

nary review to programs that expressly used race as the primary consideration for awarding a public benefit.<sup>1730</sup>

In *United Jewish Organizations v. Carey*,<sup>1731</sup> New York State had drawn a plan that consciously used racial criteria to create districts with nonwhite populations in order to comply with the Voting Rights Act and to obtain the United States Attorney General's approval for a redistricting law. These districts were drawn large enough to permit the election of nonwhite candidates in spite of the lower voting turnout of nonwhites. In the process a Hasidic Jewish community previously located entirely within one senate and one assembly district was divided between two senate and two assembly districts, and members of that community sued, alleging that the value of their votes had been diluted solely for the purpose of achieving a racial quota. The Supreme Court approved the districting, although the fragmented majority of seven concurred in no majority opinion.

Justice White, delivering the judgment of the Court, based the result on alternative grounds. First, because the redistricting took place pursuant to the administration of the Voting Rights Act, Justice White argued that compliance with the Act necessarily required states to be race conscious in the drawing of lines so as not to dilute minority voting strength. Justice White noted that this requirement was not dependent upon a showing of past discrimination and that the states retained discretion to determine just what strength minority voters needed in electoral districts in order to assure their proportional representation. Moreover, the creation of the certain number of districts in which minorities were in the majority was reasonable under the circumstances.<sup>1732</sup>

Second, Justice White wrote that, irrespective of what the Voting Rights Act may have required, what the state had done did not violate either the Fourteenth or the Fifteenth Amendment. This was so because the plan, even though it used race in a purposeful manner, represented no racial slur or stigma with respect to whites or any other race; the plan did not operate to minimize or unfairly cancel out white voting strength, because as a class whites would

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<sup>1730</sup> The constitutionality of a law school admissions program in which minority applicants were preferred for a number of positions was before the Court in *DeFunis v. Odegaard*, 416 U.S. 312 (1974), but the Court did not reach the merits.

<sup>1731</sup> 430 U.S. 144 (1977). Chief Justice Burger dissented, *id.* at 180, and Justice Marshall did not participate.

<sup>1732</sup> 430 U.S. at 155–65. Joining this part of the opinion were Justices Brennan, Blackmun, and Stevens.