YMCA New Mexico
Youth & Government
2025 Judicial Court Case Documents

APPEALS COURT OVERVIEW

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2. *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008)
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2025 New Mexico YMCA Youth & Government Judicial Case File

I. Introduction to New Mexico Voting Rights Committee v Horanburg

Below is the 2025 Judicial Problem. You will find the facts of the case, a procedural history, the issues on appeal, and attached case law. This is a closed universe, which means that you should only reference the cases provided to you for your brief and in your arguments.

II. Relevant Background

The Voting Rights Act (VRA) was signed into law on August 6, 1965, by President Lyndon Johnson. It outlawed racial discrimination in voting practices. The Act contains numerous provisions that regulate elections. The Act's "general provisions" provide nationwide protections for voting rights. Section 2 is a general provision that prohibits state and local government from imposing any voting rule that "results in the denial or abridgment of the right of any citizen to vote on account of race or color" or membership in a language minority group.

III. Facts

The present dispute concerns two features of New Mexico's voting law, generally making it relatively easy for residents to vote. The regulations at issue in this suit govern early mail-in voting and precinct-based election-day voting.

By law, all New Mexicans may vote by mail for 27 days before an election using an "early ballot." No special excuse is needed, and any voter may ask to be sent an early ballot automatically in future elections. In addition, during the 27 days before an election, New Mexicans may vote in person at an early voting location in each county.

Voters may also vote in person on election day. Each county is free to conduct election-day voting either by using the traditional precinct model or by setting up "voting centers." Voting centers are equipped to provide all voters in a county with the appropriate ballot for the precinct in which they are registered, and this allows voters in the county to use whichever vote center they prefer. Voters who choose to vote in person on election day in a county that uses the precinct system must vote in their assigned precincts. If a voter goes to the wrong polling place, poll workers are trained to direct the voter to the right location.

If a voter finds that his or her name does not appear on the register at what the voter believes is the right precinct, the voter ordinarily may cast a provisional ballot. That ballot is later counted if the voter's address is determined to be within the precinct. But if it turns out that the voter cast a ballot at the wrong precinct, that vote is not counted.

For those who choose to vote early by mail, New Mexico has long required that "[o]nly the elector may be in possession of that elector's unvoted early ballot." In fact, the state legislature enacted House Bill 2023 (HB 2023), which makes it a crime for any person other than a postal worker, an elections official, or a voter's caregiver, family member, or household member to knowingly collect an early ballot—either before or after it has been completed.

IV. Procedural History

Believing that New Mexico's early mail-in voting and precinct-based election-day voting regulations violated voting rights, the New Mexico Voting Rights Committee brought this suit against New Mexico's Secretary of State Horanburg in his official capacities. Among other things, the plaintiffs claimed that both the State's refusal to count ballots cast in the wrong precinct and its ballot-collection restriction "adversely and disparately affect New Mexico's American Indian, Hispanic, and African American citizens," in violation of §2 of the Voting Rights Act. In addition, they alleged that the ballot-collection restriction was "enacted with discriminatory intent" and thus violated both §2 of the VRA and the Fifteenth Amendment.

The District Court rejected the plaintiff's claims and made several findings:
The court first found that the out-of-precinct policy "has no meaning-fully disparate impact on the opportunities of minority voters to elect" representatives of their choice. The percentage of ballots invalidated under this policy was very small and decreasing. While the percentages were slightly higher for members of minority groups, the court found that this disparity "does not result in minorities having unequal access to the political process."

The court also found that the plaintiffs had not proved that the policy "causes minorities to show up to vote at the wrong precinct at rates higher than their non-minority counterparts," and the court noted that the plaintiffs had not even challenged "the manner in which New Mexico counties allocate and assign polling places or New Mexico's requirement that voters re-register to vote when they move."

The District Court also found that the ballot collection restriction is unlikely to "cause a meaningful inequality in the electoral opportunities of minorities." Instead, the court noted, the restriction applies equally to all voters and "does not impose burdens beyond those traditionally associated with voting." The court observed that the plaintiffs had presented no records showing how many voters had previously relied on now-prohibited third-party ballot collectors and that the plaintiffs also had "provided no quantitative or statistical evidence" of the percentage of minority and non-minority voters in this group. "[T]he vast majority" of early voters, the court found, "do not return their ballots with the assistance of a [now-prohibited] third-party collector," and the evidence primarily showed that those who had used such collectors in the past "ha[d] done so out of convenience or personal preference, or because of circumstances that New Mexico law adequately accommodates in other ways."

In addition, the court noted that none of the individual voters called by the plaintiffs had even claimed that the ballot collection restriction "would make it significantly more difficult to vote."

Finally, the court found that the ballot-collection law had not been enacted with discriminatory intent. "[T]he majority of H.B. 2023's proponents," the court found, "were sincere in their belief that ballot collection increased the risk of early voting fraud, and that H.B. 2023 was a necessary prophylactic measure to bring early mail ballot security in line with in-person voting." The court added that "some individual legislators and proponents were motivated in part by partisan interests." But it distinguished between partisan and racial motives while recognizing that "racially polarized voting can sometimes blur the lines."

Voting Rights of NM appealed the decision of the District Court. The Court of Appeals reversed.

The Court of Appeals first concluded that both the out-of-precinct policy and the ballot-collection restriction imposed disparate burdens on minority voters because such voters were more likely to be adversely affected by those rules.

Then, based on an assessment of the vote-dilution factors used in Gingles, the Court of Appeals found that these disparate burdens were "in part caused by or linked to 'social and historical conditions'" that produce inequality. Among other things, the court relied on racial discrimination dating back to New Mexico's territorial days, current socioeconomic disparities, racially polarized voting, and racial campaign appeals.

The majority held that the District Court had committed a clear error in finding that the ballot collection was not enacted with discriminatory intent. The Court of Appeals did not claim that a majority of legislators had voted for the law for a discriminatory purpose, but the court held that these lawmakers "were used as 'cat's paws'" by others. A "cat's paw" is a "dupe" that is "used by another to accomplish his purposes."

Secretary of State Horanburg appealed and the New Mexico Supreme Court granted cert.

V. Issues on Appeal

1. Whether the early mail-in voting policy violates §2 of the VRA.
2. Whether the precinct-based election day voting policy violates §2 of the VRA.

VI. Case Law

1. Thornburg v. Gingles, 478 U.S. 30 (1986)
2. Crawford v. Marion County Election Bd., 553 U.S. 181 (2008)
3. Shelby County v. Holder, 570 U.S. 529 (2013)
4. Johnson v. Degrandy, 512 U.S. 997 (1994)
5. Section 2 of the VRA

Thornburg v. Gingles, 478 U.S. 30 (1986)

I. BACKGROUND

In April, 1982, the North Carolina General Assembly enacted a legislative redistricting plan for the State's Senate and House of Representatives. Appellees, black citizens of North Carolina who are registered to vote, challenged seven districts, one single-member and six multimember districts, alleging that the redistricting scheme impaired black citizens' ability to elect representatives of their choice in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and of § 2 of the Voting Rights Act.

After appellees brought suit, but before trial, Congress amended § 2. The amendment was largely a response to this Court's plurality opinion in *Mobile v. Bolden,* 446 U. S. 55 (1980), which had declared that, in order to establish a violation either of § 2 or of the Fourteenth or Fifteenth Amendments, minority voters must prove that a contested electoral mechanism was intentionally adopted or maintained by state officials for a discriminatory purpose. Congress substantially revised § 2 to make clear that a violation could be proved by showing discriminatory effect alone, and to establish as the relevant legal standard the "results test," applied by this Court in *White v. Regester,* 412 U. S. 755 (1973), and by other federal courts before *Bolden.* Section 2, *as amended,* 96 Stat. 134, reads as follows:

> "(a) No voting qualification or prerequisite to voting or standard, practice, or procedure 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, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b)."
>
> "(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."
>
> *Codified at* 42 U.S.C. § 1973.

The Senate Judiciary Committee majority Report accompanying the bill that amended § 2 elaborates on the circumstances that might be probative of a § 2 violation, noting the following "typical factors":

> "1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;"

"2. the extent to which voting in the elections of the state or political subdivision is racially polarized;"

"3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;"

"4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;"

"5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;"

"6. whether political campaigns have been characterized by overt or subtle racial appeals;"

"7. the extent to which members of the minority group have been elected to public office in the jurisdiction."

"Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:"

"whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group."

"whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous."

The District Court applied the "totality of the circumstances" test set forth in § 2(b) to appellees' statutory claim, and, relying principally on the factors outlined in the Senate Report, held that the redistricting scheme violated § 2 because it resulted in the dilution of black citizens' votes in all seven disputed districts. In light of this conclusion, the court did not reach appellees' constitutional claims.

Preliminarily, the court found that black citizens constituted a distinct population and registered-voter minority in each challenged district. The court noted that, at the time the multimember districts were created, there were concentrations of black citizens within the boundaries of each that were sufficiently large and contiguous to constitute effective voting majorities in single-member districts lying wholly within the boundaries of the multimember districts. With respect to the challenged single-member district, Senate District No. 2, the court also found that there existed a concentration of black citizens within its boundaries and within those of adjoining Senate District No. 6 that was sufficient in numbers and in contiguity to constitute an effective voting majority in a single-member district. The District Court then proceeded to find that the following circumstances combined with the multimember districting scheme to result in the dilution of black citizens' votes.

First, the court found that North Carolina had officially discriminated against its black citizens with respect to their exercise of the voting franchise from approximately 1900 to 1970 by employing, at different times, a poll tax, a literacy test, a prohibition against bullet (single-shot) voting, and designated seat plans for multimember districts. The court observed that, even after the removal of direct barriers to black voter registration such as the poll tax and literacy test, black voter registration remained relatively depressed; in 1982, only 52.7% of age-qualified blacks statewide were registered to vote, whereas 66.7% of whites were registered. The District Court found these statewide depressed levels of black voter registration to be present in all of the disputed districts, and to be traceable, at least in part, to the historical pattern of statewide official discrimination.

Second, the court found that historic discrimination in education, housing, employment, and health services had resulted in a lower socioeconomic status for North Carolina blacks as a group than for whites. The court concluded that this lower status both gives rise to special group interests and hinders blacks' ability to participate effectively in the political process and to elect representatives of their choice.

Third, the court considered other voting procedures that may operate to lessen the opportunity of black voters to elect candidates of their choice. It noted that North Carolina has a majority vote requirement for primary elections, and, while acknowledging that no black candidate for election to the State General Assembly had failed to win solely because of this requirement, the court concluded that it nonetheless presents a continuing practical impediment to the opportunity of black voting minorities to elect candidates of their choice. The court also remarked on the fact that North Carolina does not have a subdistrict residency requirement for members of the General Assembly elected from multimember districts, a requirement which the court found could offset to some extent the disadvantages minority voters often experience in multimember districts.

Fourth, the court found that white candidates in North Carolina have encouraged voting along color lines by appealing to racial prejudice. It noted that the record is replete with specific examples of racial appeals, ranging in style from overt and blatant to subtle and furtive, and in date from the 1890's to the 1984 campaign for a seat in the United States Senate. The court determined that the use of racial appeals in political campaigns in North Carolina persists to the present day, and that its current effect is to lessen to some degree the opportunity of black citizens to participate effectively in the political processes and to elect candidates of their choice.

Fifth, the court examined the extent to which blacks have been elected to office in North Carolina, both statewide and in the challenged districts. It found, among other things, that, prior to World War II, only one black had been elected to public office in this century. While recognizing that "it has now become possible for black citizens to be elected to office at all levels of state government in North Carolina," the court found that, in comparison to white candidates running for the same office, black candidates are at a disadvantage in terms of relative probability of success. It also found that the overall rate of black electoral success has been minimal in relation to the percentage of blacks in the total state population. For example, the court noted, from 1971 to 1982, there were, at any given time, only two-to-four blacks in the

120-member House of Representatives -- that is, only 1.6% to 3.3% of House members were black. From 1975 to 1983, there were, at any one time, only one or two blacks in the 50-member State Senate -- that is, only 2% to 4% of State Senators were black. By contrast, at the time of the District Court's opinion, blacks constituted about 22.4% of the total state population.

With respect to the success in this century of black candidates in the contested districts, the court found that only one black had been elected to House District 36 -- after this lawsuit began. Similarly, only one black had served in the Senate from District 22, from 1975-1980. Before the 1982 election, a black was elected only twice to the House from District 39 (part of Forsyth County); in the 1982 contest, two blacks were elected. Since 1973, a black citizen had been elected each 2-year term to the House from District 23 (Durham County), but no black had been elected to the Senate from Durham County. In House District 21 (Wake County), a black had been elected twice to the House, and another black served two terms in the State Senate. No black had ever been elected to the House or Senate from the area covered by House District No. 8, and no black person had ever been elected to the Senate from the area covered by Senate District No. 2.

The court did acknowledge the improved success of black candidates in the 1982 elections, in which 11 blacks were elected to the State House of Representatives, including 5 blacks from the multimember districts at issue here. However, the court pointed out that the 1982 election was conducted after the commencement of this litigation. The court found the circumstances of the 1982 election sufficiently aberrational, and the success by black candidates too minimal and too recent in relation to the long history of complete denial of elective opportunities, to support the conclusion that black voters' opportunities to elect representatives of their choice were not impaired.

Finally, the court considered the extent to which voting in the challenged districts was racially polarized. Based on statistical evidence presented by expert witnesses, supplemented to some degree by the testimony of lay witnesses, the court found that all of the challenged districts exhibit severe and persistent racially polarized voting.

Based on these findings, the court declared the contested portions of the 1982 redistricting plan violative of § 2, and enjoined appellants from conducting elections pursuant to those portions of the plan. Appellants, the Attorney General of North Carolina and others, took a direct appeal to this Court, pursuant to 28 U.S.C. § 1253, with respect to five of the multimember districts -- House Districts 21, 23, 36, and 39, and Senate District 22. Appellants argue, first, that the District Court utilized a legally incorrect standard in determining whether the contested districts exhibit racial bloc voting to an extent that is cognizable under § 2. Second, they contend that the court used an incorrect definition of racially polarized voting, and thus erroneously relied on statistical evidence that was not probative of polarized voting. Third, they maintain that the court assigned the wrong weight to evidence of some black candidates' electoral success. Finally, they argue that the trial court erred in concluding that these multimember districts result in black citizens' having less opportunity than their white counterparts to participate in the political process and to elect representatives of their choice. We noted probable jurisdiction, 471 U.S.

