A GENERAL THEORY OF VOTE DILUTION

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I. INTRODUCTION

In 1965, Congress passed the Voting Rights Act¹ to eliminate the discrimination in voting that had plagued the nation since the end of Reconstruction in the 1870’s. Because the right to vote is a “fundamental political right ... preservative of all rights,”² the Voting Rights Act is

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the crown jewel of the civil rights movement.

Although the Voting Rights Act quickly removed obstacles to registration and voting by individuals, discrimination continued in the more subtle form of electoral mechanisms that reduce opportunities for minority voters to participate in the political process on an equal basis with white citizens and to elect candidates of their choice. Examples of practices that potentially "dilute" minority voting strength include submerging minority voters within white-dominated single or multi-member districts and packing minorities into districts beyond the level needed to achieve effective political control.  

In 1982, Congress amended Section 2 of the Voting Rights Act to proscribe electoral arrangements that produce discriminatory results. In its 1986 decision, *Thornburg v. Gingles*, the Supreme Court ruled that the "results" test of amended Section 2 does not require proof that a jurisdiction adopted or maintained an electoral system for racial reasons or that race motivates the choices of voters. Beyond showing that an electoral system dilutes minority voting strength, plaintiffs need only identify a practical means for achieving more equitable opportunities for minority voters.

Since 1986, misconstructions of the results test have sown confusion in the literature and the courts. Some critics assert that the amended Section 2 is a form of affirmative action that mandates tinkering with electoral systems to maximize representation for minorities. In this view, the Voting Rights Act tacitly requires proportional representation for minorities, despite explicit prohibitions to the contrary. Section 2, critics also charge, undermines interracial coalitions and fosters racial segregation by concentrating minorities in particular electoral districts.

The reapportionment case from Ohio — *Voinovich v. Quilter* — raises several questions crucial to the interpretation of Section 2. What kinds of arrangements of minority voters into districts are required or

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3. We use the shorthand terms "minority" and "white" throughout our discussion. In practice, however, where a Section 2 complaint involves a single minority group, the analysis considers members and non-members of that minority group (e.g., Latinos and non-Latinos). Non-members may thus include members of other minority groups. Section 2 analyses involving combined minority groups are beyond the scope of this article, although the same general principles apply.


prohibited under the Voting Rights Act? Do the same standards of analysis apply to multi-member and single-member district systems for electing public officials? Can decision-makers take race into account when crafting a redistricting plan?

The fundamental principles of the Voting Rights Act as explained in *Gingles* provide clear guidance to courts in evaluating all variants of single-member, multi-member, and at-large systems for electing public officials. Although elements of a theory of vote dilution have been discussed in the literature, our effort is to develop an integrated, general theory applicable to novel situations. The general theory of vote dilution presented here rests on three foundations:

1) A voting rights violation requires proof of ongoing discriminatory effects against minority group members.
2) Minority exclusion must result from the combination of an electoral arrangement and the voting patterns of whites and minorities within a jurisdiction.
3) There must be a practical remedy, tailored to local conditions.

Explication of these basic principles not only resolves all controverted issues in the *Voinovich* litigation, but provides clear and justiciable standards for evaluating redistricting plans.

Electoral arrangements are not legal or illegal *per se*. Depending on local factors such as the geographic distribution of racial groups and patterns of racially linked turnout and minority voting, identical systems for electing public officials may impact differently on minority voting strength. Under some circumstances, such as low minority turnout or monolithic white voting against minority-preferred candidates, even single-member districts with majorities of minority members may dilute minority voting strength. Under other circumstances, such as high minority turnout or significant white support for minority-preferred candidates, white majority districts may not have dilutive effects.

A lack of proportional representation for minorities does not by it-

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self establish a voting rights violation. Plaintiffs must demonstrate that lagging electoral success for minority-preferred candidates results from the combined impact of a given electoral system and the voting patterns characteristic of white and minority voters. In analyzing these locally specific effects of electoral systems, the same standards apply to multi-member or single-member districts and, with the exception of packing, to at-large elections as well. To ascertain whether a particular electoral arrangement is likely to produce discriminatory effects, decision-makers must take race into account in formulating redistricting plans.

The remedy for an exclusionary system must likewise respond to local conditions. The same methods used to uncover voting rights violations also disclose the efficacy of proposed remedies. There are neither per se violations, nor per se solutions under the Voting Rights Act. For example, the level of minority concentration in a remedial single-member district will vary according to locally-specific patterns of white and minority turnout and of coalition voting. If minority turnout is low and coalition voting weak, remedial districts would likely require substantial majorities of minority members. If minority turnout is high and coalition voting strong, satisfactory remedial districts might include less than a majority of minority group members. The test is not achievement of an arbitrary level of minority population, but the realistic potential of minority voters to elect candidates of their choice.

II. ONGOING DISCRIMINATORY EFFECTS

The Voting Rights Act is different in purpose than other civil rights remedies that rectify past discrimination in, for example, employment or university admissions. Section 2 litigation is aimed at electoral systems that are presently impeding minority opportunities to participate fully in the political process and to elect candidates of their choice. Although present-day effects are often tied to a history of discrimination, complaining parties must still show that electoral arrangements have ongoing discriminatory effects that can be remedied by a new system for electing public officials. Remedies in voting rights are not reparations for past wrongs, but are means for curing ongoing discriminatory effects.

Both affirmative action programs and Section 2, however, target minorities as a group, rather than particular, named individuals. Given that dilutive electoral systems diminish the overall impact of the minority vote, plaintiffs must show that minorities are sufficiently cohesive in their voting behavior to be treated as a group with common political

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interests. Unless minority voters generally support the same candidates, there is little point in considering whether political systems provide the minority electorate an opportunity to elect candidates of their choice.

The Supreme Court has ruled that plaintiffs establish minority political cohesion by examining patterns of minority voting. Under Gingles, to prove that a minority group is politically cohesive, plaintiffs must show that "a significant number of minority group members usually vote for the same candidates." Thus, plaintiffs need to demonstrate a usual, but not a uniform, pattern of minority cohesion in past elections. The clearest indication of minority cohesion is sustained minority support for minority candidates, especially when those candidates lack comparable white support. Such racially consistent voting shows that minority voters — as distinct from white voters — share a common interest in electing minority candidates. In theory, minority group cohesion could be established by usual bloc voting for minority candidates above the 50 percent level. But an absolute 50 percent threshold is simultaneously too lenient and too strict.

