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Postscript to "A General Theory of Vote Dilution" by Allan J. Lichtman and J. Gerald Hebert: The Supreme Court's Decision in Voinovich v. Quilter

Since completion of this article, the Supreme Court has ruled in the Ohio redistricting case, Voinovich v. Quilter. Although the Supreme Court reversed and remanded the trial court's ruling, the Court's logic is fully consistent with the principles we develop. First, Justice O'Connor, for a unanimous Court, issued an opinion reaffirming that black voting rights could be diluted by the packing as well as the fragmentation of black voters. "As a result, we have recognized that '[d]ilution of racial minority group voting strength may be caused' either 'by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority. (citation omitted)'" Second, the Court indicated that a state need not itself demonstrate a Section 2 violation to justify a race-conscious redistricting plan. State governments have broad latitude to use race as a factor in redistricting plans; it is plaintiffs that have the burden of showing that a state's plan "has the effect of diminishing or abridging the voting strength of the protected class." Third, the ruling upheld the applicability to single-member districts of the Gingles three-part test of Section 2 liability. Fourth, the Court left open the possibility that a district need not include a minority-majority population to elect candidates of their choice. The Court did, however, mischaracterize such districts as "influence districts." The only difference between the Quilter decision and our analysis of the case is that the Court found an absence of white polarized voting (and hence a failure to meet the third of the three Gingles criteria). This finding, however, simply reflected the decision of plaintiffs to concede a lack of polarized voting. As indicated above, however, there is sufficient evidence in the record to demonstrate white polarized voting. Otherwise,

2. Id. at 4201.
3. Id. at 4202.
5. 161 U.S. L. Wk. at 4201.
the racial composition of the legislative district should have no effect on the ability of black voters to elect candidates of their choice. Clearly, neither plaintiffs nor defendants actually believe this to be the case in Ohio.