1064 (1985), and now affirm with respect to all of the districts except House District 23. With regard to District 23, the judgment of the District Court is reversed.

II. SECTION 2 AND VOTE DILUTION THROUGH USE OF MULTIMEMBER DISTRICTS

An understanding both of § 2 and of the way in which multimember districts can operate to impair blacks' ability to elect representatives of their choice is prerequisite to an evaluation of appellants' contentions. First, then, we review amended § 2 and its legislative history in some detail. Second, we explain the theoretical basis for appellees' claim of vote dilution.

A. SECTION 2 AND ITS LEGISLATIVE HISTORY

Subsection 2(a) prohibits all States and political subdivisions from imposing any voting qualifications or prerequisites to voting, or any standards, practices, or procedures which result in the denial or abridgment of the right to vote of any citizen who is a member of a protected class of racial and language minorities. Subsection 2(b) establishes that § 2 has been violated where the "totality of circumstances" reveals that "the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."

While explaining that "[t]he extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered" in evaluating an alleged violation, § 2(b) cautions that "nothing in [§ 2] establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

The Senate Report which accompanied the 1982 amendments elaborates on the nature of § 2 violations, and on the proof required to establish these violations. First and foremost, the Report dispositively rejects the position of the plurality in *Mobile v. Bolden,* 446 U. S. 55 (1980), which required proof that the contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters. The intent test was repudiated for three principal reasons -- it is "unnecessarily divisive because it involves charges of racism on the part of individual officials or entire communities," it places an "inordinately difficult" burden of proof on plaintiffs, and it "asks the wrong question." The "right" question, as the Report emphasizes repeatedly, is whether, "as a result of the challenged practice or structure, plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice."

In order to answer this question, a court must assess the impact of the contested structure or practice on minority electoral opportunities "on the basis of objective factors." The Senate Report specifies factors which typically may be relevant to a § 2 claim: the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority

vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group, and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous, may have probative value. The Report stresses, however, that this list of typical factors is neither comprehensive nor exclusive. While the enumerated factors will often be pertinent to certain types of § 2 violations, particularly to vote dilution claims, other factors may also be relevant, and may be considered. Furthermore, the Senate Committee observed that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." Rather, the Committee determined that "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,'" and on a "functional" view of the political process.

Although the Senate Report espouses a flexible, fact-intensive test for § 2 violations, it limits the circumstances under which § 2 violations may be proved in three ways. First, electoral devices, such as at-large elections, may not be considered *per se* violative of § 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation, alone, does not establish a violation. Third, the results test does not assume the existence of racial bloc voting; plaintiffs must prove it.

B. VOTE DILUTION THROUGH THE USE OF MULTIMEMBER DISTRICTS

Appellees contend that the legislative decision to employ multimember, rather than single-member, districts in the contested jurisdictions dilutes their votes by submerging them in a white majority, thus impairing their ability to elect representatives of their choice.

The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives. This Court has long recognized that multimember districts and at-large voting schemes may "*operate to minimize or cancel out the voting strength of racial [minorities in] the voting population.'"*

The theoretical basis for this type of impairment is that, where minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters. Multimember districts and at-large election schemes, however, are not *per se* violative of minority voters' rights. Minority voters who contend that the multimember form of districting violates § 2 must prove that the use of a multimember electoral structure operates to minimize or cancel out their ability to elect their preferred candidates.

While many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice. Stated succinctly, a bloc voting majority must *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group.

These circumstances are necessary preconditions for multimember districts to operate to impair minority voters' ability to elect representatives of their choice for the following reasons. First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. If it is not, as would be the case in a substantially integrated district, the *multimember form* of the district cannot be responsible for minority voters' inability to elect its candidates.

Second, the minority group must be able to show that it is politically cohesive. If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests. Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it -- in the absence of special circumstances, such as the minority candidate running unopposed. In establishing this last circumstance, the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives.

Finally, we observe that the usual predictability of the majority's success distinguishes structural dilution from the mere loss of an occasional election.

III. RACIALLY POLARIZED VOTING

Having stated the general legal principles relevant to claims that § 2 has been violated through the use of multimember districts, we turn to the arguments of appellants and of the United States as *amicus curiae* addressing racially polarized voting. First, we describe the District Court's treatment of racially polarized voting. Next, we consider appellants' claim that the District Court used an incorrect legal standard to determine whether racial bloc voting in the contested districts was sufficiently severe to be cognizable as an element of a § 2 claim. Finally, we consider appellants' contention that the trial court employed an incorrect definition of racially polarized voting, and thus erroneously relied on statistical evidence that was not probative of racial bloc voting.

A. THE DISTRICT COURT'S TREATMENT OF RACIALLY POLARIZED VOTING

The investigation conducted by the District Court into the question of racial bloc voting credited some testimony of lay witnesses, but relied principally on statistical evidence presented by appellees' expert witnesses, in particular that offered by Dr. Bernard Grofman. Dr. Grofman collected and evaluated data from 53 General Assembly primary and general elections involving black candidacies. These elections were held over a period of three different election years in the six originally challenged multimember districts. Dr. Grofman subjected the data to two complementary methods of analysis -- extreme case analysis and bivariate ecological regression

analysis -- in order to determine whether blacks and whites in these districts differed in their voting behavior. These analytic techniques yielded data concerning the voting patterns of the two races, including estimates of the percentages of members of each race who voted for black candidates.

The court's initial consideration of these data took the form of a three-part inquiry: did the data reveal any correlation between the race of the voter and the selection of certain candidates; was the revealed correlation statistically significant; and was the difference in black and white voting patterns "substantively significant"? The District Court found that blacks and whites generally preferred different candidates and, on that basis, found voting in the districts to be racially correlated. The court accepted Dr. Grofman's expert opinion that the correlation between the race of the voter and the voter's choice of certain candidates was statistically significant. Finally, adopting Dr. Grofman's terminology, the court found that, in all but 2 of the 53 elections, the degree of racial bloc voting was "so marked as to be substantively significant, in the sense that the results of the individual election would have been different depending upon whether it had been held among only the white voters or only the black voters."

The court also reported its findings, both in tabulated numerical form and in written form, that a high percentage of black voters regularly supported black candidates and that most white voters were extremely reluctant to vote for black candidates. The court then considered the relevance to the existence of legally significant white bloc voting of the fact that black candidates have won some elections. It determined that, in most instances, special circumstances, such as incumbency and lack of opposition, rather than a diminution in usually severe white bloc voting, accounted for these candidates' success. The court also suggested that black voters' reliance on bullet voting was a significant factor in their successful efforts to elect candidates of their choice. Based on all of the evidence before it, the trial court concluded that each of the districts experienced racially polarized voting "in a persistent and severe degree."

B. THE DEGREE OF BLOC VOTING THAT IS LEGALLY SIGNIFICANT UNDER § 2

1. Appellants' Arguments

North Carolina and the United States argue that the test used by the District Court to determine whether voting patterns in the disputed districts are racially polarized to an extent cognizable under § 2 will lead to results that are inconsistent with congressional intent. North Carolina maintains that the court considered legally significant racially polarized voting to occur whenever "less than 50% of the white voters cast a ballot for the black candidate." Appellants also argue that racially polarized voting is legally significant only when it always results in the defeat of black candidates.

The United States, on the other hand, isolates a single line in the court's opinion and identifies it as the court's complete test. According to the United States, the District Court adopted a standard under which legally significant racial bloc voting is deemed to exist whenever

"'the results of the individual election would have been different depending upon whether it had been held among only the white voters or only the black voters in the election.'"

We read the District Court opinion differently.

2. The Standard for Legally Significant Racial Bloc Voting

The Senate Report states that the "extent to which voting in the elections of the state or political subdivision is racially polarized," S.Rep. at 29, is relevant to a vote dilution claim. Further, courts and commentators agree that racial bloc voting is a key element of a vote dilution claim. Because, as we explain below, the extent of bloc voting necessary to demonstrate that a minority's ability to elect its preferred representatives is impaired varies according to several factual circumstances, the degree of bloc voting which constitutes the threshold of legal significance will vary from district to district. Nonetheless, it is possible to state some general principles, and we proceed to do so.

The purpose of inquiring into the existence of racially polarized voting is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates. Thus, the question whether a given district experiences legally significant racially polarized voting requires discrete inquiries into minority and white voting practices. A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and, consequently, establishes minority bloc voting within the context of § 2. And, in general, a white bloc vote that normally will defeat the combined strength of minority support plus white "crossover" votes rises to the level of legally significant white bloc voting. The amount of white bloc voting that can generally "minimize or cancel," voters' ability to elect representatives of their choice, however, will vary from district to district according to a number of factors, including the nature of the allegedly dilutive electoral mechanism; the presence or absence of other potentially dilutive electoral devices, such as majority vote requirements, designated posts, and prohibitions against bullet voting; the percentage of registered voters in the district who are members of the minority group; the size of the district; and, in multimember districts, the number of seats open and the number of candidates in the field.

Because loss of political power through vote dilution is distinct from the mere inability to win a particular election, a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election. Also for this reason, in a district where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting. Furthermore, the success of a minority candidate in a particular election does not necessarily prove that the district did not experience polarized voting in that election; special circumstances, such as the absence of an opponent, incumbency, or the utilization of bullet voting, may explain minority electoral success in a polarized contest.

As must be apparent, the degree of racial bloc voting that is cognizable as an element of a § 2 vote dilution claim will vary according to a variety of factual circumstances. Consequently, there is no simple doctrinal test for the existence of legally significant racial bloc voting. However, the

foregoing general principles should provide courts with substantial guidance in determining whether evidence that black and white voters generally prefer different candidates rises to the level of legal significance under § 2.

3. Standard Utilized by the District Court

The District Court clearly did not employ the simplistic standard identified by North Carolina -- legally significant bloc voting occurs whenever less than 50% of the white voters cast a ballot for the black candidate. And, although the District Court did utilize the measure of "substantive significance" that the United States ascribes to it -- "'the results of the individual election would have been different depending on whether it had been held among only the white voters or only -- the court did not reach its ultimate conclusion that the degree of racial bloc voting present in each district is legally significant through mechanical reliance on this standard. While the court did not phrase the standard for legally significant racial bloc voting exactly as we do, a fair reading of the court's opinion reveals that the court's analysis conforms to our view of the proper legal standard.

The District Court's findings concerning black support for black candidates in the five multimember districts at issue here clearly establish the political cohesiveness of black voters. As is apparent from the District Court's tabulated findings, reproduced in black voters' support for black candidates was overwhelming in almost every election. In all but 5 of 16 primary elections, black support for black candidates ranged between 71% and 92%; and in the general elections, black support for black Democratic candidates ranged between 87% and 96%.

In sharp contrast to its findings of strong black support for black candidates, the District Court found that a substantial majority of white voters would rarely, if ever, vote for a black candidate. In the primary elections, white support for black candidates ranged between 8% and 50%, and in the general elections it ranged between 28% and 49%. The court also determined that, on average, 81.7% of white voters did not vote for any black candidate in the primary elections. In the general elections, white voters almost always ranked black candidates either last or next to last in the multicandidate field, except in heavily Democratic areas where white voters consistently ranked black candidates last among the Democrats, if not last or next to last among all candidates. The court further observed that approximately two-thirds of white voters did not vote for black candidates in general elections, even after the candidate had won the Democratic primary and the choice was to vote for a Republican or for no one.

While the District Court did not state expressly that the percentage of whites who refused to vote for black candidates in the contested districts would, in the usual course of events, result in the defeat of the minority's candidates, that conclusion is apparent both from the court's factual findings and from the rest of its analysis. First, with the exception of House District 23, the trial court's findings clearly show that black voters have enjoyed only minimal and sporadic success in electing representatives of their choice. Second, where black candidates won elections, the court closely examined the circumstances of those elections before concluding that the success of these blacks did not negate other evidence, derived from all of the elections studied in each district, that legally significant racially polarized voting exists in each district. For example, the

court took account of the benefits incumbency and running essentially unopposed conferred on some of the successful black candidates, as well as of the very different order of preference blacks and whites assigned black candidates, in reaching its conclusion that legally significant racial polarization exists in each district.

We conclude that the District Court's approach, which tested data derived from three election years in each district, and which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard.

C. EVIDENCE OF RACIALLY POLARIZED VOTING

1. Appellants' Argument

North Carolina and the United States also contest the evidence upon which the District Court relied in finding that voting patterns in the challenged districts were racially polarized. They argue that the term "racially polarized voting" must, as a matter of law, refer to voting patterns for which the *principal cause* is race. They contend that the District Court utilized a legally incorrect definition of racially polarized voting by relying on bivariate statistical analyses which merely demonstrated a *correlation* between the race of the voter and the level of voter support for certain candidates, but which did not prove that race was the primary determinant of voters' choices. According to appellants and the United States, only multiple regression analysis, which can take account of other variables which might also explain voters' choices, such as "party affiliation, age, religion, income[,] incumbency, education, campaign expenditures,"

"media use measured by cost, . . . name, identification, or distance that a candidate lived from a particular precinct," can prove that race was the primary determinant of voter behavior.

Whether appellants and the United States believe that it is the voter's race or the candidate's race that must be the primary determinant of the voter's choice is unclear; indeed, their catalogs of relevant variables suggest both. Age, religion, income, and education seem most relevant to the voter; incumbency, campaign expenditures, name identification, and media use are pertinent to the candidate; and party affiliation could refer both to the voter and the candidate. In either case, we disagree: for purposes of § 2, the legal concept of racially polarized voting incorporates neither causation nor intent. It means simply that the race of voters correlates with the selection of a certain candidate or candidates; that is, it refers to the situation where different races (or minority language groups) vote in blocs for different candidates. As we demonstrate, appellants' theory of racially polarized voting would thwart the goals Congress sought to achieve when it amended § 2, and would prevent courts from performing the "functional" analysis of the political process, and the "searching practical evaluation of the *past and present reality,'"*

2. Causation Irrelevant to Section 2 Inquiry

The first reason we reject appellants' argument that racially polarized voting refers to voting patterns that are in some way *caused by race,* rather than to voting patterns that are merely *correlated with the race of the voter,* is that the reasons black and white voters vote

differently have no relevance to the central inquiry of § 2. By contrast, the correlation between race of voter and the selection of certain candidates is crucial to that inquiry.