Social science literature relied on by the Supreme Court in a variety of civil rights contexts, including voting rights, provides no consensus for specifying a minimum level of cohesive minority voting. But the social science literature does point to a threshold above which the minority group's political cohesion would be established beyond dispute. That threshold would be one at which, based on American political history, voting reaches landslide proportions: a majority of about 60 percent or greater in a contest for a single position. Over time, usual minority support for minority candidates at or above the 60 percent level should be sufficient proof of minority group cohesion. The 60 percent "landslide standard" applies only to contests for single positions.

When voters cast ballots simultaneously for several positions, the focus shifts from percentage measures to whether minority voters usually rank minority candidates at or near the top of the list of candidates. When multiple minority candidates are competing for a single position, minority cohesion is best measured by combining minority support for the minority candidates combined. White "crossover" support for minority candidates would be measured in like fashion, so the same standards would apply. The question at issue is the extent to which minorities, as opposed to whites, favor minority candidates, not which particular minority candidate garnered the most support.12

10. We focus in this article on discriminatory electoral systems that dilute the impact of minority votes, once cast. We do not consider other forms of voting discrimination, such as majority vote requirements and impediments to registration or voting, that may produce discriminatory results.  
12. See Citizens for a Better Gretna v. City of Gretna, 834 F.2d 492, 502 (5th Cir. 1987)
Usual levels of support below 60 percent, however, would not prove a lack of political cohesiveness, but would signal the need to examine local conditions. The Gingles court recognized that special circumstances (e.g., a system so adverse to minorities that it deters viable minority candidates from running) might explain why a cohesive minority electorate provides less than landslide or even majority support for minority candidates. A wide gap between the percentage of minority and white votes cast for an otherwise weak candidate would be an indication of minority cohesion despite less than 50 or 60 percent minority support for the candidate. Under such circumstances, a more accurate level of minority cohesion may be obtained by examining contests that include more viable minority candidates.

III. STANDARDS OF PROOF

Proof of a Section 2 violation is inevitably two-fold, requiring analysis of both electoral arrangements and patterns of white and minority voting. Plaintiffs must show that the combination of a particular political system and racially linked voting by whites and minorities denies minorities an equal opportunity with whites to participate in the political process and elect candidates of their choice. A lack of proportional representation by minority candidates cannot by itself sustain a Section 2 violation. For example, minorities may be evenly dispersed throughout a jurisdiction so that they cannot establish control of even a single electoral district. Or minorities may lack sufficient cohesion to elect minority

(recognizing more than one minority-preferred candidate in multiple-seat election), cert. denied, 109 S. Ct. 3213 (1989).

13. The Gingles court recognized that special circumstances may create exceptions to the standards for judging minority cohesion. 478 U.S. at 77. In addition to deterrence of strong minority candidates other exceptions include, for example, elections with one minority candidate and numerous white candidates and elections in which a minority candidate is sponsored by the white community. See, e.g., Collins v. City of Norfolk, 883 F.2d 1232 (4th Cir. 1989), cert. denied, 111 S. Ct. 340 (1990).

14. In Garza v. County of Los Angeles, No. CV 88-5143 KN (Ex), (C.D. Cal. June 4, 1990), aff’d in part, vacated in part and remanded, 918 F.2d 763 (9th Cir. 1990), cert. denied, 111 S.Ct. 681 (1991), the trial court found that in elections for the Board of Supervisors, “a majority of Spanish surname or Spanish-origin voters support[ed] the Hispanic candidates” in “only one of four Supervisorial contests[,]” Id. at 91. The court thus resorted to other non-Supervisorial elections with viable minority candidates in assessing minority voter political cohesion. Id. at 87-93.

15. It is beyond the scope of our inquiry to consider whether, under such circumstances, it is appropriate to abandon district-based elections in favor of a type of semi-proportional representation such as a cumulative or limited voting system. See, e.g., Richard L. Engstrom, Modified Multi-Seat Election Systems as Remedies for Minority Vote Dilution, 21 STETSON L. REV. 743 (1992); Lani Guinier, No Two Seats: The Elusive Quest for Political Equality, 77 VA. L. REV. 1413 (1991); Edward Still, Alternatives to Single-Member Districts, in MINORITY VOTE DILUTION 249 (Chandler Davidson, ed., 1984); Dana R. Carstarphen, The Single Transferable Vote: Achieving the Goal of Section 2 Without Sacrificing the Integration Ideal, 9 YALE L. & POL'Y. REV. 405 (1991).
candidates even in majority-minority districts.

The remedy for a voting rights violation may, of course, have the effect of producing proportional representation in a jurisdiction. The alternative, however, would be to freeze in place an exclusionary system that results in greater than proportional representation for whites. The Voting Rights Act neither guarantees nor prohibits proportional representation for any racial group. The law mandates only the elimination of vote dilution, not any particular outcome of actual elections. After decades of voting rights litigation, most jurisdictions in the United States still disproportionately elect white candidates. Despite such high-profile achievements as Douglas Wilder's election as Governor of Virginia and Carol Moseley Braun's election as Senator from Illinois, the great bulk of minority office-holders in the United States represent districts or jurisdictions with a majority of minority group members.16

Proportional representation for minority candidates, moreover, is not a universally valid defense against a Section 2 complaint, even when sustained over time. The particular minority candidates being elected may not be the candidates of choice of the minority community. One consequence of vote dilution may be that minority candidates preferred by white voters defeat minority candidates preferred by minority voters. The white community may even sponsor minority candidates as part of a strategy for avoiding or defeating voting rights litigation. As Justice Brennan explained in Gingles, "In some situations, it may be possible for Section 2 plaintiffs to demonstrate that such sustained success [of minority candidates] does not accurately reflect the minority group's ability to elect its preferred representatives."

Whether voters choose public officials from single or multi-member districts, minority vote dilution takes one of two characteristic forms. First, minority group members may be submerged within districts under the electoral control of whites. District lines may fragment minority concentrations or attach minority communities to otherwise white districts. Minorities may also be submerged within a white-dominated at-large jurisdiction. Second, minority group members may be packed into districts beyond the proportion needed to achieve effective political control. Packing minorities into a relatively few districts limits opportunities for minorities to elect candidates of their choice in a larger number of less concentrated districts. Packing, unlike submergence, requires at least two districts and is not applicable to at-large elections.

