“In the June 2010 Democratic primary for the Attorney General race, looking within the boundaries of Assembly District 53 [...], the candidate supported by an estimated 83% of Asian American voters received support from only an estimated 4% of non-Asian American voters.”

—Eugene Lee of Asian Americans Advancing Justice, Los Angeles at the NCVR California state hearing
CHAPTER 5
Voting Discrimination, 1995–2014:
Minority Vote Dilution

I. INTRODUCTION

As discussed in various places in this Report, most forms of voting discrimination fall into one of two categories. The first form consists of practices that have the intent or result of making it more difficult for citizens to vote, commonly called “vote denial,” or ballot access restrictions. These issues are discussed in Chapters 6 and 7. The second form consists of circumstances where minority voters are not prevented from voting but where their votes are devalued. This form of discrimination is called “vote dilution” and is the subject of the present chapter.

The Supreme Court first recognized the concept of vote dilution in the 1964 case *Reynolds v. Sims*. In *Reynolds*, Alabama voters challenged the constitutionality of Alabama’s legislative districts, which had not been redrawn in decades. The existing plan allotted, for example, over 600,000 people to one Alabama Senate district and fewer than 20,000 to two others. The Supreme Court found that this violated the equal protection rights of voters in the most populated districts. In doing so, the Court stated that “[t]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”

Since the late 1960s, the predominant form of discrimination suffered by minority voters has been vote dilution. Because the VRA’s ban on tests and devices made it more difficult for jurisdictions to prevent voters from voting, jurisdictions moved to dilute the minority vote instead. As discussed in Chapter 1, Sections 2 and 5 of the VRA prevent minority vote dilution, but what constitutes vote dilution is usually not as clear-cut as what constitutes a test or device. Indeed, cases based on the Section 2 results standard are notoriously complex because plaintiffs must first satisfy three preconditions (regarding district size and geographical compactness, minority political cohesion, and the defeat of minority-preferred candidates because of white bloc voting) and then prevail on the multi-factor and all-inclusive “totality of the circumstances” balancing test.

Nonetheless, courts have repeatedly found Section 2 vote dilution violations and the Department of Justice (DOJ) has interposed hundreds of Section 5 objections to practices because they weakened the voting strength of minority voters. Vote dilution violations are most common in the context of redistricting and in the use of at-large elections or
multi-member districts. These two phenomena are discussed below, after a discussion of racial polarized voting, which is a necessary component of vote dilution.

II. RACIALLY POLARIZED VOTING AND ITS ONGOING PREVALENCE

How Analyses of Racial Bloc Voting are Performed

Racially polarized voting occurs when whites and minorities consistently support different political candidates. By definition, racially polarized voting is “a pattern of voting along racial lines where voters of the same race support the same candidate who is different from the candidate supported by voters of a different race.” In areas where racially polarized voting exists, there is an increased need for vigilance against attempts to dilute minority power. As the district court explained in Northwest Austin Municipal Utility District No. One v. Mukasey, racially polarized voting “enables the use of devices such as multi-member districts and at-large elections that dilute the voting strength of minority communities.” Conversely, where voters do not typically vote along racial lines, racial vote dilution cannot occur because voter preferences are not correlated to the race of those voters.

In the process of proving minority vote dilution, plaintiffs typically establish the presence of racially polarized voting by conducting a statistical analysis of voting patterns. The two most frequently used analyses are Bivariate Ecological Regression Analysis and Ecological Inference Analysis. Both of these analyses use two variables, the racial composition of each precinct and the number of votes each candidate received in the precinct, to estimate the amount of white and minority support each candidate received. The accuracy of the analysis depends on the quality of the demographic data for each precinct, the number of precincts, and the variation of the racial demographics among the precincts. Analysts examine a series of elections to determine whether a pattern of racially polarized voting exists.

Findings of Racially Polarized Voting Regarding State Redistricting Plans

Fifty years after the passage of the VRA, racially polarized voting remains a prevalent and persistent phenomenon. The many successful vote dilution claims under Section 2 of the VRA constitute proof of its persistence because one must prove the existence of racially polarized voting to be successful. However, the proof does not stop there. Experts and scholars, both independent and state-hired, have made findings of racially polarized voting. These findings have recognized the existence of racially polarized voting on both national and state levels. Additionally, DOJ has cited racially polarized voting in interposing hundreds of Section 5
objections against proposed voting changes. Thus, racially polarized voting continues to be widespread. Examples of the aforementioned findings are discussed below.