Both § 2 itself and the Senate Report make clear that the critical question in a § 2 claim is whether the use of a contested electoral practice or structure results in members of a protected group having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. As we explained, multimember districts may impair the ability of blacks to elect representatives of their choice where blacks vote sufficiently as a bloc as to be able to elect their preferred candidates in a black majority, single-member district and where a white majority votes sufficiently as a bloc usually to defeat the candidates chosen by blacks. It is the *difference* between the choices made by blacks and whites -- not the reasons for that difference -- that results in blacks having less opportunity than whites to elect their preferred representatives. Consequently, we conclude that, under the "results test" of § 2, only the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters.

The irrelevance to a § 2 inquiry of the reasons why black and white voters vote differently supports, by itself, our rejection of appellants' theory of racially polarized voting. However, their theory contains other equally serious flaws that merit further attention. As we demonstrate below, the addition of irrelevant variables distorts the equation and yields results that are indisputably incorrect under § 2 and the Senate Report.

3. Race of Voter as Primary Determinant of Voter Behavior

Appellants and the United States contend that the legal concept of "racially polarized voting" refers not to voting patterns that are merely *correlated with the voter's race,* but to voting patterns that are *determined primarily by the voter's race,* rather than by the voter's other socioeconomic characteristics.

The first problem with this argument is that it ignores the fact that members of geographically insular racial and ethnic groups frequently share socioeconomic characteristics, such as income level, employment status, amount of education, housing and other living conditions, religion, language, and so forth. Where such characteristics are shared, race or ethnic group not only denotes color or place of origin, it also functions as a shorthand notation for common social and economic characteristics. Appellants' definition of racially polarized voting is even more pernicious where shared characteristics are causally related to race or ethnicity. The opportunity to achieve high employment status and income, for example, is often influenced by the presence or absence of racial or ethnic discrimination. A definition of racially polarized voting which holds that black bloc voting does not exist when black voters' choice of certain candidates is most strongly influenced by the fact that the voters have low incomes and menial jobs -- when the reason most of those voters have menial jobs and low incomes is attributable to past or present racial discrimination -- runs counter to the Senate Report's instruction to conduct a searching and practical evaluation of past and present reality, and interferes with the purpose of the Voting Rights Act to eliminate the negative effects of past discrimination on the electoral opportunities of minorities.

Furthermore, under appellants' theory of racially polarized voting, even uncontrovertible evidence that candidates strongly preferred by black voters are always defeated by a bloc voting white majority would be dismissed for failure to prove racial polarization whenever the black and white populations could be described in terms of other socioeconomic characteristics.

To illustrate, assume a racially mixed, urban multimember district in which blacks and whites possess the same socioeconomic characteristics that the record in this case attributes to blacks and whites in Halifax County, a part of Senate District 2. The annual mean income for blacks in this district is $10,465, and 47.8% of the black community lives in poverty. More than half -- 51.5% -- of black adults over the age of 25 have only an eighth-grade education or less. Just over half of black citizens reside in their own homes; 48.9% live in rental units. And almost a third of all black households are without a car. In contrast, only 12.6% of the whites in the district live below the poverty line. Whites enjoy a mean income of $19,042. White residents are better educated than blacks -- only 25.6% of whites over the age of 25 have only an eighth-grade education or less. Furthermore, only 26.2% of whites live in rental units, and only 10.2% live in households with no vehicle available. As is the case in Senate District 2, blacks in this hypothetical urban district have never been able to elect a representative of their choice.

According to appellants' theory of racially polarized voting, proof that black and white voters in this hypothetical district regularly choose different candidates, and that the blacks' preferred candidates regularly lose, could be rejected as not probative of racial bloc voting. The basis for the rejection would be that blacks chose a certain candidate not principally because of their race, but principally because this candidate best represented the interests of residents who, because of their low incomes, are particularly interested in government-subsidized health and welfare services; who are generally poorly educated, and thus share an interest in job training programs; who are, to a greater extent than the white community, concerned with rent control issues; and who favor major public transportation expenditures. Similarly, whites would be found to have voted for a different candidate, not principally because of their race, but primarily because that candidate best represented the interests of residents who, due to their education and income levels, and to their property and vehicle ownership, favor gentrification, low residential property taxes, and extensive expenditures for street and highway improvements.

Congress could not have intended that courts employ this definition of racial bloc voting. First, this definition leads to results that are inconsistent with the effects test adopted by Congress when it amended § 2 and with the Senate Report's admonition that courts take a "functional" view of the political process, and conduct a searching and practical evaluation of reality. A test for racially polarized voting that denies the fact that race and socioeconomic characteristics are often closely correlated permits neither a practical evaluation of reality nor a functional analysis of vote dilution. And, contrary to Congress' intent in adopting the "results test," appellants' proposed definition could result in the inability of minority voters to establish a critical element of a vote dilution claim, even though both races engage in "monolithic" bloc voting, and generations of black voters have been unable to elect a representative of their choice.

Second, appellants' interpretation of "racially polarized voting" creates an irreconcilable tension between their proposed treatment of socioeconomic characteristics in the bloc voting context and

the Senate Report's statement that "the extent to which members of the minority group . . . bear the effects of discrimination in such areas as education, employment and health" may be relevant to a § 2 claim. We can find no support in either logic or the legislative history for the anomalous conclusion to which appellants' position leads -- that Congress intended, on the one hand, that proof that a minority group is predominately poor, uneducated, and unhealthy should be considered a factor tending to prove a § 2 violation, but that Congress intended, on the other hand, that proof that the same socioeconomic characteristics greatly influence black voters' choice of candidates should destroy these voters' ability to establish one of the most important elements of a vote dilution claim.

4. Race of Candidate as Primary Determinant of Voter Behavior

North Carolina's and the United States' suggestion that racially polarized voting means that voters select or reject candidates *principally* on the basis of the *candidate's race* is also misplaced.

First, both the language of § 2 and a functional understanding of the phenomenon of vote dilution mandate the conclusion that the race of the candidate *per se* is irrelevant to racial bloc voting analysis. Section 2(b) states that a violation is established if it can be shown that members of a protected minority group "have less opportunity than other members of the electorate to . . . elect representatives *of their choice.*"

Because both minority and majority voters often select members of their own race as their preferred representatives, it will frequently be the case that a black candidate is the choice of blacks, while a white candidate is the choice of whites. Indeed, the facts of this case illustrate that tendency -- blacks preferred black candidates, whites preferred white candidates. Thus, as a matter of convenience, we and the District Court may refer to the preferred representative of black voters as the "black candidate" and to the preferred representative of white voters as the "white candidate." Nonetheless, the fact that race of voter and race of candidate is often correlated is not directly pertinent to a § 2 inquiry. Under § 2, it is the *status* of the candidate as the *chosen representative of a particular racial group,* not the race of the candidate, that is important.

An understanding of how vote dilution through submergence in a white majority works leads to the same conclusion. The essence of a submergence claim is that minority group members prefer certain candidates whom they could elect were it not for the interaction of the challenged electoral law or structure with a white majority that votes as a significant bloc for different candidates. Thus, as we explained in Part III, *supra,* the existence of racial bloc voting is relevant to a vote dilution claim in two ways. Bloc voting by blacks tends to prove that the black community is politically cohesive, that is, it shows that blacks prefer certain candidates whom they could elect in a single-member, black majority district. Bloc voting by a white majority tends to prove that blacks will generally be unable to elect representatives of their choice. Clearly, only the race of the voter, not the race of the candidate, is relevant to vote dilution analysis.

Second, appellants' suggestion that racially polarized voting refers to voting patterns where whites vote for white candidates because they prefer members of their own race or are hostile to blacks, as opposed to voting patterns where whites vote for white candidates because the white candidates spent more on their campaigns, utilized more media coverage, and thus enjoyed greater name recognition than the black candidates, fails for another, independent reason. This argument, like the argument that the race of the voter must be the primary determinant of the voter's ballot, is inconsistent with the purposes of § 2, and would render meaningless the Senate Report factor that addresses the impact of low socioeconomic status on a minority group's level of political participation.

Congress intended that the Voting Rights Act eradicate inequalities in political opportunities that exist due to the vestigial effects of past purposeful discrimination. Both this Court and other federal courts have recognized that political participation by minorities tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes. The Senate Report acknowledges this tendency, and instructs that "the extent to which members of the minority group . . . bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process," is a factor which may be probative of unequal opportunity to participate in the political process and to elect representatives. Courts and commentators have recognized further that candidates generally must spend more money in order to win election in a multimember district than in a single-member district. If, because of inferior education and poor employment opportunities, blacks earn less than whites, they will not be able to provide the candidates of their choice with the same level of financial support that whites can provide theirs. Thus, electoral losses by candidates preferred by the black community may well be attributable in part to the fact that their white opponents outspent them. But the fact is that, in this instance, the economic effects of prior discrimination have combined with the multimember electoral structure to afford blacks less opportunity than whites to participate in the political process and to elect representatives of their choice. It would be both anomalous and inconsistent with congressional intent to hold that, on the one hand, the effects of past discrimination which hinder blacks' ability to participate in the political process tend to prove a § 2 violation, while holding on the other hand that, where these same effects of past discrimination deter whites from voting for blacks, blacks cannot make out a crucial element of a vote dilution claim.

5. Racial Animosity as Primary Determinant of Voter Behavior

Finally, we reject the suggestion that racially polarized voting refers only to white bloc voting which is caused by white voters' *racial hostility* toward black candidates. To accept this theory would frustrate the goals Congress sought to achieve by repudiating the intent test of *Mobile v. Bolden,* , and would prevent minority voters who have clearly been denied an opportunity to elect representatives of their choice from establishing a critical element of a vote dilution claim.

In amending § 2, Congress rejected the requirement announced by this Court in *Bolden, supra,* that § 2 plaintiffs must prove the discriminatory intent of state or local governments in adopting or maintaining the challenged electoral mechanism. Appellants' suggestion that the

discriminatory intent of individual white voters must be proved in order to make out a § 2 claim must fail for the very reasons Congress rejected the intent test with respect to governmental bodies.

The Senate Report states that one reason the Senate Committee abandoned the intent test was that "the Committee . . . heard persuasive testimony that the intent test is unnecessarily divisive because it involves charges of racism on the part of individual officials or entire communities."

The Committee found the testimony of Dr. Arthur S.Flemming, Chairman of the United States Commission on Civil Rights, particularly persuasive. He testified:

> "[Under an intent test,] [l]itigators representing excluded minorities will have to explore the motivations of individual council members, mayors, and other citizens. The question would be whether their decisions were motivated by invidious racial considerations. Such inquiries can only be divisive, threatening to destroy any existing racial progress in a community. It is the intent test, not the results test, that would make it necessary to brand individuals as racist in order to obtain judicial relief."

The grave threat to racial progress and harmony which Congress perceived from requiring proof that racism caused the adoption or maintenance of a challenged electoral mechanism is present to a much greater degree in the proposed requirement that plaintiffs demonstrate that racial animosity determined white voting patterns. Under the old intent test, plaintiffs might succeed by proving only that a limited number of elected officials were racist; under the new intent test, plaintiffs would be required to prove that most of the white community is racist in order to obtain judicial relief. It is difficult to imagine a more racially divisive requirement.

A second reason Congress rejected the old intent test was that, in most cases, it placed an "inordinately difficult burden" on § 2 plaintiffs. *Ibid.* The new intent test would be equally, if not more, burdensome. In order to prove that a specific factor -- racial hostility -- determined white voters' ballots, it would be necessary to demonstrate that other potentially relevant causal factors, such as socioeconomic characteristics and candidate expenditures, do not correlate better than racial animosity with white voting behavior. As one commentator has explained:

> "Many of the[se] independent variables . . . would be all but impossible for a social scientist to operationalize as interval-level independent variables for use in a multiple regression equation, whether on a step-wise basis or not. To conduct such an extensive statistical analysis as this implies, moreover, can become prohibitively expensive."

"Compared to this sort of effort, proving discriminatory intent in the adoption of an at-large election system is both simple and inexpensive."

The final and most dispositive reason the Senate Report repudiated the old intent test was that it "asks the wrong question." Amended § 2 asks instead "whether minorities have equal access to the process of electing their representatives."

Focusing on the discriminatory intent of the voters, rather than the behavior of the voters, also asks the wrong question. All that matters under § 2 and under a functional theory of vote dilution

is voter behavior, not its explanations. Moreover, as we have explained in detail, *supra,* requiring proof that racial considerations actually *caused* voter behavior will result -- contrary to congressional intent -- in situations where a black minority that functionally has been totally excluded from the political process will be unable to establish a § 2 violation. The Senate Report's remark concerning the old intent test thus is pertinent to the new test: the requirement that a "court . . . make a separate . . . finding of intent, after accepting the proof of the factors involved in the analysis . . . [would] seriously clou[d] the prospects of eradicating the remaining instances of racial discrimination in American elections."

We therefore decline to adopt such a requirement.

6. Summary

In sum, we would hold that the legal concept of racially polarized voting, as it relates to claims of vote dilution, refers only to the existence of a correlation between the race of voters and the selection of certain candidates. Plaintiffs need not prove causation or intent in order to prove a *prima facie* case of racial bloc voting, and defendants may not rebut that case with evidence of causation or intent.

IV. THE LEGAL SIGNIFICANCE OF SOME BLACK CANDIDATES' SUCCESS

A

North Carolina and the United States maintain that the District Court failed to accord the proper weight to the success of some black candidates in the challenged districts. Black residents of these districts, they point out, achieved improved representation in the 1982 General Assembly election. They also note that blacks in House District 23 have enjoyed proportional representation consistently since 1973, and that blacks in the other districts have occasionally enjoyed nearly proportional representation. This electoral success demonstrates conclusively, appellants and the United States argue, that blacks in those districts do not have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Essentially, appellants and the United States contend that, if a racial minority gains proportional or nearly proportional representation in a single election, that fact alone precludes, as a matter of law, finding a § 2 violation.

Section 2(b) provides that "[t]he extent to which members of a protected class have been elected to office . . . is one circumstance which may be considered." The Senate Committee Report also identifies the extent to which minority candidates have succeeded as a pertinent factor. However, the Senate Report expressly states that "the election of a few minority candidates does not necessarily foreclose the possibility of dilution of the black vote,'" noting that, if it did, "the possibility exists that the majority citizens might evade [§ 2] by manipulating the election of a `safe' minority candidate." The Senate Committee decided, instead, to "require an independent consideration of the record." The Senate Report also emphasizes that the question whether "the political processes are `equally open' depends upon a searching practical evaluation of the `past and present reality.'" Thus, the language of § 2 and its legislative history plainly demonstrate that proof that some minority candidates have been elected does not foreclose a § 2 claim.