17. 478 U.S. at 77 (footnote omitted).
IV. SUBMERSION

In *Gingles*, the Supreme Court promulgated standards for determining whether minorities are illegally submerged within white-controlled districts. The specific application was to multi-member districts for electing North Carolina legislators, but the logic of the *Gingles* approach applies equally well to either a single-member district or at-large system. The dispersion of minority voters among single-member districts is equivalent to submergence within multi-member districts or at-large jurisdictions, and has the same effect on the ability of minority-group members to elect representatives of their choice.18 As Justice Brennan observed in *Gingles*: "Dilution of racial minority group voting strength may be caused by the dispersal of [minorities] into districts in which they constitute an ineffective minority of voters . . . ."19

Under *Gingles*, plaintiffs must prove that voting is polarized along racial lines and that such voting patterns are politically consequential for the minority electorate. The *Gingles* court drew an important distinction between the existence of racially polarized voting and the political or substantive significance of racially polarized voting. Racially polarized voting, the Court noted, represents "‘a consistent relationship between [the] race of the voter and the way in which the voter votes[.]’"20 Polarized voting thus exists if minorities and whites differ in the extent to which they support competing candidates. There is a pattern of racially polarized voting if minorities and whites usually prefer different candidates in elections held over a period of time.

Racially polarized voting is politically or substantively significant if a cohesive minority electorate is typically unable to elect its preferred candidates in the face of white opposition. According to Justice Brennan: "The purpose of inquiring into the existence of racially polarized voting is two-fold: 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 candidate."21 The only other prerequisite for establishing vote dilution is that a minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district."22 This requirement completes the

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18. Analysis may, of course, have to adjust mathematically for multi-member or at-large systems that simultaneously elect several members of a legislative or judicial body. The adjustment is technical rather than conceptual given that analyses of multiple seat elections also depend on the proportion of minority and white populations, as well as levels of turnout, minority cohesion, and white bloc voting.
19. 478 U.S. 30, 46 n. 11.
20. *Id.* at 53 n. 21.
21. *Id.* at 55.
22. *Id.* at 50 (footnote omitted).
three-part *Gingles* test for proving a Section 2 violation.\(^\text{23}\)

Taken together, the three *Gingles* factors provide sufficient proof of a Section 2 violation, showing that an electoral system impedes minority opportunities not only to elect candidates of their choice, but also to participate fully in the political process.\(^\text{24}\) The *Gingles* criteria establish when the combination of electoral arrangements in a jurisdiction and patterns of white and minority voting interact to dilute the impact of minority votes. Thus minority voters, unlike white voters, are systematically blocked from having their preferred representatives take part in the policy-making and voter-feedback stage of the political process.\(^\text{25}\) As the Supreme Court noted in *Reynolds v. Sims*, full participation in politics means more than the ability to cast an unobstructed ballot: "There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted . . . . It also includes the right to have the vote counted at full value without dilution or discount. . . .\(^\text{26}\)

There are no absolute standards for gauging white bloc voting, the third of the three *Gingles* standards. Legally significant bloc voting consists of "a white bloc vote that normally will defeat the . . . combined strength of minority support plus white 'crossover' votes. . . .\(^\text{27}\) Note that *Gingles* requires proof of a "normal", but not a universal, pattern of white bloc voting sufficient to defeat minority-preferred candidates. The dimensions of this white bloc vote depend on district-specific factors.

Minority support for candidates is a function of the percentage of voting age minorities in a district, minority turnout rates, and the level of minority cohesion. In turn, white "crossover" is a function of the per-

\(^{23}\) This criterion, often referred to in the literature as the "first prong" of *Gingles*, treads a fine line between violation and remedy. On the one hand, to show that an electoral system dilutes minority voting strength, plaintiffs must point to some non-dilutive alternative. On the other hand, this particular alternative need not become the final plan adopted as a remedy by the jurisdiction or imposed by the court.

\(^{24}\) In our view, sufficient proof of the three *Gingles* factors establishes a Section 2 violation because it proves that racially polarized voting patterns, operating in the context of the electoral arrangement under attack, harm minority voters. Although additional proof may be offered by plaintiffs in some cases, it is not essential that they do so in order to establish a Section 2 violation once the three *Gingles* factors have been proven. Furthermore, defendants cannot rebut a Section 2 case once plaintiffs have offered a sufficient amount of proof of the three *Gingles* factors, and should be required instead to proceed with the development of a remedy for the proven violation.

\(^{25}\) In *Chisom v. Roemer*, 111 S. Ct. 2354 (1991), Justice Stevens, writing for the Court, observed that the mere inability of minorities to elect candidates of their choice is not sufficient proof of a Section 2 violation. Rather, the defeat of minority-preferred candidates must be tied to the operation of the election system under challenge.


centage of voting age whites, white turnout rates, and white bloc voting. As the proportion of minority population in a district, the level of minority turnout, and the degree of minority cohesion increase, the levels of white bloc voting needed to defeat minority preferred candidates also increase. For example, white bloc voting of about 70 percent would be sufficient to defeat minority-preferred candidates in a 30 percent minority district, even if minority turnout equalled white turnout and minority cohesion reached 90 percent. Given the same levels of turnout and cohesion, however, white bloc voting of about 80 percent would be needed to defeat a minority-preferred candidate in a 40 percent minority district. A consistent 30 percent white "crossover" vote in this majority-white district would constitute sufficient coalition voting to provide for the election of minority-preferred candidates. Thus coalition voting between whites and minorities does not necessarily imply an absence of polarized voting. Rather, it means only that under a given districting configuration are white "crossover" votes sufficient to provide minorities realistic opportunities to elect candidates of their choice.

In analyzing the two components of racially polarized voting — minority cohesion and white bloc voting — analysts generally look first to elections for the office under challenge. As noted above, such elections may, however, be misleading if an electoral system has deterred viable minority candidates from competing. Generally speaking, the most reliable studies examine a pattern of results for a variety of candidates and offices.

