*, 517 U. S. 899, 912 (1996) *(Shaw II)*; *Miller*, *supra*, at 924. We have made clear, on the other hand, what we reaffirm today: that proceedings to preclear apportionment schemes and proceedings to consider the constitutionality of apportionment schemes are entirely distinct.

> "Although the Court concluded that the redistricting scheme at issue in *Beer* was nonretrogressive, it did not hold that the plan, for that reason, was immune from constitutional challenge. . . . Indeed, the Voting Rights Act and our case law make clear that a reapportionment plan *that satisfies §5* still may be enjoined as unconstitutional." *Shaw* v. *Reno*, 509 U. S. 630, 654 (1993) *(Shaw I)* (emphasis added).

See also *City of Lockhart* v. *United States*, 460 U. S. 125, 134 (1983) (describing the holding of *Beer* as follows: "Although the new plan may have remained discriminatory, it nevertheless was not a regressive change. . . . Since the new plan did not increase the degree of discrimination against blacks, it was entitled to §5 preclearance"); *Allen* v. *State Bd. of Elections*, 393 U. S. 544, 549–550 (1969) ("Once the State has successfully complied with the §5 approval requirements, private parties may enjoin the enforcement of the new enactment only in traditional suits attacking its constitutionality . . ."). As we noted in *Shaw I*, §5 explicitly states that neither administrative nor judicial preclearance "'shall bar a subsequent action to enjoin enforcement' of [a change in voting practice]." 509 U. S., at 654 (quoting 42 U. S. C. §1973c). That fully available remedy leaves us untroubled by the possibility that §5 could produce preclearance of an unconstitution-

ally dilutive redistricting plan.

Second, appellants contend that we denied preclearance on the basis of a discriminatory but nonretrogressive purpose in *Pleasant Grove* v. *United States*, 479 U. S. 462 (1987). That case involved an unusual fact pattern. The city of Pleasant Grove, Alabama– which, at the time of the District Court's decision, had 32 black inhabitants, none of whom was registered to vote and of whose existence city officials appear to have been unaware, *id*., at 465, n. 2– sought to annex two parcels of land, one inhabited by a few whites, and the other vacant but likely to be inhabited by whites in the near future. We upheld the District Court's conclusion that the city acted with a discriminatory purpose in annexing the land, rejecting the city's contention that it could not have done so because it was unaware of the existence of any black voters against whom it could have intended to discriminate:

> "[The city's] argument is based on the incorrect assumption that an impermissible purpose under §5 can relate only to present circumstances. Section 5 looks not only to the present effects of changes, but to their future effects as well . . . . Likewise, an impermissible purpose under §5 may relate to anticipated as well as present circumstances.
>
> "It is quite plausible to see [the annexation] as motivated, in part, by the impermissible purpose of minimizing future black voting strength. . . . This is just as impermissible a purpose as the dilution of present black voting strength." *Id*., at 471–472 (citation and footnote omitted).

Appellants assert that we must have viewed the city's purpose as discriminatory but nonretrogressive because, as the city noted in contending that it lacked even a discriminatory purpose, the city could not have been acting to worsen the voting strength of any present black residents,

since there were no black voters at the time. However, as the above quoted passage suggests, we did not hold that the purpose prong of §5 extends beyond retrogression, but rather held that a jurisdiction with no minority voters can have a retrogressive purpose, at the present time, by intending to worsen the voting strength of *future* minority voters. Put another way, our holding in *Pleasant Grove* had nothing to do with the question whether, to justify the denial of preclearance on the basis of the purpose prong, the purpose must be retrogressive; instead, it involved the question whether the purpose must be to achieve retrogression at once or could include, in the case of a jurisdiction with no present minority voters, retrogression with regard to operation of the proposed plan (as compared with operation of the *status quo*) against new minority voters in the future. Like the dictum from *Beer*, therefore, *Pleasant Grove* is simply inapposite here.

* * *

In light of the language of §5 and our prior holding in *Beer*, we hold that §5 does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. Accordingly, the judgment of the District Court is affirmed.

It is so ordered.