Moreover, in conducting its "independent consideration of the record" and its "searching practical evaluation of the past and present reality,'" the District Court could appropriately take account of the circumstances surrounding recent black electoral success in deciding its significance to appellees' claim. In particular, as the Senate Report makes clear, the court could properly notice the fact that black electoral success increased markedly in the 1982 election -- an election that occurred after the instant lawsuit had been filed -- and could properly consider to what extent

"the pendency of this very litigation [might have] worked a one-time advantage for black candidates in the form of unusual organized political support by white leaders concerned to forestall single-member districting."

Nothing in the statute or its legislative history prohibited the court from viewing with some caution black candidates' success in the 1982 election, and from deciding on the basis of all the relevant circumstances to accord greater weight to blacks' relative lack of success over the course of several recent elections. Consequently, we hold that the District Court did not err, as a matter of law, in refusing to treat the fact that some black candidates have succeeded as dispositive of appellees' § 2 claim. Where multimember districting generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters.

B

The District Court did err, however, in ignoring the significance of the *sustained* success black voters have experienced in House District 23. In that district, the last six elections have resulted in proportional representation for black residents. This persistent proportional representation is inconsistent with appellees' allegation that the ability of black voters in District 23 to elect representatives of their choice is not equal to that enjoyed by the white majority.

In some situations, it may be possible for § 2 plaintiffs to demonstrate that such sustained success does not accurately reflect the minority group's ability to elect its preferred representatives, but appellees have not done so here. Appellees presented evidence relating to black electoral success in the last three elections; they failed utterly, though, to offer any explanation for the success of black candidates in the previous three elections. Consequently, we believe that the District Court erred, as a matter of law, in ignoring the sustained success black voters have enjoyed in House District 23, and would reverse with respect to that District.

V. ULTIMATE DETERMINATION OF VOTE DILUTION

Finally, appellants and the United States dispute the District Court's ultimate conclusion that the multimember districting scheme at issue in this case deprived black voters of an equal opportunity to participate in the political process and to elect representatives of their choice.

A

As an initial matter, both North Carolina and the United States contend that the District Court's ultimate conclusion that the challenged multimember districts operate to dilute black citizens'

votes is a mixed question of law and fact subject to *de novo* review on appeal. In support of their proposed standard of review, they rely primarily on *Bose Corp. v. Consumers Union of U.S. Inc.,* a case in which we reconfirmed that, as a matter of constitutional law, there must be independent appellate review of evidence of "actual malice" in defamation cases. Appellants and the United States argue that, because a finding of vote dilution under amended § 2 requires the application of a rule of law to a particular set of facts it constitutes a legal, rather than factual, determination. Neither appellants nor the United States cite our several precedents in which we have treated the ultimate finding of vote dilution as a question of fact subject to the clearly erroneous standard of Rule 52(a).

In *Regester, supra,* we noted that the District Court had based its conclusion that minority voters in two multimember districts in Texas had less opportunity to participate in the political process than majority voters on the totality of the circumstances, and stated that

> "we are not inclined to overturn these findings, representing as they do a blend of history and an intensely local appraisal of the design and impact of the . . . multimember district in the light of past and present reality, political and otherwise."

Quoting this passage from *Regester* with approval, we expressly held in *Rogers v. Lodge, supra,* that the question whether an at-large election system was maintained for discriminatory purposes and subsidiary issues, which include whether that system had the effect of diluting the minority vote, were questions of fact, reviewable under Rule 52(a)'s clearly erroneous standard. Similarly, in *City of Rome v. United States,* we declared that the question whether certain electoral structures had a "discriminatory effect," in the sense of diluting the minority vote, was a question of fact subject to clearly erroneous review.

We reaffirm our view that the clearly erroneous test of Rule 52(a) is the appropriate standard for appellate review of a finding of vote dilution. As both amended § 2 and its legislative history make clear, in evaluating a statutory claim of vote dilution through districting, the trial court is to consider the "totality of the circumstances" and to determine, based "upon a searching practical evaluation of the *past and present reality*,'" The fact that amended § 2 and its legislative history provide legal standards which a court must apply to the facts in order to determine whether § 2 has been violated does not alter the standard of review. As we explained in *Bose*, Rule 52(a) "does not inhibit an appellate court's power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on a misunderstanding of the governing rule of law.

Thus, the application of the clearly erroneous standard to ultimate findings of vote dilution preserves the benefit of the trial court's particular familiarity with the indigenous political reality without endangering the rule of law."

B

The District Court in this case carefully considered the totality of the circumstances and found that, in each district, racially polarized voting; the legacy of official discrimination in voting matters, education, housing, employment, and health services; and the persistence of campaign

appeals to racial prejudice acted in concert with the multimember districting scheme to impair the ability of geographically insular and politically cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice. It found that the success a few black candidates have enjoyed in these districts is too recent, too limited, and, with regard to the 1982 elections, perhaps too aberrational, to disprove its conclusion. Excepting House District 23, with respect to which the District Court committed legal error, we affirm the District Court's judgment. We cannot say that the District Court, composed of local judges who are well acquainted with the political realities of the State, clearly erred in concluding that use of a multimember electoral structure has caused black voters in the districts other than House District 23 to have less opportunity than white voters to elect representatives of their choice.

The judgment of the District Court is

Affirmed in part and reversed in part.

Crawford v. Marion County Election Bd., 553 U.S. 181 (2008)

At issue in these cases is the constitutionality of an Indiana statute requiring citizens voting in person on election day, or casting a ballot in person at the office of the circuit court clerk prior to election day, to present photo identification issued by the government.

Referred to as either the "Voter ID Law" or "SEA 483," the statute applies to in-person voting at both primary and general elections. The requirement does not apply to absentee ballots submitted by mail, and the statute contains an exception for persons living and voting in a state-licensed facility such as a nursing home. A voter who is indigent or has a religious objection to being photographed may cast a provisional ballot that will be counted only if she executes an appropriate affidavit before the circuit court clerk within 10 days following the election. A voter who has photo identification but is unable to present that identification on election day may file a provisional ballot that will be counted if she brings her photo identification to the circuit county clerk's office within 10 days. No photo identification is required in order to register to vote, and the State offers free photo identification to qualified voters able to establish their residence and identity.

Promptly after the enactment of SEA 483 in 2005, the Indiana Democratic Party and the Marion County Democratic Central Committee (Democrats) filed suit in the Federal District Court for the Southern District of Indiana against the state officials responsible for its enforcement, seeking a judgment declaring the Voter ID Law invalid and enjoining its enforcement. A second suit seeking the same relief was brought on behalf of two elected officials and several nonprofit organizations representing groups of elderly, disabled, poor, and minority voters. The cases were consolidated, and the State of Indiana intervened to defend the validity of the statute.

The complaints in the consolidated cases allege that the new law substantially burdens the right to vote in violation of the Fourteenth Amendment; that it is neither a necessary nor appropriate method of avoiding election fraud; and that it will arbitrarily disfranchise qualified voters who do not possess the required identification and will place an unjustified burden on those who cannot readily obtain such identification.

After discovery, District Judge Barker prepared a comprehensive 70-page opinion explaining her decision to grant defendants' motion for summary judgment. She found that petitioners had "not introduced evidence of a single, individual Indiana resident who will be unable to vote as a result of SEA 483 or who will have his or her right to vote unduly burdened by its requirements." She rejected "as utterly incredible and unreliable" an expert's report that up to 989,000 registered voters in Indiana did not possess either a driver's license or other acceptable photo identification. She estimated that as of 2005, when the statute was enacted, around 43,000 Indiana residents lacked a state-issued driver's license or identification card.

A divided panel of the Court of Appeals affirmed. The majority first held that the Democrats had standing to bring a facial challenge to the constitutionality of SEA 483. Next, noting the absence of any plaintiffs who claimed that the law would deter them from voting, the Court of Appeals inferred that "the motivation for the suit is simply that the law may require the Democratic Party and the other organizational plaintiffs to work harder to get every last one of their supporters to

the polls." It rejected the argument that the law should be judged by the same strict standard applicable to a poll tax because the burden on voters was offset by the benefit of reducing the risk of fraud. The dissenting judge, viewing the justification for the law as "hollow"—more precisely as "a not-too-thinly-veiled attempt to discourage election-day turnout by certain folks believed to skew Democratic"—would have applied a stricter standard, something he described as "close to 'strict scrutiny light.' " In his view, the "law imposes an undue burden on a recognizable segment of potential eligible voters" and therefore violates their rights under the First and Fourteenth Amendments to the Constitution.

Four judges voted to grant a petition for rehearing en banc. Because we agreed with their assessment of the importance of these cases, we granted certiorari. We are, however, persuaded that the District Court and the Court of Appeals correctly concluded that the evidence in the record is not sufficient to support a facial attack on the validity of the entire statute, and thus affirm.

I

In *Harper* v. *Virginia Bd. of Elections,* the Court held that Virginia could not condition the right to vote in a state election on the payment of a poll tax of $1.50. We rejected the dissenters' argument that the interest in promoting civic responsibility by weeding out those voters who did not care enough about public affairs to pay a small sum for the privilege of voting provided a rational basis for the tax. Applying a stricter standard, we concluded that a State "violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard." We used the term "invidiously discriminate" to describe conduct prohibited under that standard, noting that we had previously held that while a State may obviously impose "reasonable residence restrictions on the availability of the ballot," it "may not deny the opportunity to vote to a bona fide resident merely because he is a member of the armed services." Although the State's justification for the tax was rational, it was invidious because it was irrelevant to the voter's qualifications.

Thus, under the standard applied in *Harper,* even rational restrictions on the right to vote are invidious if they are unrelated to voter qualifications. In *Anderson* v. *Celebrezze,* however, we confirmed the general rule that "evenhanded restrictions that protect the integrity and reliability of the electoral process itself" are not invidious and satisfy the standard set forth in *Harper*. 4Rather than applying any "litmus test" that would neatly separate valid from invalid restrictions, we concluded that a court must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then make the "hard judgment" that our adversary system demands.

In later election cases we have followed *Anderson*'s balancing approach. Thus, in *Norman* v. *Reed,* after identifying the burden Illinois imposed on a political party's access to the ballot, we "called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation," and concluded that the "severe restriction" was not justified by a narrowly drawn state interest of compelling importance. Later, in *Burdick* v. *Takushi*, we applied *Anderson*'s standard for " 'reasonable, nondiscriminatory restrictions,' and upheld

Hawaii's prohibition on write-in voting despite the fact that it prevented a significant number of "voters from participating in Hawaii elections in a meaningful manner." We reaffirmed *Anderson*'s requirement that a court evaluating a constitutional challenge to an election regulation weigh the asserted injury to the right to vote against the " 'precise interests put forward by the State as justifications for the burden imposed by its rule.' "

In neither *Norman* nor *Burdick* did we identify any litmus test for measuring the severity of a burden that a state law imposes on a political party, an individual voter, or a discrete class of voters. However slight that burden may appear, as *Harper* demonstrates, it must be justified by relevant and legitimate state interests "sufficiently weighty to justify the limitation." We therefore begin our analysis of the con- stitutionality of Indiana's statute by focusing on those interests.

II

The State has identified several state interests that arguably justify the burdens that SEA 483 imposes on voters and potential voters. While petitioners argue that the statute was actually motivated by partisan concerns and dispute both the significance of the State's interests and the magnitude of any real threat to those interests, they do not question the legitimacy of the interests the State has identified. Each is unquestionably relevant to the State's interest in protecting the integrity and reliability of the electoral process.

The first is the interest in deterring and detecting voter fraud. The State has a valid interest in participating in a nationwide effort to improve and modernize election procedures that have been criticized as antiquated and inefficient. The State also argues that it has a particular interest in preventing voter fraud in response to a problem that is in part the product of its own maladministration—namely, that Indiana's voter registration rolls include a large number of names of persons who are either deceased or no longer live in Indiana. Finally, the State relies on its interest in safeguarding voter confidence. Each of these interests merits separate comment.

Election Modernization

Two recently enacted federal statutes have made it necessary for States to reexamine their election procedures. Both contain provisions consistent with a State's choice to use government-issued photo identification as a relevant source of information concerning a citizen's eligibility to vote.

In the National Voter Registration Act of 1993 (NVRA), Congress established procedures that would both increase the number of registered voters and protect the integrity of the electoral process. The statute requires state motor vehicle driver's license applications to serve as voter registration applications. While that requirement has increased the number of registered voters, the statute also contains a provision restricting States' ability to remove names from the lists of registered voters. These protections have been partly responsible for inflated lists of registered voters. For example, evidence credited by Judge Barker estimated that as of 2004 Indiana's voter rolls were inflated by as much as 41.4%, and data collected by the Election Assistance

Committee in 2004 indicated that 19 of 92 Indiana counties had registration totals exceeding 100% of the 2004 voting-age population.

In HAVA, Congress required every State to create and maintain a computerized statewide list of all registered voters. HAVA also requires the States to verify voter information contained in a voter registration application and specifies either an "applicant's driver's license number" or "the last 4 digits of the applicant's social security number" as acceptable verifications. If an individual has neither number, the State is required to assign the applicant a voter identification number.

HAVA also imposes new identification requirements for individuals registering to vote for the first time who submit their applications by mail. If the voter is casting his ballot in person, he must present local election officials with written identification, which may be either "a current and valid photo identification" or another form of documentation such as a bank statement or paycheck. If the voter is voting by mail, he must include a copy of the identification with his ballot. A voter may also include a copy of the documentation with his application or provide his driver's license number or Social Security number for verification. Finally, in a provision entitled "Fail-safe voting," HAVA authorizes the casting of provisional ballots by challenged voters.

Of course, neither HAVA nor NVRA required Indiana to enact SEA 483, but they do indicate that Congress believes that photo identification is one effective method of establishing a voter's qualification to vote and that the integrity of elections is enhanced through improved technology. That conclusion is also supported by a report issued shortly after the enactment of SEA 483 by the Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James A. Baker III, which is a part of the record in these cases. In the introduction to their discussion of voter identification, they made these pertinent comments:

"A good registration list will ensure that citizens are only registered in one place, but election officials still need to make sure that the person arriving at a polling site is the same one that is named on the registration list. In the old days and in small towns where everyone knows each other, voters did not need to identify themselves. But in the United States, where 40 million people move each year, and in urban areas where some people do not even know the people living in their own apartment building let alone their precinct, some form of identification is needed.