The Gingles standards for proving cohesion and bloc voting do not result in the destruction of interracial coalitions in order to segregate minority groups. As with a lack of proportional representation, a lack of majority-minority districts does not by itself prove a voting rights violation. On the contrary, proof of the failure or the nonexistence of coalition voting (i.e., that voting patterns are polarized) is a prerequisite under Gingles for demonstrating that minorities are insufficiently concentrated in districts or submerged in an at-large jurisdiction. Minority voting strength is not diluted when white "crossover" voting, combined with sufficient minority cohesion, provides minorities a realistic potential to elect candidates of their choice. As the Senate Report which accompanied the 1982 amendments to the Voting Rights Act makes clear, Section 2 does not disturb effective interracial coalitions: "If plaintiffs assert that they are denied fair access to the political process, in part, because of the racial bloc voting context within which the challenged election system works, they would have to prove it."28

Given differences in minority and white voting, a districting ar-

arrangement that violates Section 2 in one jurisdiction may be perfectly legal in another. Table 1 analyzes two districts (or at-large systems) with an identical 40 percent minority voting age population. In District 1, minority turnout is lower than Anglo turnout and minority cohesion is less than Anglo bloc voting. Under these conditions, Anglo bloc voting would usually be sufficient to defeat the minority-prefereed candidate. In District 2, minority turnout equals Anglo turnout, and minority cohesion is substantially greater than white bloc voting. Under these conditions, minority voters can elect candidates of their choice in coalition with Anglo voters.

### Table 1

**PROJECTED VOTE FOR MINORITY CANDIDATE OF CHOICE**

**TWO HYPOTHETICAL DISTRICTS**

**DISTRICT 1:** Minority Voting Age Population = 40%

(Minority Turnout = 30% and Anglo Turnout = 40%)

Percent Minority Voters = \(40 \times .30 / (40 \times .30 + 60 \times .40) = 33\%\)

1. Minority Vote for Minority Candidate = \(.70 \times 33\% = 23.1\%^*\)
2. Anglo Vote for Minority Candidate = \(.20 \times 67\% = 13.4\%^{**}\)
3. Total Vote for Minority Candidate = 23.1% + 13.4% = 36.5%

**DISTRICT 2:** Minority Voting Age Population = 40%

(Minority Turnout = 30% and Anglo Turnout = 30%)

Percent Minority Voters = \(40 \times .30 / (40 \times .30 + 60 \times .30) = 40\%\)

1. Minority Vote for Minority Candidate = \(.90 \times 40\% = 36.0\%^*\)
2. Anglo Vote for Minority Candidate = \(.25 \times 60\% = 15.0\%^{**}\)
3. Total Vote for Minority Candidate = 36.0% + 15.0% = 51.0%

* The minority vote for the minority candidate is the product of minority cohesion (70% in District 1 and 90% in District 2) and the percent minority among voters.

** The white vote for the minority candidate is the product of white crossover voting (20% in District 1 and 25% in District 2) and the percent white among voters.

Even districts with a population majority of minority-group members may violate Section 2 if, given district-specific circumstances, the level of minority concentration fails to provide minorities a realistic potential to elect candidates of their choice. Table 2 analyzes two districts with 55 percent minority voting age populations. Both districts are under the effective political control of the white electorate: District 1 because of the extremely low minority turnout and District 2 because of the monolithic white opposition to minority-preferred candidates.

The foregoing analysis examines opportunities for minority voters to elect minority candidates. A focus on minority candidates is appropriate
### Table 2

**PROJECTED VOTE FOR MINORITY CANDIDATE OF CHOICE**

**TWO HYPOTHETICAL DISTRICTS**

**DISTRICT 1:** Minority Voting Age Population = 55%

(Minority Turnout = 30% and Anglo Turnout = 40%)

Percent Minority Among Voters = \( \frac{55 \times 0.30}{55 \times 0.30 + 45 \times 0.40} \) = 48%

1. Minority Vote for Minority Candidate = \( 0.75 \times 48\% \) = 36.0%*
2. Anglo Vote for Minority Candidate = \( 0.20 \times 52\% \) = 10.4%**
3. Total Vote for Minority Candidate = 36.0% + 10.4% = 46.4%

**DISTRICT 2:** Minority Voting Age Population = 55%

(Minority Turnout = 30% and Anglo Turnout = 30%)

Percent Minority Among Voters = \( \frac{40 \times 0.30}{40 \times 0.30 + 60 \times 0.30} \) = 55%

1. Minority Vote for Minority Candidate = \( 0.80 \times 55\% \) = 44.0%*
2. Anglo Vote for Minority Candidate = \( 0.05 \times 45\% \) = 2.3%**
3. Total Vote for Minority Candidate = 44.0% + 2.3% = 46.3%

* The minority vote for the minority candidate is the product of minority cohesion (75% in District 1 and 80% in District 2) and the percent minority among voters.

** The white vote for the minority candidate is the product of white crossover voting (20% in District 1 and 5% in District 2) and the percent white among voters.

if, empirically, the minority electorate is cohesive in its support for minority over white candidates.\(^{29}\) For this reason, the *Gingles* court found it unnecessary in North Carolina to look beyond minority versus white contests. “We conclude that the District Court’s approach, which tested data derived from three election years in each district, and which revealed that minorities strongly supported black candidates, while to the black candidates’ usual detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard.”\(^{30}\)

A finding of vote dilution based on minority versus white contests cannot be refuted by showing that minorities usually can elect the white candidate of their choice in elections that include no minority competitors, that is, that minorities can successfully influence the choice of one white candidate over another white candidate. The scrutiny of all-white elections has surface appeal because the Voting Rights Act provides minority group members with an equal opportunity to elect candidates of their choice, not of their race. However, minority opportunities are still lacking if minority prospects for electing preferred candidates are re-

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29. A proper analysis of voting behavior makes no advance assumption that in a particular district or jurisdiction minorities necessarily will be found to prefer minority over white candidates. Such a pattern of behavior must be demonstrated empirically.

30. 478 U.S. at 61.
stricted to elections in which no members of their own race are competing. Minorities are not full participants in the political process if they prefer to vote for minority candidates, but are limited to influencing the choice among white candidates. Conversely, would whites be full participants in the political process if their role were confined to influencing the choice among minority candidates? This focus on unrestricted opportunities for minority voters resolves the controversy over white versus white elections that has arisen in the courts and the literature, without drawing artificial distinctions between elections based on the race of the candidates.\(^{31}\)

The ability of minorities to influence the choice among white candidates may even suggest a lack of opportunities for the minority electorate. It may mean that minority candidates are sufficiently deterred from competing under adverse electoral arrangements that minority voters are generally forced into choosing among less preferred candidates in white-only contests. Given that white bloc voting tends to be lower in white versus white than in minority versus white contests, minority voters may appear to have more control over electoral results than is actually the case.

