

SUMMARY OF ARGUMENT

This case involves the appeal of a three judge district court's order that is totally at odds with Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Section 5 requires that, with respect to covered jurisdictions, the Attorney General or the United States District Court for the District of Columbia preclear any changes affecting voting prior to their implementation. *Id.* Amici curiae fully agree with appellants that the three judge district court (the "district court") radically subverted Section 5's mandate when it dissolved an injunction that had prohibited Monterey County, a covered jurisdiction, from implementing an unprecleared, at-large voting plan for the election of municipal judges in the County. See *Clark v. Roemer*, 500 U.S. 64b, 652-54 (1991) (requiring that courts enjoin the implementation of covered, unprecleared voting changes absent "extreme" circumstances). The district court's error was compounded by the fact that, prior to its order, Monterey County had sought to obtain preclearance for the plan from the District Court of the District of Columbia but abandoned that effort, stipulating that it was "unable to establish that [the at-large plan]. . . did not have the effect of denying the right to vote to Latinos in Monterey County due to [its] retrogressive effect. . . ." (J.A.126) The district court thus sanctioned the use not only of an unprecleared election plan but one for which Monterey County had stipulated it could not obtain preclearance.

We understand that appellants will fully address the district court's error in dissolving its injunction against Monterey County's implementation of the unprecleared plan and its violation of the standards set forth in *Clark v. Roemer*, *supra*. This brief of amici curiae focuses on another egregious error: the district court's unwarranted refusal to extend an interim plan, already in place, that includes two majority-Latino districts and remedies the County's violation of the Voting Rights Act.

The district court failed to meet its remedial obligation because of its fundamental misreading of this Court's decision in *Miller v. Johnson*, 115 S. Ct. 2475 (1995). The district court read *Miller* to constrain a court's authority to remedy a Section 5 violation by implementing any plan that includes majority-minority districts, if race was a "significant factor" in the plan. As a result, the district court departed from well-settled federal law requiring that court-ordered plans be district-based and abdicated its obligation to devise an interim plan that would not cause the retrogression of Latino voting strength. Instead, the district court sanctioned the implementation of the unprecleared at-large plan that the County acknowledged it could not show to be non-retrogressive. (Motion to Dismiss or Affirm of Intervenor Stephen A. Sillman ("Sillman Motion") App. 4a; see J.A. 126)

Nothing in *Miller* justifies this perverse result. Race, of course, will be a "significant factor" in any plan designed to remedy a violation of Section 5 and to assure adequate protection of a minority group's voting rights. *Miller* held only that a districting plan based "predominantly" on race was subject to strict scrutiny, and even then, that it would be lawful if narrowly tailored to meet a compelling state interest. Moreover, under *Miller*, race will not be deemed the predominant purpose behind a plan absent proof that the plan disregards traditional redistricting principles. In refusing to extend the interim plan, the district court did not attempt to make findings on any of these matters. Indeed, even its conclusion that race was a "significant factor" in the design of the plan was reached without holding any evidentiary hearing.

These circumstances require reversal of the district court and make it imperative that this Court clarify that *Miller* is not an obstacle to a lower court's obligation, where it has found a violation of the Voting Rights Act, to implement a properly drawn, district-based remedial plan that protects minority voting rights.

Finally, the district court erroneously believed that a federal court was forbidden from fashioning an appropriate district-based remedial plan if it involved any departure from state law. This Court should re-affirm its decision in *Conner v. Finch*, 431 U.S. 407 (1977), that, while a court should be aware of and attempt to comply with state law and policies to the extent possible in crafting a remedial plan, state law cannot be an absolute barrier to the effective enforcement of the Voting Rights Act.