"There is no evidence of extensive fraud in U. S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election. The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters. Photo identification cards currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important."

Voter Fraud

The only kind of voter fraud that SEA 483 addresses is in-person voter impersonation at polling places. The record contains no evidence of any such fraud actually occurring in Indiana at any

time in its history. Moreover, petitioners argue that provisions of the Indiana Criminal Code punishing such conduct as a felony provide adequate protection against the risk that such conduct will occur in the future. It remains true, however, that flagrant examples of such fraud in other parts of the country have been documented throughout this Nation's history by respected historians and journalists, that occasional examples have surfaced in recent years, and that Indiana's own experience with fraudulent voting in the 2003 Democratic primary for East Chicago Mayor—though perpetrated using absentee ballots and not in-person fraud—demonstrate that not only is the risk of voter fraud real but that it could affect the outcome of a close election.

There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process. While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear.

In its brief, the State argues that the inflation of its voter rolls provides further support for its enactment of SEA 483. The record contains a November 5, 2000, newspaper article asserting that as a result of NVRA and "sloppy record keeping," Indiana's lists of registered voters included the names of thousands of persons who had either moved, died, or were not eligible to vote because they had been convicted of felonies.The conclusion that Indiana has an unusually inflated list of registered voters is supported by the entry of a consent decree in litigation brought by the Federal Government alleging violations of NVRA. Even though Indiana's own negligence may have contributed to the serious inflation of its registration lists when SEA 483 was enacted, the fact of inflated voter rolls does provide a neutral and nondiscriminatory reason supporting the State's decision to require photo identification.

Safeguarding Voter Confidence

Finally, the State contends that it has an interest in protecting public confidence "in the integrity and legitimacy of representative government." While that interest is closely related to the State's interest in preventing voter fraud, public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process. As the Carter-Baker Report observed, the "electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters."

III

States employ different methods of identifying eligible voters at the polls. Some merely check off the names of registered voters who identify themselves; others require voters to present registration cards or other documentation before they can vote; some require voters to sign their names so their signatures can be compared with those on file; and in recent years an increasing number of States have relied primarily on photo identification. A photo identification requirement imposes some burdens on voters that other methods of identification do not share. For example, a voter may lose his photo identification, may have his wallet stolen on the way to the polls, or may not resemble the photo in the identification because he recently grew a beard.

Burdens of that sort arising from life's vagaries, however, are neither so serious nor so frequent as to raise any question about the constitutionality of SEA 483; the availability of the right to cast a provisional ballot provides an adequate remedy for problems of that character.

The burdens that are relevant to the issue before us are those imposed on persons who are eligible to vote but do not possess a current photo identification that complies with the requirements of SEA 483. The fact that most voters already possess a valid driver's license, or some other form of acceptable identification, would not save the statute under our reasoning in *Harper,* if the State required voters to pay a tax or a fee to obtain a new photo identification. But just as other States provide free voter registration cards, the photo identification cards issued by Indiana's BMV are also free. For most voters who need them, the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.

Both evidence in the record and facts of which we may take judicial notice, however, indicate that a somewhat heavier burden may be placed on a limited number of persons. They include elderly persons born out-of-state, who may have difficulty obtaining a birth certificate; persons who because of economic or other personal limitations may find it difficult either to secure a copy of their birth certificate or to assemble the other required documentation to obtain a state-issued identification; homeless persons; and persons with a religious objection to being photographed. If we assume, as the evidence suggests, that some members of these classes were registered voters when SEA 483 was enacted, the new identification requirement may have imposed a special burden on their right to vote.

The severity of that burden is, of course, mitigated by the fact that, if eligible, voters without photo identification may cast provisional ballots that will ultimately be counted. To do so, however, they must travel to the circuit court clerk's office within 10 days to execute the required affidavit. It is unlikely that such a requirement would pose a constitutional problem unless it is wholly unjustified. And even assuming that the burden may not be justified as to a few voters, that conclusion is by no means sufficient to establish petitioners' right to the relief they seek in this litigation.

IV

Given the fact that petitioners have advanced a broad attack on the constitutionality of SEA 483, seeking relief that would invalidate the statute in all its applications, they bear a heavy burden of persuasion. Only a few weeks ago we held that the Court of Appeals for the Ninth Circuit had failed to give appropriate weight to the magnitude of that burden when it sustained a preelection, facial attack on a Washington statute regulating that State's primary election procedures. Our reasoning in that case applies with added force to the arguments advanced by petitioners in these cases.

Petitioners ask this Court, in effect, to perform a unique balancing analysis that looks specifically at a small number of voters who may experience a special burden under the statute and weighs their burdens against the State's broad interests in protecting election integrity. Petitioners urge

us to ask whether the State's interests justify the burden imposed on voters who cannot afford or obtain a birth certificate and who must make a second trip to the circuit court clerk's office after voting. But on the basis of the evidence in the record it is not possible to quantify either the magnitude of the burden on this narrow class of voters or the portion of the burden imposed on them that is fully justified.

First, the evidence in the record does not provide us with the number of registered voters without photo identification; Judge Barker found petitioners' expert's report to be "utterly incredible and unreliable." Much of the argument about the numbers of such voters comes from extra record, post judgment studies, the accuracy of which has not been tested in the trial court.

Further, the deposition evidence presented in the District Court does not provide any concrete evidence of the burden imposed on voters who currently lack photo identification. The record includes depositions of two case managers at a day shelter for homeless persons and the depositions of members of the plaintiff organizations, none of whom expressed a personal inability to vote under SEA 483. A deposition from a named plaintiff describes the difficulty the elderly woman had in obtaining an identification card, although her testimony indicated that she intended to return to the BMV since she had recently obtained her birth certificate and that she was able to pay the birth certificate fee.

Judge Barker's opinion makes reference to six other elderly named plaintiffs who do not have photo identifications, but several of these individuals have birth certificates or were born in Indiana and have not indicated how difficult it would be for them to obtain a birth certificate. One elderly named plaintiff stated that she had attempted to obtain a birth certificate from Tennessee, but had not been successful, and another testified that he did not know how to obtain a birth certificate from North Carolina. The elderly in Indiana, however, may have an easier time obtaining a photo identification card than the nonelderly, and although it may not be a completely acceptable alternative, the elderly in Indiana are able to vote absentee without presenting photo identification.

The record says virtually nothing about the difficulties faced by either indigent voters or voters with religious objections to being photographed. While one elderly man stated that he did not have the money to pay for a birth certificate, when asked if he did not have the money or did not wish to spend it, he replied, "both." From this limited evidence we do not know the magnitude of the impact SEA 483 will have on indigent voters in Indiana. The record does contain the affidavit of one homeless woman who has a copy of her birth certificate, but was denied a photo identification card because she did not have an address. But that single affidavit gives no indication of how common the problem is.

In sum, on the basis of the record that has been made in this litigation, we cannot conclude that the statute imposes "excessively burdensome requirements" on any class of voters. A facial challenge must fail where the statute has a " 'plainly legitimate sweep.' " When we consider only the statute's broad application to all Indiana voters we conclude that it "imposes only a limited burden on voters' rights." " 'precise interests' " advanced by the State are therefore sufficient to defeat petitioners' facial challenge to SEA 483.

Finally we note that petitioners have not demonstrated that the proper remedy—even assuming an unjustified burden on some voters—would be to invalidate the entire statute. When evaluating a neutral, nondiscriminatory regulation of voting procedure, "[w]e must keep in mind that " '[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.' "

V

In their briefs, petitioners stress the fact that all of the Republicans in the General Assembly voted in favor of SEA 483 and the Democrats were unanimous in opposing it. In her opinion rejecting petitioners' facial challenge, Judge Barker noted that the litigation was the result of a partisan dispute that had "spilled out of the state house into the courts." It is fair to infer that partisan considerations may have played a significant role in the decision to enact SEA 483. If such considerations had provided the only justification for a photo identification requirement, we may also assume that SEA 483 would suffer the same fate as the poll tax at issue in *Harper.*

But if a nondiscriminatory law is supported by valid neutral justifications, those justifications should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators. The state interests identified as justifications for SEA 483 are both neutral and sufficiently strong to require us to reject petitioners' facial attack on the statute. The application of the statute to the vast majority of Indiana voters is amply justified by the valid interest in protecting "the integrity and reliability of the electoral process."

The judgment of the Court of Appeals is affirmed.

It is so ordered.

Shelby County v. Holder, 570 U.S. 529 (2013)

The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 of the Act required States to obtain federal permission before enacting any law related to voting—a drastic departure from basic principles of federalism. And §4 of the Act applied that requirement only to some States—an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." As we explained in upholding the law, "exceptional conditions can justify legislative measures not otherwise appropriate." Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years.

Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are now scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. By 2009, "the racial gap in voter registration and turnout [was] lower in the States originally covered by §5 than it [was] nationwide." Since that time, Census Bureau data indicate that African-American voter turnout has come to exceed white voter turnout in five of the six States originally covered by §5, with a gap in the sixth State of less than one half of one percent.

At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act's extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, "the Act imposes current burdens and must be justified by current needs."

I

A

The Fifteenth Amendment was ratified in 1870, in the wake of the Civil War. It provides that "[t]he 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," and it gives Congress the "power to enforce this article by appropriate legislation."

"The first century of congressional enforcement of the Amendment, however, can only be regarded as a failure." In the 1890s, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia began to enact literacy tests for voter registration and to employ other methods designed to prevent African-Americans from voting. Congress passed statutes outlawing some of these practices and facilitating litigation against them, but litigation remained slow and expensive, and the States came up with new ways to discriminate as soon as existing ones were struck down. Voter registration of African-Americans barely improved.

Inspired to action by the civil rights movement, Congress responded in 1965 with the Voting Rights Act. Section 2 was enacted to forbid, in all 50 States, any "standard, practice, or

procedure . . . imposed or applied . . . to deny or abridge the right of any citizen of the United States to vote on account of race or color." The current version forbids any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." Both the Federal Government and individuals have sued to enforce §2, and injunctive relief is available in appropriate cases to block voting laws from going into effect. Section 2 is permanent, applies nationwide, and is not at issue in this case.

Other sections targeted only some parts of the country. At the time of the Act's passage, these "covered" jurisdictions were those States or political subdivisions that had maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential election. Such tests or devices included literacy and knowledge tests, good moral character requirements, the need for vouchers from registered voters, and the like. A covered jurisdiction could "bail out" of coverage if it had not used a test or device in the preceding five years "for the purpose or with the effect of denying or abridging the right to vote on account of race or color." In 1965, the covered States included Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. The additional covered subdivisions included 39 counties in North Carolina and one in Arizona.

In those jurisdictions, §4 of the Act banned all such tests or devices. Section 5 provided that no change in voting procedures could take effect until it was approved by federal authorities in Washington, D. C.—either the Attorney General or a court of three judges. A jurisdiction could obtain such "preclearance" only by proving that the change had neither "the purpose [nor] the effect of denying or abridging the right to vote on account of race or color."

Sections 4 and 5 were intended to be temporary; they were set to expire after five years. In *South Carolina v. Katzenbach*, we upheld the 1965 Act against constitutional challenge, explaining that it was justified to address "voting discrimination where it persists on a pervasive scale."

In 1970, Congress reauthorized the Act for another five years, and extended the coverage formula in §4(b) to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1968. That swept in several counties in California, New Hampshire, and New York. Congress also extended the ban in §4(a) on tests and devices nationwide.

In 1975, Congress reauthorized the Act for seven more years, and extended its coverage to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1972. Congress also amended the definition of "test or device" to include the practice of providing English-only voting materials in places where over five percent of voting-age citizens spoke a single language other than English. As a result of these amendments, the States of Alaska, Arizona, and Texas, as well as several counties in California, Florida, Michigan, New York, North Carolina, and South Dakota, became covered jurisdictions. Congress correspondingly amended sections 2 and 5 to forbid voting discrimination on the basis of membership in a language minority group, in addition to discrimination on the basis of race or color. Finally, Congress made the nationwide ban on tests and devices permanent.

In 1982, Congress reauthorized the Act for 25 years, but did not alter its coverage formula. Congress did, however, amend the bailout provisions, allowing political subdivisions of covered jurisdictions to bail out. Among other prerequisites for bailout, jurisdictions and their subdivisions must not have used a forbidden test or device, failed to receive preclearance, or lost a §2 suit, in the ten years prior to seeking bailout.

We upheld each of these reauthorizations against constitutional challenge.

In 2006, Congress again reauthorized the Voting Rights Act for 25 years, again without change to its coverage formula. Congress also amended §5 to prohibit more conduct than before. Section 5 now forbids voting changes with "any discriminatory purpose" as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, "to elect their preferred candidates of choice."

Shortly after this reauthorization, a Texas utility district brought suit, seeking to bail out from the Act's cover- age and, in the alternative, challenging the Act's constitutionality. A three-judge District Court explained that only a State or political subdivision was eligible to seek bailout under the statute, and concluded that the utility district was not a political subdivision, a term that encompassed only "counties, parishes, and voter-registering subunits." The District Court also rejected the constitutional challenge.

We reversed. We explained that " 'normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case.' " Concluding that "underlying constitutional concerns," among other things, "compel[led] a broader reading of the bailout provision," we construed the statute to allow the utility district to seek bailout. In doing so we expressed serious doubts about the Act's continued constitutionality.

We explained that §5 "imposes substantial federalism costs" and "differentiates between the States, despite our historic tradition that all the States enjoy equal sovereignty." We also noted that "[t]hings have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." Finally, we questioned whether the problems that §5 meant to address were still "concentrated in the jurisdictions singled out for preclearance."

Eight Members of the Court subscribed to these views, and the remaining Member would have held the Act unconstitutional. Ultimately, however, the Court's construction of the bailout provision left the constitutional issues for another day.

B

Shelby County is located in Alabama, a covered jurisdiction. It has not sought bailout, as the Attorney General has recently objected to voting changes proposed from within the county. Instead, in 2010, the county sued the Attorney General in Federal District Court in Washington, D. C., seeking a declaratory judgment that sections 4(b) and 5 of the Voting Rights Act are facially unconstitutional, as well as a permanent injunction against their enforcement. The District Court ruled against the county and upheld the Act. The court found that the evidence

before Congress in 2006 was sufficient to justify reauthorizing §5 and continuing the §4(b) coverage formula.