**Judicial Findings of Racially Polarized Voting in Challenges to Statewide Redistricting Plans**

Over the last three decades, courts across the country have consistently acknowledged the continued presence of racially polarized voting while applying the factors outlined in the Supreme Court’s *Thornburg v. Gingles* ruling. 11 The following are cases since 1995 regarding statewide redistricting plans where courts have found racially polarized voting:

**Colorado**

In *Sanchez v. Colorado*, 12 Hispanic voters challenged the post-1990 State House redistricting plan, alleging that the plan failed to draw a majority Hispanic district, thus violating Section 2 of the VRA. The Tenth Circuit of Appeals found that the plaintiffs “established under the totality of circumstances [that] racial polarization drive the voting community in HD 60 despite limited local success in being elected or appointed to political office.”13 The Tenth Circuit directed the district court to impose a remedy that drew a majority Hispanic district in Southern Colorado.

**Montana**

Native American voters in Montana challenged the constitutionality of the state legislature redistricting plan adopted after the 1990 census. In *Old Person v. Cooney*, the Ninth Circuit Court of Appeals “conclude[d] that the white majority in the four districts ‘votes sufficiently as a bloc to enable it...usually to defeat the [American Indians’] preferred candidate.”14 The plaintiffs ultimately lost the case on other grounds.15

**South Carolina**

African-American and white voters in *Smith v. Beasley* 16 challenged the constitutionality of the 1995 State House and Senate redistricting plans in South Carolina. The challenge was raised on the grounds that race was the predominant factor considered in redrawing election districts. The district court noted, “[i]n South Carolina, voting has been, and still is, polarized by race. This voting pattern is general throughout the state and is present in all of the challenged House and Senate districts in this litigation.”17

Voters in *Colleton County Council v. McConnell* 18 challenged the 2000 state and congressional redistricting plans of South Carolina. In its opinion, the district court directly addressed the presence of severe and persistent racially polarized voting, stating that “[v]oting in South Carolina continues to be racially polarized to a very high degree, in all regions of the state and in both primary elections and general elections. Statewide, black citizens generally are a highly politically cohesive group and whites engage in significant white-bloc voting.”19 Moreover,
[I]n order to give minority voters an equal opportunity to elect a minority candidate of choice as well as an equal opportunity to elect a white candidate of choice in a primary election in South Carolina, a majority-minority or very near majority-minority black voting age population in each district remains a minimum requirement.  

Massachusetts

In Black Political Task Force v. Galvin, voters challenged the 2001 Massachusetts State House redistricting plan. The lawsuit alleged that the redistricting plan eliminated two majority-minority districts, reduced the minority population into one district and “super-packed” another district so that minorities made up 98 percent of the district’s voting age population. The district court found racially polarized voting, noting “the presence of both cohesive African-American voting and a white bloc voting staunch enough to defeat a black-preferred candidate.” The district court struck down the redistricting plan and ordered the State to prepare and submit a new plan consistent with Section 2 of the Voting Rights Act.

Tennessee

In West Tennessee African-American Affairs Council v. Sunquist, African-American voters successfully challenged a 1994 redistricting plan for the Tennessee House of Representatives under Section 2 based upon a dilution of minority voting strength in the western portion of the State. Tennessee agreed in the litigation that African Americans vote in a cohesive manner but claimed that white voters do not usually vote as a bloc to defeat candidates supported by African-American voters. On appeal from the district court’s ruling in favor of plaintiffs, the U.S. Court of Appeals for the Sixth Circuit affirmed. The court undertook a detailed review of the evidence, and concluded that the district court had not erred in finding that white voters typically cast their ballots against minority-supported legislative candidates.

Wisconsin

In response to a lawsuit filed by Latino voters in Wisconsin, a three-judge district court in Baldus v. Members of Wisconsin Government Accountability Board, found that the post-2010 plan for the State Assembly violated Section 2. The court agreed with expert testimony that voting is polarized between Latino and white voters.

South Dakota

Native American voters in Bone Shirt v. Hazeltine challenged a 2001 South Dakota legislative districting plan. The district court concluded that “substantial evidence, both statistical and lay, demonstrates that voting in South Dakota is racially polarized among whites and Indians.” In addition, “the white majority in District 26 ‘votes sufficiently as a bloc to enable it... to usually defeat the [Indian] preferred candidate.’” The district court ruled that the redistricting plan violated the VRA and the State was ordered to redraw district lines in compliance with Section 2.
Texas
As discussed later in this chapter, federal courts found that racially polarized voting exists throughout Texas in finding that Texas’s 2003 congressional redistricting plan and 2011 congressional, State House, and State Senate plans violated the VRA.