Table 3 partitions into five distinct categories minority prospects of electing candidates of choice in a district or at-large jurisdiction. Districts that provide minorities a realistic potential to elect candidates of their choice would include both so-called “safe” minority districts (Category 5), as well as districts that are more likely than not to elect a minority-preferred candidate (Category 4). Even “safe” minority districts, although highly likely to elect the candidate of choice of minorities, do not, in fact, guarantee that any particular candidate will prevail in any given election.

There are two complementary procedures for classifying an electoral district (whether single member or multi-member) or an at-large system. The first is to project likely votes for minority candidates, based on minority and white populations and turnout, minority cohesion, and white bloc voting (see Tables 1 and 2). The second is to ascertain how particular minority candidates running in past elections would have fared within the district. For an existing district this can include minority candidates running within the district or the district-specific results of minority candidates competing within a broader arena (e.g., the votes for a minority candidate for governor might be examined within the boundaries of an existing congressional district). For a newly created district, the examination of past elections requires recompiling election results solely for the

\(^{31}\) See, e.g., Soni, supra, note 8.
TABLE 3
PROSPECTS FOR MINORITY CANDIDATES IN DISTRICT OR AT-LARGE ELECTIONS

CATEGORY 1: "Safe" districts for the candidates of choice of whites.
CATEGORY 2: Districts more likely to elect the candidates of choice of whites than the candidates of choice of minorities.
CATEGORY 3: Equally competitive districts.
CATEGORY 4: Districts more likely to elect the candidates of choice of minorities than the candidates of choice of whites.
CATEGORY 5: "Safe" districts for the candidates of choice of minorities.

precincts included within the district. Analysts must also be cautious about relying on projected votes for marginal minority candidates.

Based on the categories in Table 3, Figure 1 provides a classification scheme that distinguishes among various arrangements of whites and minorities within single or multi-member districts or at-large jurisdictions. The two rows of the figure examine whether a district includes a population majority of minority-group members. The two columns consider whether the minority voters have a realistic potential to elect candidates of their choice.

Figure 1 shows that two types of districts (or at-large systems) present no prima facie violation of the Voting Rights Act. Type A includes majority-minority districts in which minorities have a realistic potential to elect candidates of their choice. Type C includes majority-white districts in which minorities have this same potential.

Type C districts should not be confused with so-called "influence districts" mentioned in some recent court decisions. Type C districts are rather "functional-majority" districts, because coalition voting provides minorities a realistic potential to elect candidates of their choice, despite the lack of a numerical population majority. As the analysis in Tables 1 and 2 shows, a 50 percent population is not a magic number for measuring the viability of a district for minority voters. Districts of Type C can provide equal or greater opportunities for the minority electorate than districts of Type A. Type C districts differ from Type A districts only in that minorities are less than a 50 percent majority and depend more heavily on minority turnout and cohesion, and white coalition voting. Influence districts, in contrast, only enable minorities to affect the

32. See, e.g., Armour v. Ohio, 775 F.Supp. 1044 (N.D. Ohio 1991); Turner v. Arkansas, 784 F.Supp. 553 (E.D. Ark. 1991), aff'd 112 S.Ct. 2296 (U.S. June 1, 1992). Where minority group plaintiffs prove intentional discrimination, the court's analysis need not proceed with a full application of each prong of the Gingles test and may address the issue of political influence. See Turner v. Arkansas, id. at 568; Garza v. County of Los Angeles, 918 F.2d 763, 769 (9th Cir. 1990).
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FIGURE 1

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<th>Minority Voters Have</th>
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<td>A Realistic Potential To Elect Their Preferred Candidates</td>
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<th>District is Majority-Minority</th>
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D = Districts in which minority voters comprise a *minority* of the population and do not have a realistic potential to elect a candidate of their choice.

A = Districts in which minority voters comprise a *majority* of the population and have a realistic potential to elect a candidate of their choice.

B = Districts in which minority voters comprise a *majority* of the population but do not have a realistic potential to elect a candidate of their choice.

Equally competitive districts (Category 3 in Table 3) form the boundaries between districts of Type A and C on the one hand and districts of Type B and D on the other hand. Competitive districts would raise Section 2 concerns if it were possible to draw an equal or larger number of districts (Type A or Type C) in which minorities have a better than equal chance of electing their candidates of choice.

The analysis of whether minorities have an equal opportunity with whites to elect candidates of their choice applies not to a single district within a plan, but to a districting plan as a whole. We believe that this is an important point which, to date, many courts and scholars have failed to understand. Minority-opportunity districts must generally provide...
minorities more than just an equal chance to elect candidates of their choice, because the concentration of minorities in particular districts usually leaves the remaining districts under the effective control of whites. Consider, for example, a five member plan in a jurisdiction with about a 25 percent minority population that had four safe white districts and one equally competitive district. Such an arrangement would not fairly reflect minority voting strength in the jurisdiction as a whole; in any given election, whites would have nearly an even chance of controlling all five districts.

There is symmetry between violations and remedies under Section 2 of the Voting Rights Act. Only district arrangements that present no violation of the Voting Rights Act — Type A and Type C districts — would generally be appropriate remedies for vote dilution — that is, would satisfy the third Gingles criterion. Neither districts of Type B nor districts of Type D present realistic opportunities for minorities to elect candidates of their choice and therefore cannot remedy minority vote dilution. Five important consequences follow from this observation.