The Court of Appeals for the D. C. Circuit affirmed. In assessing §5, the D. C. Circuit considered six primary categories of evidence: Attorney General objections to voting changes, Attorney General requests for more information regarding voting changes, successful §2 suits in covered jurisdictions, the dispatching of federal observers to monitor elections in covered jurisdictions, §5 preclearance suits involving covered jurisdictions, and the deterrent effect of §5. After extensive analysis of the record, the court accepted Congress's conclusion that §2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, and that §5 was therefore still necessary.

Turning to §4, the D. C. Circuit noted that the evidence for singling out the covered jurisdictions was "less robust" and that the issue presented "a close question." But the court looked to data comparing the number of successful §2 suits in the different parts of the country. Coupling that evidence with the deterrent effect of §5, the court concluded that the statute continued "to single out the jurisdictions in which discrimination is concentrated," and thus held that the coverage formula passed constitutional muster.

Judge Williams dissented. He found "no positive correlation between inclusion in §4(b)'s coverage formula and low black registration or turnout." Rather, to the extent there was any correlation, it actually went the other way: "condemnation under §4(b) is a marker of higher black registration and turnout." Judge Williams also found that "[c]overed jurisdictions have far more black officeholders as a proportion of the black population than do uncovered ones." As to the evidence of successful §2 suits, Judge Williams disaggregated the reported cases by State, and concluded that "[t]he five worst uncovered jurisdictions . . . have worse records than eight of the covered jurisdictions." He also noted that two covered jurisdictions—Arizona and Alaska—had not had any successful reported §2 suit brought against them during the entire 24 years covered by the data. Judge Williams would have held the coverage formula of §4(b) "irrational" and unconstitutional.

We granted certiorari.

II

In *Northwest Austin*, we stated that "the Act imposes current burdens and must be justified by current needs." And we concluded that "a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." These basic principles guide our review of the question before us.

A

The Constitution and laws of the United States are "the supreme Law of the Land." State legislation may not contravene federal law. The Federal Government does not, however, have a general right to review and veto state enactments before they go into effect. A proposal to grant such authority to "negative" state laws was considered at the Constitutional Convention, but

rejected in favor of allowing state laws to take effect, subject to later challenge under the Supremacy Clause.

Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives. Indeed, the Constitution provides that all powers not specifically granted to the Federal Government are reserved to the States or citizens. Amdt. 10. This "allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States." But the federal balance "is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power."

More specifically, " 'the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.' " Of course, the Federal Government retains significant control over federal elections. For instance, the Constitution authorizes Congress to establish the time and manner for electing Senators and Representatives. But States have "broad powers to determine the conditions under which the right of suffrage may be exercised." And "[e]ach State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen. Drawing lines for congressional districts is likewise "primarily the duty and responsibility of the State."

Not only do States retain sovereignty under the Constitution, there is also a "fundamental principle of equal sovereignty" among the States. Over a hundred years ago, this Court explained that our Nation "was and is a union of States, equal in power, dignity and authority." Indeed, "the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized." Coyle concerned the admission of new States, and Katzenbach rejected the notion that the principle operated as a bar on differential treatment outside that context. At the same time, as we made clear in Northwest Austin, the fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent disparate treatment of States.

The Voting Rights Act sharply departs from these basic principles. It suspends "all changes to state election law—however innocuous—until they have been precleared by federal authorities in Washington, D. C." States must beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own, subject of course to any injunction in a §2 action. The Attorney General has 60 days to object to a preclearance request, longer if he requests more information. If a State seeks preclearance from a three-judge court, the process can take years.

And despite the tradition of equal sovereignty, the Act applies to only nine States (and several additional counties). While one State waits months or years and expends funds to implement a validly enacted law, its neighbor can typically put the same law into effect immediately, through the normal legislative process. Even if a noncovered jurisdiction is sued, there are important differences between those proceedings and preclearance proceedings; the preclearance proceeding "not only switches the burden of proof to the supplicant jurisdiction, but also applies substantive standards quite different from those governing the rest of the nation."

All this explains why, when we first upheld the Act in 1966, we described it as "stringent" and "potent." We recognized that it "may have been an uncommon exercise of congressional power," but concluded that "legislative measures not otherwise appropriate" could be justified by "exceptional conditions." We have since noted that the Act "authorizes federal intrusion into sensitive areas of state and local policymaking," and represents an "extraordinary departure from the traditional course of relations between the States and the Federal Government," As we reiterated in *Northwest Austin*, the Act constitutes "extraordinary legislation otherwise unfamiliar to our federal system."

B

In 1966, we found these departures from the basic features of our system of government justified. The "blight of racial discrimination in voting" had "infected the electoral process in parts of our country for nearly a century." Several States had enacted a variety of requirements and tests "specifically designed to prevent" African-Americans from voting. Case-by-case litigation had proved inadequate to prevent such racial discrimination in voting, in part because States "merely switched to discriminatory devices not covered by the federal decrees," "enacted difficult new tests," or simply "defied and evaded court orders." Shortly before enactment of the Voting Rights Act, only 19.4 percent of African-Americans of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi. Those figures were roughly 50 percentage points or more below the figures for whites.

In short, we concluded that "[u]nder the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner." We also noted then and have emphasized since that this extra-ordinary legislation was intended to be temporary, set to expire after five years.

At the time, the coverage formula—the means of linking the exercise of the unprecedented authority with the problem that warranted it—made sense. We found that "Congress chose to limit its attention to the geographic areas where immediate action seemed necessary." The areas where Congress found "evidence of actual voting discrimination" shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average." We explained that "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." Ibid. We therefore concluded that "the coverage formula [was] rational in both practice and theory." Ibid. It accurately reflected those jurisdictions uniquely characterized by voting discrimination "on a pervasive scale," linking coverage to the devices used to effectuate discrimination and to the resulting disenfranchisement. The formula ensured that the "stringent remedies [were] aimed at areas where voting discrimination ha[d] been most flagrant."

C

Nearly 50 years later, things have changed dramatically. Shelby County contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional. Its arguments have a good deal of force. In the covered jurisdictions, "[v]oter turnout and

registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." tests and devices that blocked access to the ballot have been forbidden nationwide for over 40 years.

Those conclusions are not ours alone. Congress said the same when it reauthorized the Act in 2006, writing that "[s]ignificant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices." The House Report elaborated that "the number of African-Americans who are registered and who turn out to cast ballots has increased significantly over the last 40 years, particularly since 1982," and noted that "[i]n some circumstances, minorities register to vote and cast ballots at levels that surpass those of white votersThat Report also explained that there have been "significant increases in the number of African-Americans serving in elected offices"; more specifically, there has been approximately a 1,000 percent increase since 1965 in the number of African-American elected officials in the six States originally covered by the Voting Rights Act.

The following chart, compiled from the Senate and House Reports, compares voter registration numbers from 1965 to those from 2004 in the six originally covered States. These are the numbers that were before Congress when it reauthorized the Act in 2006:

	1965			2024		
	White	Black	Gap	White	Black	Gap
Alabama	69.2	19.3	49.9	73.8	72.9	0.9
Georgia	62.[6]	27.4	35.2	63.5	64.2	-0.7
Louisiana	80.5	31.6	48.9	75.1	71.1	4.0
Mississippi	69.9	6.7	63.2	72.3	76.1	-3.8
South Carolina	75.7	37.3	38.4	74.4	71.1	3.3
Virginia	61.1	38.3	22.8	68.2	57.4	10.8

The 2004 figures come from the Census Bureau. Census Bureau data from the most recent election indicate that African-American voter turnout exceeded white voter turnout in five of the six States originally covered by §5, with a gap in the sixth State of less than one half of one percent. The preclearance statistics are also illuminating. In the first decade after enactment of §5, the Attorney General objected to 14.2 percent of proposed voting changes. In the last decade before reenactment, the Attorney General objected to a mere 0.16 percent.

There is no doubt that these improvements are in large part because of the Voting Rights Act. The Act has proved immensely successful at redressing racial discrimination and integrating the voting process. During the "Freedom Summer" of 1964, in Philadelphia, Mississippi, three men were murdered while working in the area to register African-American voters. On "Bloody Sunday" in 1965, in Selma, Alabama, police beat and used tear gas against hundreds marching in sup- port of African-American enfranchisement. Today both of those towns are governed by African-American mayors. Problems remain in these States and others, but there is no denying that, due to the Voting Rights Act, our Nation has made great strides.

Yet the Act has not eased the restrictions in §5 or narrowed the scope of the coverage formula in §4(b) along the way. Those extraordinary and unprecedented features were reauthorized—as if nothing had changed. In fact, the Act's unusual remedies have grown even stronger. When Congress reauthorized the Act in 2006, it did so for another 25 years on top of the previous 40—a far cry from the initial five-year period. Congress also expanded the prohibitions in §5. We had previously interpreted §5 to prohibit only those redistricting plans that would have the purpose or effect of worsening the position of minority groups. In 2006, Congress amended §5 to prohibit laws that could have favored such groups but did not do so because of a discriminatory purpose, even though we had stated that such broadening of §5 coverage would "exacerbate the substantial federalism costs that the preclearance procedure already exacts, perhaps to the extent of raising concerns about §5's constitutionality,". In addition, Congress expanded §5 to prohibit any voting law "that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States," on account of race, color, or language minority status, "to elect their preferred candidates of choice." In light of those two amendments, the bar that covered jurisdictions must clear has been raised even as the conditions justifying that requirement have dramatically improved.

We have also previously highlighted the concern that "the preclearance requirements in one State [might] be unconstitutional in another." Nothing has happened since to alleviate this troubling concern about the current application of §5.

Respondents do not deny that there have been improvements on the ground, but argue that much of this can be attributed to the deterrent effect of §5, which dissuades covered jurisdictions from engaging in discrimination that they would resume should §5 be struck down. Under this theory, however, §5 would be effectively immune from scrutiny; no matter how "clean" the record of covered jurisdictions, the argument could always be made that it was deterrence that accounted for the good behavior.

The provisions of §5 apply only to those jurisdictions singled out by §4. We now consider whether that coverage formula is constitutional in light of current conditions.

III

A

When upholding the constitutionality of the coverage formula in 1966, we concluded that it was "rational in both practice and theory." The formula looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both.

By 2009, however, we concluded that the "coverage formula raise[d] serious constitutional questions." As we explained, a statute's "current burdens" must be justified by "current needs," and any "disparate geographic coverage" must be "sufficiently related to the problem that it targets." The coverage formula met that test in 1965, but no longer does so.

Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early

1970s. But such tests have been banned nationwide for over 40 years. And voter registration and turnout numbers in the covered States have risen dramatically in the years since. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. There is no longer such a disparity.

In 1965, the States could be divided into two groups: those with a recent history of voting tests and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were.

B

The Government's defense of the formula is limited. First, the Government contends that the formula is "reverse-engineered": Congress identified the jurisdictions to be covered and then came up with criteria to describe them. Under that reasoning, there need not be any logical relationship between the criteria in the formula and the reason for coverage; all that is necessary is that the formula happen to capture the jurisdictions Congress wanted to single out.

The Government suggests that Katzenbach sanctioned such an approach, but the analysis in Katzenbach was quite different. Katzenbach reasoned that the coverage formula was rational because the "formula . . . was relevant to the problem": "Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters."

Here, by contrast, the Government's reverse- engineering argument does not even attempt to demonstrate the continued relevance of the formula to the problem it targets. And in the context of a decision as significant as this one—subjecting a disfavored subset of States to "extraordinary legislation otherwise unfamiliar to our federal system," that failure to establish even relevance is fatal.

The Government falls back to the argument that because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States Congress identified back then—regardless of how that discrimination compares to discrimination in States unburdened by coverage. This argument does not look to "current political conditions,", but instead relies on a comparison between the States in 1965. That comparison reflected the different histories of the North and South. It was in the South that slavery was upheld by law until uprooted by the Civil War, that the reign of Jim Crow denied African-Americans the most basic freedoms, and that state and local governments worked tirelessly to disenfranchise citizens on the basis of race. The Court invoked that history—rightly so—in sustaining the disparate coverage of the Voting Rights Act in 1966.

But history did not end in 1965. By the time the Act was reauthorized in 2006, there had been 40 more years of it. In assessing the "current need[ ]" for a preclearance system that treats States differently from one another today, that history cannot be ignored. During that time, largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration

and turnout due to race were erased, and African-Americans attained political office in record numbers. And yet the coverage formula that Congress reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.

The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish for the past; its purpose is to ensure a better future. To serve that purpose, Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past. We made that clear in Northwest Austin, and we make it clear again today.

C

In defending the coverage formula, the Government, the intervenors, and the dissent also rely heavily on data from the record that they claim justify disparate coverage. Congress compiled thousands of pages of evidence before reauthorizing the Voting Rights Act. The court below and the parties have debated what that record shows—they have gone back and forth about whether to compare covered to noncovered jurisdictions as blocks, how to disaggregate the data State by State, how to weigh §2 cases as evidence of ongoing discrimination, and whether to consider evidence not before Congress, among other issues. Regardless of how to look at the record, however, no one can fairly say that it shows anything approaching the "pervasive," "flagrant," "widespread," and "rampant" discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time.

But a more fundamental problem remains: Congress did not use the record it compiled to shape a coverage formula grounded in current conditions. It instead reenacted a formula based on 40-year-old facts having no logical relation to the present day. The dissent relies on "second-generation barriers," which are not impediments to the casting of ballots, but rather electoral arrangements that affect the weight of minority votes. That does not cure the problem. Viewing the preclearance requirements as targeting such efforts simply highlights the irrationality of continued reliance on the §4 coverage formula, which is based on voting tests and access to the ballot, not vote dilution. We cannot pretend that we are reviewing an updated statute, or try our hand at updating the statute ourselves, based on the new record compiled by Congress. Contrary to the dissent's contention, see post, at 23, we are not ignoring the record; we are simply recognizing that it played no role in shaping the statutory formula before us today.

The dissent also turns to the record to argue that, in light of voting discrimination in Shelby County, the county cannot complain about the provisions that subject it to preclearance. But that is like saying that a driver pulled over pursuant to a policy of stopping all redheads cannot complain about that policy, if it turns out his license has expired. Shelby County's claim is that the coverage formula here is unconstitutional in all its applications, because of how it selects the jurisdictions subjected to preclearance. The county was selected based on that formula, and may challenge it in court.