First, the effectiveness of remedial districts depends on all factors relevant to assessing the electability of minority-preferred candidates; not just minority populations and turnout, but also levels of minority group cohesion and white bloc voting. Minorities may constitute a majority of the voter turnout in a district, but still lack effective political control as a result of monolithic white bloc voting (see, for example, District 2 in Table 2). Conversely, white coalition voting may enable minorities to elect candidates of their choice in districts with a white-majority turnout (for example, District 2 in Table 1).³³

Second, just as so-called influence districts offer no remedy to a voting rights violation, they provide no defense against a voting rights claim. A voting rights complaint cannot be defeated by contending that minorities may have greater political influence when dispersed among many districts, rather than concentrated in a few districts where they can realistically expect to elect candidates of their choice. In passing the 1982 amendments Congress made the clear policy choice that voting rights for minorities means the ability to elect candidates of choice, not merely to influence electoral outcomes. This was confirmed by the Supreme Court in Gingles: "The essence of a Section 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

³³. For a more detailed discussion of how to analyze district-specific opportunities for minorities, see Allan J. Lichtman, Passing the Test: Ecological Regression in the Los Angeles County Case and Beyond, Evaluation Review (1991).
voters to elect their preferred representatives." (emphasis added)34

Third, a Section 2 claim cannot be defeated by arguing, as defendants have unsuccessfully done in some vote dilution cases, that single-member district remedies should not be imposed because some minority-group members are excluded from the minority-controlled districts. The continued dispersion of some minorities is an almost inevitable consequence of the demographic realities of any single-member districting system. There will always be individual voters who are dissatisfied with their district assignment. Members of a cohesive minority voting bloc, however, are more likely to have their interests represented by a system that provides for the election of minority-preferred candidates as compared to a system that systematically dilutes minority voting strength.35

Fourth, for reasons outlined above, competitive districts (Category 3), in which whites and minorities have an equal chance to elect candidates of choice in that district, would be less preferable remedies than "safer" minority districts (Category 4 and 5 districts). Competitive districts, which may provide minorities at least some potential to elect their preferred candidates, would generally be acceptable remedies only if it were not possible to draw more effective minority districts.

Fifth, a remedial district may include a white population majority if coalition voting is sufficient to elect minority-preferred candidates. Thus redrawing Type D districts to create functional-majority districts of Type C would remedy a Section 2 violation. Given the integrationist goals of American public policy during the past 30 years, functional-majority districts of Type C may even be preferable as remedies to minority-majority districts of Type A. Functional-majority districts promote interactions between whites and minorities and help maintain the strength of interracial coalitions. In principle, functional majority districts may include relatively small percentages of minorities. But either plaintiffs or defendants proposing such districts would have the burden of showing that minority cohesion and turnout, as well as white "crossover" voting, are sufficiently high to enable minorities to elect candidates of their choice.

The use of functional majority districts to remedy Section 2 violations does not clash with the threshold criterion established by the Court in Gingles that a minority group must establish that they can "constitute a majority" in a single-member district.36 Contrary to what lower courts have said about this criterion, it cannot be interpreted to mean that the

34. 478 U.S. at 47. See also Solomon v. Liberty County, 899 F.2d 1012 (11th Cir. 1990) (en banc), cert. denied, 111 S.Ct. 670 (1991).

inability to create a district with a population majority of minority-group members means that no remedy exists for a Section 2 violation. To do so would run counter to the explicit statutory command of Section 2 that the practical effect of an electoral system must be measured against the "totality of circumstances" in a jurisdiction. As indicated above, depending on factors such as turnout, minority cohesion, and white bloc voting, districts with minority population majorities may be under the effective political control of whites. In turn, districts with a white population majority may be under the effective control of minorities.

The Gingles requirement for majority-minority districts is a specific application to North Carolina State legislative elections of the general principle that minority voters must "possess the potential to elect representatives in the absence of the challenged structure or practice." As Table 1 shows, under some empirically verifiable circumstances, minorities would clearly have such potential even when they fall short of a population majority in a district. In Gingles, the Court explicitly recognized that there may be ways to remedy a Section 2 violation other than the formation of majority-minority districts. "We have no occasion to consider whether Section 2 permits, and if it does, what standards should pertain to, a claim brought by a minority group, which is not sufficiently large and compact to constitute a majority in a single-member district, alleging that the use of a multi-member district impairs its ability to influence elections." The Court further explained in Gingles that even if minority group members fall short of the 50 percent threshold in any district, the mere elimination of multi-member or at-large voting may expand the ability of the minority group to elect candidates of its choice.

Some lower court decisions, notably McNeil v. Springfield Park District, however, have gone beyond Gingles to suggest that a bright-line population rule establishes a standard for minority districts that precludes undue judicial interference in the political process. We agree that clear standards for intervention are required, but the "opportunity to elect" standard for functional majorities which we outline here is a far more accurate gauge of minority opportunities than an arbitrary population standard. No such standard was presented to the Court at the time that McNeil was decided. A McNeil-type rule requiring a numerical majority of minorities in districts (whether population, voting-age population, or citizen voting-age population) also gives undue weight to Census results that are but a snapshot in time (invariably outdated by the time litigation is completed) and are infected by the now well-established un-

37. Id. at 50 n. 17.
38. Id. at 46 n. 12.
dercounting of minority peoples.  

If a voting rights complaint challenges an entire plan or several districts, then the court's review must consider the effects of the plan on the overall jurisdiction or, at least, on the area under challenge. There is no requirement under the Voting Rights Act that a districting plan must maximize minority voting strength. Rather, a plan must include enough effective minority districts (Type A or C) to fairly reflect minority voting strength in a jurisdiction. The minority population percentage can serve as a rough gauge, although the geographic dispersion of minorities may preclude the creation of a proportionate number of effective minority districts. The drawing of effective minority districts eliminates the dilution of minority voting strength, but does not guarantee any particular outcome of any given election.

Remedies for vote dilution may sometimes result in the creation of oddly shaped or contorted districts. Although such districts may lack aesthetic appeal, social scientists rank the compactness of districts near the bottom of evaluation criteria, well below racial fairness. Moreover, there is no agreement among scholars on how precisely to measure compactness. Gingles requires only that minorities be geographically compact enough to form a remedial single-member district. It does not require districts to conform to any particular standard of compactness. Clearly the primacy of voting rights in a democratic society would argue against elevating compactness over the elimination of vote dilution.

V.

PACKING

The general principles of the Gingles decision provide sufficient guidance for the scrutiny of packing, despite a lack of detailed analysis of this form of vote dilution in that decision. Packing occurs when minorities are aggregated into one or more districts beyond the level needed for minority voters to achieve effective political control. Such packing "wastes" minority votes that could empower minorities to elect candidates of their choice in a larger number of districts. As the Supreme

43. In Dillard, the court observed that "[t]he degree of geographical symmetry or attractiveness is therefore a desirable consideration for districting, but only to the extent it aids or facilitates the political process, and only as one among many considerations a court should include, the principal one being Section 2's vote dilution prohibition, in determining whether there is sufficient compactness for a majority black district." Id. at 1465 (emphasis added).
Court explained in *Gingles*, minority vote dilution may result either from submerging minorities within white districts or "from the concentration of [minorities] into districts where they constitute an excessive majority." 44

As with submergence, packing reflects the combined effects of an electoral system and patterns of minority and white voting. Plaintiffs must show that packing is not simply a consequence of residential patterns, that minorities are politically cohesive, and that white bloc voting in the districts with diminished minority population would be sufficient to defeat the candidate of choice of the minority electorate. To prove packing, plaintiffs must also demonstrate that the alleged packed districts waste minority votes by concentrating minorities beyond the level needed for effective political control. Finally, plaintiffs must prove that a larger number of unpacked districts can be created with sufficient concentrations of minorities to provide minorities a realistic potential to elect candidates of their choice. In effect, a packing claim asserts that a smaller number of districts of Type A have been created at the expense of a larger number of districts of Type A, Type C or Type A and C combined.

There is no absolute threshold at which the concentration of minority voters in a district becomes packing. Assessment turns on a district-specific analysis of the minority population percentage, white and minority turnout levels, and the measures of minority cohesion and white bloc voting. When coalition voting is sufficient to enable minorities to elect candidates of their choice in districts with a white majority (Type C districts), packing could involve the creation of a smaller number of districts with only small black majorities (Type A). Thus, a larger number of Type C districts would be sacrificed for a smaller number of Type A districts. In contrast, when racially polarized voting is severe and minority turnout low, districts could appropriately include large concentrations of minorities. In this instance, reducing minority population could result in the formation of districts with insufficient minority percentages (Type B and Type D districts).

Decision-makers should also have the latitude to make reasonable trade-offs along the continuum of minority voting strength in districts. If only one minority "opportunity" district can be created in a jurisdiction, then prudence would call for the drawing of a "safe" district if possible (Category 5 in Table 3). Otherwise there is a heightened risk that the white majority will control all districts. In other circumstances, however, it might be appropriate to draw a larger number of districts more likely than not to elect the minority candidate of choice (Category 4) rather than a smaller number of safe districts (Category 5).

The methods used to classify prospects of electing minority candidates of choice in a district also apply to the analysis of packing. First, there is the past record of success of candidates preferred by minority voters. A strong presumption of packing would arise if a larger number of districts that regularly elected minority candidates of choice were redrawn to create a smaller number of districts with greater concentrations of minorities. Second, there are the methods for projecting likely election outcomes, illustrated in Tables 1 and 2. A simple rule of thumb would be a presumption of packing if the projected vote for the minority candidate of choice is greater than the 60 percent landslide level.

VI.
RACE CONSCIOUS DISTRICTING

The criteria for analyzing submergence and packing show that race must be taken into account by prudent decision-makers concerned with guarding against districting arrangements that dilute minority voting strength. In most cases, the purpose of a race-conscious redistricting process is not to remedy an existing violation, but rather to make sure that new district lines do not create a violation through the packing or submergence of minority voters. Justice White, writing for the Court in UJO v. Carey, notes "that the Constitution does not prevent a State subject to the Voting Rights Act from deliberately creating or preserving black majorities in particular districts in order to ensure that its reapportionment plan complies with the [the Voting Rights Act]."45 The opinion continues: "[N]either the Fourteenth or Fifteenth Amendment mandates any per se rule against using racial factors in districting and apportionment. . . . The permissible use of racial criteria is not confined to eliminating the effects of past discriminatory districting or apportionment."46

It is unrealistic to assume that decision-makers could simply ignore racial demographics in redrawing district lines. The relative locations of concentrations of whites and minorities as well as their political proclivities are generally well-known, especially to redistricting authorities. Patterns of residential segregation did not occur randomly, but are linked to

46. Id. Although the Court in UJO analyzed the State of New York's use of race as a redistricting criterion in the context of the state's obligations under Section 5 of the Act, 42 U.S.C. 1973c, the logic of the Court's argument applies to Section 2 obligations as well. Since plaintiffs in UJO attacked the redistricting on 14th and 15th Amendment grounds, and Section 2 is even broader in its coverage of voting practices (see S. REP. No. 97-417, supra note 28, at 41-45), it follows that the use of race would be permitted under Section 2 as well. It is also noteworthy that a redistricting plan is ordinarily adopted as a remedy for past discrimination, either because the "old" plan is malapportioned and thus violates the one-person, one-vote standard of the Fourteenth Amendment, or because the prior plan, whether or not valid upon adoption, would produce discriminatory results due to changing demographics.
a history of discrimination. To pretend to draw color-blind boundaries becomes, at best, a charade, and at worst, a cloak for discrimination, given the correlation between race and other demographic factors such as education, income, and urban versus suburban residence. The test of a redistricting plan is whether it fairly reflects minority voting strength; whether prospectively or retrospectively, this test requires explicit analysis both of racially linked voting and the racial configuration of districts.

Race-conscious districting becomes illicit, however, when it is used as a subterfuge for protecting incumbent office-holders or gaining partisan advantages. Under such circumstances a jurisdiction becomes vulnerable not only to a Section 2 claim of discriminatory results, but also to a constitutional challenge of intentional discrimination. As the Ninth Circuit Court of Appeals observed in Garza v. County of Los Angeles: “The Supervisors intended to create the very discriminatory result that occurred . . . . That intent was coupled with the intent to preserve incumbencies, but the discrimination need not be the sole goal in order to be unlawful.”

VII. THE OHIO REDISTRICTING CASE

The basic principles outlined above can resolve voting rights disputes that appear to raise issues beyond the scope of settled opinion. To illustrate, consider the Ohio redistricting litigation, Voinovich v. Quilter, one of the more controverted cases to arise from the post-1990 Census redistricting. Although the three-judge court correctly rejected the state’s plan for redistricting the Ohio House of Representatives, its opinion needlessly strayed beyond the standard format of voting rights analysis.