D

The dissent proceeds from a flawed premise. It quotes the famous sentence from *McCulloch v. Maryland*, with the following emphasis: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." But this case is about a part of the sentence that the dissent does not emphasize—the part that asks whether a legislative means is "consist[ent] with the letter and spirit of the constitution." The dissent states that "[i]t cannot tenably be maintained" that this is an issue with regard to the Voting Rights Act, but four years ago, in an opinion joined by two of today's dissenters, the Court expressly stated that "[t]he Act's preclearance requirement and its coverage formula raise serious constitutional questions." The dissent does not explain how those "serious constitutional questions" became untenable in four short years.

The dissent treats the Act as if it were just like any other piece of legislation, but this Court has made clear from the beginning that the Voting Rights Act is far from ordinary. At the risk of repetition, Katzenbach indicated that the Act was "uncommon" and "not otherwise appropriate," but was justified by "exceptional" and "unique" conditions. Multiple decisions since have reaffirmed the Act's "extraordinary" nature. Yet the dissent goes so far as to suggest instead that the preclearance requirement and disparate treatment of the States should be upheld into the future "unless there [is] no or almost no evidence of unconstitutional action by States."

In other ways as well, the dissent analyzes the ques- tion presented as if our decision in *Northwest Austin* never happened. For example, the dissent refuses to con- sider the principle of equal sovereignty, despite Northwest Austin's emphasis on its significance. *Northwest Austin* also emphasized the "dramatic" progress since 1965, but the dissent describes current levels of discrimination as "flagrant," "widespread," and "pervasive." Despite the fact that Northwest Austin requires an Act's "disparate geographic coverage" to be "sufficiently related" to its targeted problems, the dissent maintains that an Act's limited coverage actually eases Congress's burdens, and suggests that a fortuitous relationship should suffice. Although Northwest Austin stated definitively that "current burdens" must be justified by "current needs," the dissent argues that the coverage formula can be justified by history, and that the required showing can be weaker on reenactment than when the law was first passed.

There is no valid reason to insulate the coverage formula from review merely because it was previously enacted 40 years ago. If Congress had started from scratch in 2006, it plainly could not have enacted the present coverage formula. It would have been irrational for Congress to distinguish between States in such a fundamental way based on 40-year-old data, when today's statistics tell an entirely different story. And it would have been irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time. But that is exactly what Congress has done.

* * *

Striking down an Act of Congress "is the gravest and most delicate duty that this Court is called on to perform." We do not do so lightly. That is why, in 2009, we took care to avoid ruling on the constitutionality of the Voting Rights Act when asked to do so, and instead resolved the case

then before us on statutory grounds. But in issuing that decision, we expressed our broader concerns about the constitutionality of the Act. Congress could have updated the coverage formula at that time, but did not do so. Its failure to act leaves us today with no choice but to declare §4(b) unconstitutional. The formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance.

Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in §2. We issue no holding on §5 itself, only on the coverage formula. Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that exceptional conditions still exist justifying such an "extraordinary departure from the traditional course of relations between the States and the Federal Government." Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.

The judgment of the Court of Appeals is reversed.

It is so ordered.

Johnson v. De Grandy, 512 U.S. 997 (1994)

These consolidated cases are about the meaning of vote dilution and the facts required to show it, when § 2 of the Voting Rights Act of 1965 is applied to challenges to single-member legislative districts. We hold that no violation of § 2 can be found here, where, in spite of continuing discrimination and racial bloc voting, minority voters form effective voting majorities in a number of districts roughly proportional to the minority voters' respective shares in the voting-age population. While such proportionality is not dispositive in a challenge to single-member districting, it is a relevant fact in the totality of circumstances to be analyzed when determining whether members of a minority group have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."

I

On the first day of Florida's 1992 legislative session, a group of Hispanic voters including Miguel De Grandy (De Grandy plaintiffs) complained in the United States District Court against the speaker of Florida's House of Representatives, the president of its Senate, the Governor, and other state officials (State). The complainants alleged that the districts from which Florida voters had chosen their state senators and representatives since 1982 were malapportioned, failing to reflect changes in the State's population during the ensuing decade. The State Conference of NAACP Branches and individual black voters filed a similar suit, which the three-judge District Court consolidated with the De Grandy case.

Several months after the first complaint was filed, on April 10, 1992, the state legislature adopted Senate Joint Resolution 2–G (SJR 2–G), providing the reapportionment plan currently at issue. The plan called for dividing Florida into 40 single-member Senate, and 120 single-member House, districts based on population data from the 1990 census. As the Constitution of Florida required, the state attorney general then petitioned the Supreme Court of Florida for a declaratory judgment that the legislature's apportionment plan was valid under federal and state law. The court so declared, while acknowledging that state constitutional time constraints precluded full review for conformity with § 2 of the Voting Rights Act and recognizing the right of any interested party to bring a § 2 challenge to the plan in the Supreme Court of Florida.

The De Grandy and NAACP plaintiffs responded to SJR 2–G by amending their federal complaints to charge the new reapportionment plan with violating § 2. They claimed that SJR 2–G " 'unlawfully fragments cohesive minority communities and otherwise impermissibly submerges their right to vote and to participate in the electoral process,' " and they pointed to areas around the State where black or Hispanic populations could have formed a voting majority in a politically cohesive, reasonably compact district (or in more than one), if SJR 2–G had not fragmented each group among several districts or packed it into just a few.

The Department of Justice filed a similar complaint, naming the State of Florida and several elected officials as defendants and claiming that SJR 2–G diluted the voting strength of blacks and Hispanics in two parts of the State in violation of § 2. The Government alleged that SJR 2–G

diluted the votes of the Hispanic population in an area largely covered by Dade County (including Miami) and the black population in an area covering much of Escambia County (including Pensacola). The District Court consolidated this action with the other two and held a 5–day trial, followed immediately by an hours-long hearing on remedy.

At the end of the hearing, on July 1, 1992, the District Court ruled from the bench. It held the plan's provisions for state House districts to be in violation of § 2 because "more than [SJR 2–G's] nine Hispanic districts may be drawn without having or creating a regressive effect upon black voters," and it imposed a remedial plan offered by the De Grandy plaintiffs calling for 11 majority-Hispanic House districts. As to the Senate, the court found that a fourth majority-Hispanic district could be drawn in addition to the three provided by SJR 2–G, but only at the expense of black voters in the area. The court was of two minds about the implication of this finding, once observing that it meant the legislature's plan for the Senate was a violation of § 2 but without a remedy, once saying the plan did not violate § 2 at all. In any event, it ordered elections to be held using SJR 2–G's senatorial districts.

In a later, expanded opinion the court reviewed the totality of circumstances as required by § 2 and *Thornburg v. Gingles*. In explaining Dade County's "tripartite politics," in which "ethnic factors ... predominate over all other[s] ...," the court found political cohesion within each of the Hispanic and black populations but none between the two, and a tendency of non-Hispanic whites to vote as a bloc to bar minority groups from electing their chosen candidates except in a district where a given minority makes up a voting majority. The court further found that the nearly one million Hispanics in the Dade County area could be combined into 4 Senate and 11 House districts, each one relatively compact and with a functional majority of Hispanic voters, whereas SJR 2–G created fewer majority-Hispanic districts; and that one more Senate district with a black voting majority could have been drawn, Noting that Florida's minorities bore the social, economic, and political effects of past discrimination, the court concluded that SJR 2–G impermissibly diluted the voting strength of Hispanics in its House districts and of both Hispanics and blacks in its Senate districts. The findings of vote dilution in the senatorial districts had no practical effect, however, because the court held that remedies for the blacks and the Hispanics were mutually exclusive; it consequently deferred to the state legislature's work as the "fairest" accommodation of all the ethnic communities in south Florida.

We stayed the judgment of the District Court, and noted probable jurisdiction.

II

Before going to the issue at the heart of these cases, we need to consider the District Court's refusal to give preclusive effect to the decision of the State Supreme Court validating SJR 2–G. The State argues that the claims of the De Grandy plaintiffs should have been dismissed as res judicata because they had a full and fair opportunity to litigate vote dilution before the State Supreme Court. The premise, however, is false, exaggerating the review afforded the De Grandy plaintiffs in the state court and ignoring that court's own opinion of its judgment's limited scope. Given the state constitutional mandate to review apportionment resolutions within 30 days, the Supreme Court of Florida accepted briefs and evidentiary submissions, but held no trial. In that

court's own words, it was "impossible ... to conduct the complete factual analysis contemplated by the Voting Rights Act ... within the time constraints of article III," and its holding was accordingly "without prejudice to the right of any protestor to question the validity of the plan by filing a petition in this Court alleging how the plan violates the Voting Rights Act."

The State balks at recognizing this express reservation by blaming the De Grandy plaintiffs for not returning to the State Supreme Court with the § 2 claims. But the plaintiffs are free to litigate in any court with jurisdiction, and their choice to forgo further, optional state review hardly converted the state constitutional judgment into a decision following "full and fair opportunity to litigate," as res judicata would require. For that matter, a federal court gives no greater preclusive effect to a state-court judgment than the state court itself would do, and the Supreme Court of Florida made it plain that its preliminary look at the vote dilution claims would have no preclusive effect under Florida law.

The State does not, of course, argue that res judicata bars the claims of the United States, which was not a party in the Florida Supreme Court action. It contends instead that the Federal Government's § 2 challenge deserved dismissal under this Court's *Rooker*/*Feldman* abstention doctrine, under which a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights. But the invocation of *Rooker/ Feldman* is just as inapt here, for unlike Rooker or Feldman, the United States was not a party in the state court. It was in no position to ask this Court to review the state court's judgment and has not directly attacked it in this proceeding. The United States merely seeks to litigate its § 2 case for the first time, and the Government's claims, like those of the private plaintiffs, are properly before the federal courts.

III

On the merits of the vote dilution claims covering the House districts, the crux of the State's argument is the power of Hispanics under SJR 2–G to elect candidates of their choice in a number of districts that mirrors their share of the Dade County area's voting-age population (*i.e.,* 9 out of 20 House districts); this power, according to the State, bars any finding that the plan dilutes Hispanic voting strength. The District Court is said to have missed that conclusion by mistaking our precedents to require the plan to maximize the number of Hispanic-controlled districts.

The State's argument takes us back to ground covered last Term in two cases challenging single-member districts. In *Growe,* we held that a claim of vote dilution in a single-member district requires proof meeting the same three threshold conditions for a dilution challenge to a multimember district: that a minority group be " 'sufficiently large and geographically compact to constitute a majority in a single-member district' "; that it be " 'politically cohesive' "; and that " 'the white majority vot[e] sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate.' " Of course, as we reflected in *Voinovich* and amplify later in this opinion, "the *Gingles* factors cannot be applied mechanically and without regard to the nature of the claim."

In *Voinovich* we explained how manipulation of district lines can dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door. Section 2 prohibits either sort of line-drawing where its result, " 'interact[ing] with social and historical conditions,' impairs the ability of a protected class to elect its candidate of choice on an equal basis with other voters."

Plaintiffs in *Growe* and *Voinovich* failed to show vote dilution because the former did not prove political cohesiveness of the minority group, and the latter showed no significant white bloc voting. Here, on the contrary, the District Court found, and the State does not challenge, the presence of both these *Gingles* preconditions. The dispute in this litigation centers on two quite different questions: whether Hispanics are sufficiently numerous and geographically compact to be a majority in additional single-member districts, as required by the first *Gingles* factor; and whether, even with all three *Gingles* conditions satisfied, the circumstances in totality support a finding of vote dilution when Hispanics can be expected to elect their chosen representatives in substantial proportion to their percentage of the area's population.

A

When applied to a claim that single-member districts dilute minority votes, the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice. The District Court found the condition satisfied by contrasting SJR 2–G with the De Grandy plan for the Dade County area, which provided for 11 reasonably compact districts, each with a voting-age population at least 64 percent Hispanic. While the percentage figures are not disputed, the parties disagree about the sufficiency of these super-majorities to allow Hispanics to elect representatives of their choice in all 11 districts. The District Court agreed with plaintiffs that the supermajorities would compensate for the number of voting-age Hispanics who did not vote, most commonly because they were recent immigrants who had not become citizens of the United States. The State protests that fully half of the Hispanic voting-age residents of the region are not citizens, with the result that several districts in the De Grandy plan lack enough Hispanic voters to elect candidates of their choice without cross-over votes from other ethnic groups. On these assumptions, the State argues that the condition necessary to justify tinkering with the State's plan disappears.

We can leave this dispute without a winner. The parties' ostensibly factual disagreement raises an issue of law about which characteristic of minority populations (*e.g.,* age, citizenship) ought to be the touchstone for proving a dilution claim and devising a sound remedy. These cases may be resolved, however, without reaching this issue or the related question whether the first *Gingles* condition can be satisfied by proof that a so-called influence district may be created (that is, by proof that plaintiffs can devise an additional district in which members of a minority group are a minority of the voters, but a potentially influential one). As in the past, we will assume without deciding that even if Hispanics are not an absolute majority of the relevant population in the additional districts, the first *Gingles* condition has been satisfied in these cases.

B

We do, however, part company from the District Court in assessing the totality of circumstances. The District Court found that the three *Gingles* preconditions were satisfied, and that Hispanics had suffered historically from official discrimination, the social, economic, and political effects of which they generally continued to feel, Without more, and on the apparent assumption that what could have been done to create additional Hispanic supermajority districts should have been done, the District Court found a violation of § 2. But the assumption was erroneous, and more is required, as a review of *Gingles* will show.

1

Thornburg v. Gingles, prompted this Court's first reading of § 2 of the Voting Rights Act of 1965 after its 1982 amendment. Section 2(a) of the amended Act prohibits any "standard, practice, or procedure ... 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 [or membership in a language minority group]...." Section 2(b) provides that a denial or abridgment occurs where, "based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

Gingles provided some structure to the statute's "totality of circumstances" test in a case challenging multimember legislative districts. The Court listed the factors put forward as relevant in the Senate Report treating the 1982 amendments, and held that "[w]hile many or all of [them] may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice. Stated succinctly, a bloc voting majority must *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group."

The Court thus summarized the three now-familiar *Gingles* factors (compactness/numerousness, minority cohesion or bloc voting, and majority bloc voting) as "necessary preconditions," for establishing vote dilution by use of a multimember district.

But if *Gingles* so clearly identified the three as generally necessary to prove a § 2 claim, it just as clearly declined to hold them sufficient in combination, either in the sense that a court's examination of relevant circumstances was complete once the three factors were found to exist, or in the sense that the three in combination necessarily and in all circumstances demonstrated dilution. This was true not only because bloc voting was a matter of degree, with a variable legal significance depending on other facts, but also because the ultimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on

comprehensive, not limited, canvassing of relevant facts. Lack of electoral success is evidence of vote dilution, but courts must also examine other evidence in the totality of circumstances, including the extent of the opportunities minority voters enjoy to participate in the political To be sure, some § 2 plaintiffs may have easy cases, but although lack of equal electoral opportunity may be readily imagined and unsurprising when demonstrated under circumstances that include the three essential *Gingles* factors, that conclusion must still be addressed explicitly, and without isolating any other arguably relevant facts from the act of judgment.

2

If the three *Gingles* factors may not be isolated as sufficient, standing alone, to prove dilution in every multimember district challenge, *a fortiori* they must not be when the challenge goes to a series of single-member districts, where dilution may be more difficult to grasp. Plaintiffs challenging single-member districts may claim, not total submergence, but partial submergence; not the chance for some electoral success in place of none, but the chance for more success in place of some. When the question thus comes down to the reasonableness of drawing a series of district lines in one combination of places rather than another, judgments about inequality may become closer calls. As facts beyond the ambit of the three *Gingles* factors loom correspondingly larger, factfinders cannot rest uncritically on assumptions about the force of the *Gingles* factors in pointing to dilution.

The cases now before us, of course, fall on this more complex side of the divide, requiring a court to determine whether provision for somewhat fewer majority-minority districts than the number sought by the plaintiffs was dilution of the minority votes. The District Court was accordingly required to assess the probative significance of the *Gingles* factors critically after considering the further circumstances with arguable bearing on the issue of equal political opportunity. We think that in finding dilution here the District Court misjudged the relative importance of the *Gingles* factors and of historical discrimination, measured against evidence tending to show that in spite of these facts, SJR 2–G would provide minority voters with an equal measure of political and electoral opportunity.

The District Court did not, to be sure, commit the error of treating the three *Gingles* conditions as exhausting the enquiry required by § 2. Consistently with *Gingles,* the court received evidence of racial relations outside the immediate confines of voting behavior and found a history of discrimination against Hispanic voters continuing in society generally to the present day. But the District Court was not critical enough in asking whether a history of persistent discrimination reflected in the larger society and its bloc-voting behavior portended any dilutive effect from a newly proposed districting scheme, whose pertinent features were majority-minority districts in substantial proportion to the minority's share of voting-age population. The court failed to ask whether the totality of facts, including those pointing to proportionality, showed that the new scheme would deny minority voters equal political opportunity.

Treating equal political opportunity as the focus of the enquiry, we do not see how these district lines, apparently providing political effectiveness in proportion to voting-age numbers, deny equal political opportunity. The record establishes that Hispanics constitute 50 percent of the

voting-age population in Dade County and under SJR 2–G would make up supermajorities in 9 of the 18 House districts located primarily within the county. Likewise, if one considers the 20 House districts located at least in part within Dade County, the record indicates that Hispanics would be an effective voting majority in 45 percent of them (*i.e.,* nine), and would constitute 47 percent of the voting-age population in the area. In other words, under SJR 2–G Hispanics in the Dade County area would enjoy substantial proportionality. On this evidence, we think the State's scheme would thwart the historical tendency to exclude Hispanics, not encourage or perpetuate it. Thus in spite of that history and its legacy, including the racial cleavages that characterize Dade County politics today, we see no grounds for holding in these cases that SJR 2–G's district lines diluted the votes cast by Hispanic voters.

The De Grandy plaintiffs urge us to put more weight on the District Court's findings of packing and fragmentation, allegedly accomplished by the way the State drew certain specific lines: "[T]he line of District 116 separates heavily Hispanic neighborhoods in District 112 from the rest of the heavily Hispanic Kendall Lakes area and the Kendall area," so that the line divides "neighbors making up the ... same housing development in Kendall Lakes," and District 114 "packs" Hispanic voters, while Districts 102 and 109 "fragmen[t]" them. We would agree that where a State has split (or lumped) minority neighborhoods that would have been grouped into a single district (or spread among several) if the State had employed the same line-drawing standards in minority neighborhoods as it used elsewhere in the jurisdiction, the inconsistent treatment might be significant evidence of a § 2 violation, even in the face of proportionality. The district court, however, made no such finding. Indeed, the propositions the Court recites on this point are not even phrased as factual findings, but merely as recitations of testimony offered by plaintiffs' expert witness. While the District Court may well have credited the testimony, the court was apparently wary of adopting the witness's conclusions as findings. But even if one imputed a greater significance to the accounts of testimony, they would boil down to findings that several of SJR 2–G's district lines separate portions of Hispanic neighborhoods, while another district line draws several Hispanic neighborhoods into a single district. This, however, would be to say only that lines could have been drawn elsewhere, nothing more. But some dividing by district lines and combining within them is virtually inevitable and befalls any population group of substantial size. Attaching the labels "packing" and "fragmenting" to these phenomena,without more, does not make the result vote dilution when the minority group enjoys substantial proportionality.

3

It may be that the significance of the facts under § 2 was obscured by the rule of thumb apparently adopted by the District Court, that anything short of the maximum number of majority-minority districts consistent with the *Gingles* conditions would violate § 2, at least where societal discrimination against the minority had occurred and continued to occur. But reading the first *Gingles* condition in effect to define dilution as a failure to maximize in the face of bloc voting (plus some other incidents of societal bias to be expected where bloc voting occurs) causes its own dangers, and they are not to be courted.

Assume a hypothetical jurisdiction of 1,000 voters divided into 10 districts of 100 each, where members of a minority group make up 40 percent of the voting population and voting is totally polarized along racial lines. With the right geographic dispersion to satisfy the compactness requirement, and with careful manipulation of district lines, the minority voters might be placed in control of as many as 7 of the 10 districts. Each such district could be drawn with at least 51 members of the minority group, and whether the remaining minority voters were added to the groupings of 51 for safety or scattered in the other three districts, minority voters would be able to elect candidates of their choice in all seven districts. The point of the hypothetical is not, of course, that any given district is likely to be open to such extreme manipulation, or that bare majorities are likely to vote in full force and strictly along racial lines, but that reading § 2 to define dilution as any failure to maximize tends to obscure the very object of the statute and to run counter to its textually stated purpose. One may suspect vote dilution from political famine, but one is not entitled to suspect (much less infer) dilution from mere failure to guarantee a political feast. However prejudiced a society might be, it would be absurd to suggest that the failure of a districting scheme to provide a minority group with effective political power 75 percent above its numerical strength indicates a denial of equal participation in the political process. Failure to maximize cannot be the measure of § 2.

4

While, for obvious reasons, the State agrees that a failure to leverage minority political strength to the maximum possible point of power is not definitive of dilution in bloc-voting societies, it seeks to impart a measure of determinacy by applying a definitive rule of its own: that as a matter of law no dilution occurs whenever the percentage of single-member districts in which minority voters form an effective majority mirrors the minority voters' percentage of the relevant population. Proportionality so defined, would thus be a safe harbor for any districting scheme.

The safety would be in derogation of the statutory text and its considered purpose, however, and of the ideal that the Voting Rights Act of 1965 attempts to foster. An inflexible rule would run counter to the textual command of § 2, that the presence or absence of a violation be assessed "based on the totality of circumstances." The need for such "totality" review springs from the demonstrated ingenuity of state and local governments in hobbling minority voting power, *McCain v. Lybrand,* a point recognized by Congress when it amended the statute in 1982: "[S]ince the adoption of the Voting Rights Act, [some] jurisdictions have substantially moved from direct, over[t] impediments to the right to vote to more sophisticated devices that dilute minority voting strength," In modifying § 2, Congress thus endorsed our view in *White v. Regester,* that "whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,' " a substantial number of voting jurisdictions, that past reality has included such reprehensible practices as ballot box stuffing, outright violence, discretionary registration, property requirements, the poll tax, and the white primary; and other practices censurable when the object of their use is discriminatory, such as at-large elections, runoff requirements, anti-single-shot devices, gerrymandering, the impeachment of office-holders, the annexation or deannexation of territory, and the creation or elimination of elective offices. Some of those expedients could occur even in a jurisdiction with numerically

demonstrable proportionality; the harbor safe for States would thus not be safe for voters. It is, in short, for good reason that we have been, and remain, chary of entertaining a simplification of the sort the State now urges upon us.

Even if the State's safe harbor were open only in cases of alleged dilution by the manipulation of district lines, however, it would rest on an unexplored premise of highly suspect validity: that in any given voting jurisdiction (or portion of that jurisdiction under consideration), the rights of some minority voters under § 2 may be traded off against the rights of other members of the same minority class. Under the State's view, the most blatant racial gerrymandering in half of a county's single-member districts would be irrelevant under § 2 if offset by political gerrymandering in the other half, so long as proportionality was the bottom line.

Finally, we reject the safe harbor rule because of a tendency the State would itself certainly condemn, a tendency to promote and perpetuate efforts to devise majority-minority districts even in circumstances where they may not be necessary to achieve equal political and electoral opportunity. Because in its simplest form the State's rule would shield from § 2 challenge a districting scheme in which the number of majority-minority districts reflected the minority's share of the relevant population, the conclusiveness of the rule might be an irresistible inducement to create such districts. It bears recalling, however, that for all the virtues of majority-minority districts as remedial devices, they rely on a quintessentially race-conscious calculus aptly described as the "politics of second best," If the lesson of *Gingles* is that society's racial and ethnic cleavages sometimes necessitate majority-minority districts to ensure equal political and electoral opportunity, that should not obscure the fact that there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice. Those candidates may not represent perfection to every minority voter, but minority voters are not immune from the obligation to pull, haul, and trade to find common political ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics.

It is enough to say that, while proportionality in the sense used here is obviously an indication that minority voters have an equal opportunity, in spite of racial polarization, "to participate in the political process and to elect representatives of their choice," the degree of probative value assigned to proportionality may vary with other facts. No single statistic provides courts with a shortcut to determine whether a set of single-member districts unlawfully dilutes minority voting strength.

5

While the United States concedes the relevance of proportionality to a § 2 claim, it would confine proportionality to an affirmative defense, and one to be made only on a statewide basis in cases that challenge districts for electing a body with statewide jurisdiction. In this litigation, the United States would have us treat any claim that evidence of proportionality supports the State's plan as having been waived because the State made no argument in the District Court that

the proportion of districts statewide in which Hispanics constitute an effective voting majority mirrors the proportion of statewide Hispanic population.

The argument has two flaws. There is, first, no textual reason to segregate some circumstances from the statutory totality, to be rendered insignificant unless the defendant pleads them by way of affirmative defense. Second, and just as importantly, the argument would recast these cases as they come to us, in order to bar consideration of proportionality except on statewide scope, whereas up until now the dilution claims have been litigated on a smaller geographical scale. It is, indeed, the plaintiffs themselves, including the United States, who passed up the opportunity to frame their dilution claim in statewide terms. While the United States points to language in its complaint alleging that the redistricting plans dilute the votes of "Hispanic citizens and black citizens in the State of Florida," the complaint identifies "several areas of the State" where such violations of § 2 are said to occur, and then speaks in terms of Hispanics in the Dade County area (and blacks in the area of Escambia County), Nowhere do the allegations indicate that claims of dilution "in the State of Florida" are not to be considered in terms of the areas specifically mentioned. The complaint alleges no facts at all about the contours, demographics, or voting patterns of any districts outside the Dade County or Escambia County areas, and neither the evidence at trial nor the opinion of the District Court addressed white bloc voting and political cohesion of minorities statewide. The De Grandy plaintiffs even voluntarily dismissed their claims of Hispanic vote dilution outside the Dade County area. Thus we have no occasion to decide which frame of reference should have been used if the parties had not apparently agreed in the District Court on the appropriate geographical scope for analyzing the alleged § 2 violation and devising its remedy.

6

In sum, the District Court's finding of dilution did not address the statutory standard of unequal political and electoral opportunity, and reflected instead a misconstruction of § 2 that equated dilution with failure to maximize the number of reasonably compact majority-minority districts. Because the ultimate finding of dilution in districting for the Florida House was based on a misreading of the governing law, we hold it to be clearly erroneous.

IV

Having found insufficient evidence of vote dilution in the drawing of House districts in the Dade County area, we look now to the comparable districts for the state Senate. As in the case of House districts, we understand the District Court to have misapprehended the legal test for vote dilution when it found a violation of § 2 in the location of the Senate district lines. Because the court did not modify the State's plan, however, we hold the ultimate result correct in this instance.

SJR 2–G creates 40 single-member Senate districts, 5 of them wholly within Dade County. Of these five, three have Hispanic supermajorities of at least 64 percent, and one has a clear majority of black voters. Two more Senate districts crossing county lines include substantial numbers of Dade County voters, and in one of these, black voters, although not close to a majority, are able to elect representatives of their choice with the aid of cross-over votes.

Within this seven-district Dade County area, both minority groups enjoy rough proportionality. The voting-age population in the seven-district area is 44.8 percent Hispanic and 15.8 percent black. Hispanics predominate in 42.9 percent of the districts (three out of seven), as do blacks in 14.3 percent of them (one out of seven). While these numbers indicate something just short of perfect proportionality (42.9 percent against 44.8; 14.3 percent against 15.8), the opposite is true of the five districts located wholly within Dade County.

The District Court concentrated not on these facts but on whether additional districts could be drawn in which either Hispanics or blacks would constitute an effective majority. The court found that indeed a fourth senatorial district with a Hispanic supermajority could be drawn, or that an additional district could be created with a black majority, in each case employing reasonably compact districts. Having previously established that each minority group was politically cohesive, that each labored under a legacy of official discrimination, and that whites voted as a bloc, the District Court believed it faced "two independent, viable Section 2 claims." Because the court did not, however, think it was possible to create both another Hispanic district and another black district on the same map, it concluded that no remedy for either violation was practical and, deferring to the State's plan as a compromise policy, imposed SJR 2–G's senatorial districts.

We affirm the District Court's decision to leave the State's plan for Florida State Senate districts undisturbed. As in the case of the House districts, the totality of circumstances appears not to support a finding of vote dilution here, where both minority groups constitute effective voting majorities in a number of state Senate districts substantially proportional to their share in the population, and where plaintiffs have not produced evidence otherwise indicating that under SJR 2–G voters in either minority group have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."

V

There being no violation of the Voting Rights Act shown, we have no occasion to review the District Court's decisions going to remedy. The judgment of the District Court is accordingly affirmed in part and reversed in part.

It is so ordered.

SECTION 2 OF THE VOTING RIGHTS ACT

a) No voting qualification or prerequisite to voting or standard, practice, or procedure 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, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.