In Quilter, the State Apportioning Board contended that their plan drew majority-minority districts purportedly to meet a voting rights requirement to draw such districts wherever possible. The Board rejected an alternative plan proposed by House Democrats that reduced the number of majority-minority districts, but preserved a larger number of functional-majority districts that had usually elected minority-preferred candidates. Democrats sued, claiming that the Apportioning Board “packed” blacks into districts and fragmented other concentrations of black voters in violation of, inter alia, Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

On January 31, 1992, the three-judge district court ruled. The court

47. 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S.Ct. 681 (1991).
rejected the notion that Section 2 of the Voting Rights Act mandates the
drawing of majority-minority districts. The court also held that the first
precondition of Gingles, the requirement that minority group members
be able to demonstrate that they are sufficiently large and geographically
compact to constitute a majority in a single-member district, was "not
applicable to the apportionment of single-member districts and claims of
dilution of minority influence districts at issue here." In addition, the
Court held that the state could not engage in race-conscious redistricting
"in the absence of a [voting rights] violation. . . ."

The evidence submitted to the three-judge panel clearly showed that
the state had engaged in illegal packing by combining a larger number of
functional-majority districts (Type C in the categories of Figure 1) into a
smaller number of majority-minority districts (Type A). The remaining
white-majority districts under the state's plan had insufficient concentra-
tions of minorities to elect candidates of their choice (Type D).

The Court's finding that coalition voting exists in Ohio has been
misinterpreted to mean that there is no racially polarized voting in Ohio
(e.g., that black voting is indistinguishable from white voting). If blacks
and whites voted exactly alike, then the racial configuration of districts
would be irrelevant to opportunities for black voters to elect candidates
of their choice. Unless there is a correlation between the race of the voter
and the choice of candidates, the assignment of voters to districts could
take place according to any given criteria without affecting election
results.

One point that seems lost in the Quilter litigation is that despite coa-
lication voting, Ohio voting patterns demonstrated bloc voting to the extent
that a greater proportion of blacks than whites supported minority candi-
dates. The analysis also showed sufficient "crossover" voting by whites so
that black voters had a realistic potential to elect candidates of their
choice in districts with populations about 35 percent black. The trial
court found that the crossover voting of whites for black candidates was
sufficiently strong that "black candidates have been repeatedly elected
from districts with only a 35% black population." Thus, Ohio districts
with such a level of black population do not dilute black voting strength
(i.e., are Type C districts). Such a degree of "crossover" voting, however,
does not mean that blacks can continue to elect candidates of their choice
if the concentration of black population is reduced below the 35 percent
level. Districts in Ohio with less than a 35 percent black population con-

49. Id.
50. We do not comment here on the three-judge court's finding of intentional discrimination,
but instead analyze the litigation from the perspective of Section 2 alone.
sistently elected white candidates.\textsuperscript{52}

To strike down the Board's plan, the trial court need not have drawn an artificial distinction between the multi-member districts specifically analyzed in \textit{Gingles} and a single-member district plan. As shown above, multi-member districts are mathematically the sum of single-member districts and are analyzed according to the same standards. The ability of blacks to elect candidates of their choice in functional-majority 35 percent black districts is not integral to the single-member character of those districts, but to the strong coalition voting between whites and blacks. Similarly, the packing of blacks is not integral to the single-member character of the districts, but to numerical concentration of blacks beyond the level necessary to achieve effective political control. Finally, the inability of blacks to elect candidates of their choice in districts with less than a 35 percent black population under the state's plan is likewise not integral to the single-member character of the districts, but to the insufficient concentration of the minority population.

The district court could have reached the same findings without ruling that proof of a Section 2 violation was a prerequisite to use of race as a redistricting criteria. The district court, we believe, erred in shifting the usual burden of proof allocations from plaintiffs alleging a Section 2 violation to the authorities formulating a redistricting plan. The harm goes beyond an unnecessary judicial intrusion into the political process. The district court's reversal risks deterring states from drawing minority-majority districts if they must first find themselves in violation of federal law. As shown above, there was ample evidence before the trial court to support a finding that the Apportioning Board's plan violated Section 2 without having to impose the burden of proof on the state. Simply by applying the well-settled principles of the \textit{Gingles} decision to a standard Section 2 complaint, the trial court in \textit{Quilter} could have determined that the state had engaged in the illicit packing of minorities.

\textbf{VIII. CONCLUSION}

More than a century of struggles for civil rights has disclosed the persistent and protean character of racial discrimination in the United States. Discrimination assumes multiple, shifting, and unpredictable forms and often lurks within mechanisms, such as at-large elections, that appear racially neutral on their face. Race conscious remedies are essential for practices that produce a racially differential effect on whites and minorities. To cast race aside as a remedial tool under such circum-

\textsuperscript{52} Although some black incumbent state legislators in Ohio actually received a majority of the white vote, the typical black candidate running without the advantage of incumbency in an established district could not expect to receive such high levels of white "crossover" voting.
stances would be to perpetuate systems that produce discriminatory results and thereby provide unfair advantages to whites. Simply put, "courts cannot blind themselves to what our Nation knows." 53

The purpose of Section 2 litigation is not to rectify past wrongs, but to cure ongoing, documented discriminatory effects against minorities in particular locales. The consequent recasting of electoral systems is not a form of racial gerrymandering, but a response to the combined discriminatory effects of proven particular electoral arrangements and patterns of racially linked voting. The result is not to guarantee proportional representation for minorities, but to provide minorities equal opportunities with whites to elect candidates of their choice. Judicial intervention becomes necessary only when the political process fails to provide minorities the basic right to have their "vote[s] counted at full value without dilution or discount. . . ." 54

As with all forms of social change, Section 2 litigation may appear to produce effects — the segregation of minorities within electoral districts — that seem unwarranted at first glance. But the characteristic Section 2 remedy is a necessary response to locally-specific patterns of polarized voting between whites and minorities. Only as a result of the formation of heavily minority districts have minority voters been able to elect candidates of their choice to participate in significant numbers in the policy-making stage of the American political process. If minorities become more integrated into the mainstream of American life and polarized voting fades, the Voting Rights Act would no longer mandate the concentration of minority populations. The determination will be made jurisdiction by jurisdiction, in response to local conditions.

The guiding principles of the Voting Rights Act, elaborated in the Gingles decision, provide adequate guidance for making these jurisdiction-specific decisions, including those pending before the Supreme Court in Voinovich v. Quilter. These principles, we have attempted to show, are responsive to changing factual situations without burdening the federal courts or voting rights litigants with new standards and distinctions. Attention to fundamentals protects minorities from changing forms of discrimination without needlessly imposing solutions on jurisdictions where color blind voting behavior has truly eliminated the problem of minority vote dilution.

Please see page 157 for a last minute postscript to this article.