State-Hired Expert Findings of Continuing Racial Polarization

It is not only courts that acknowledge the existence of racially polarized voting; state-hired experts have conducted analyses of racial bloc voting and also found that racially polarized voting persists in other states.

Arizona
In 2011, Harvard University Professor of Government Gary King and mapping consultant Ken Strasma were hired by the Arizona Independent Redistricting Commission to conduct an analysis of racially polarized voting in Arizona. King and Strasma found that racially polarized voting continues to exist in multiple legislative districts in the State.26a

Alaska
At the request of the Alaska Redistricting Board, voting rights and redistricting expert Dr. Lisa Handley conducted an analysis of voting patterns by race in recent Alaska elections. Dr. Handley found that racially polarized voting is increasing in Alaska. According to Dr. Handley, “voting was more polarized in Alaska this past decade than in the previous decade.”26b

California
University of Washington Professor of Political Science Matt Barreto and counsel for the California Citizens Redistricting Commission, the official redistricting body in California, found that racially polarized voting continues to exist in California. Specifically, Dr. Barreto stated that “there was strong evidence of racially polarized voting with respect to Latinos and non-Latinos in Fresno, Orange, San Diego, Riverside, and San Bernardino Counties.”26c Dr. Barreto also found racially polarized voting with regard to Latinos, African Americans, and Asians in Los Angeles County.

Kansas
In 2012, Dr. Handley was hired by the Kansas Legislative Research Department to conduct an analysis of racial bloc voting in elections during 2008 and 2010. Her research revealed that Kansas continues to wrestle with the issue of racially polarized voting.27 During her study, Dr. Handley examined 14 statewide and legislative elections in Kansas that included a minority candidate. Of the 14 elections that Dr. Handley examined, she found that the majority of the contests (9 of 14) showed trends of racially/ethnically polarized voting: “minority and white voters clearly supported different candidates.”28
Other Expert Findings of Increasing Racial Polarization in Voting in a State or Region

The phenomenon of racially polarized voting not only continues to exist; many experts have recognized a trend of increased polarization. During the most recent VRA reauthorization proceedings, Congress heard testimony about increasing polarization in Southern jurisdictions. The House Report documenting those proceedings notes that “Testimony presented indicated that ‘the degree of racially polarized voting in the South is increasing, not decreasing… [and is] in certain ways re-creating the segregated system of the Old South.’”

Similarly, David Bositis of the Joint Center for Political and Economic Studies stated that following the election of President Barack Obama, many political observers—especially conservative ones—suggested that the United States is now a post-racial society. Three years later, in the region of the country where most African Americans live, the South, there is strong statistical evidence that politics is re-segregating, with African Americans once again excluded from power and representation.

At the National Commission for Voting Rights hearing held in Nashville, Tennessee, Professor Sekou Franklin of Middle Tennessee State University testified about increasing racially polarized voting in the State. He testified that African-American and white voters became 25 percent more polarized between the 2000 and 2012 presidential elections and further noted that in the 2007 Nashville mayoral race, the African-American candidate received 80 percent of African-American votes while only receiving 11 percent of white votes.
DOJ Findings of Racially Polarized Voting in Statewide Redistricting Plans

In addition to federal court findings of racially polarized voting and expert reports on the presence of racially polarized voting, there have been numerous DOJ objections that note the presence of racially polarized voting as a reason for denying preclearance for a statewide redistricting plan in a formerly covered jurisdiction, including the following:

**Arizona**
DOJ objected to the 2001 legislative redistricting plan. In the objection letter, DOJ noted that Arizona provided insufficient evidence to show that voting was not racially polarized. As such, Arizona failed to prove that a decrease in the number of majority-minority districts would not be retrogressive.32

**Florida**
In 2002, DOJ objected to a redistricting plan for the State House of Representatives insofar as it affected the State’s covered counties. DOJ found that Hispanic voters support Hispanic candidates but Anglo voters do not.33

**Louisiana**
DOJ objected to a 1996 congressional redistricting plan in Louisiana. The objection letter noted that “in... interracial contests, black voters overwhelmingly supported the black candidate and white cross-over was minimal.” DOJ concluded: “In light of the pattern of racially polarized voting that appears to prevail in elections in the State, Act No. 96 [the redistricting plan] would appear to provide no realistic opportunity for black voters to elect a candidate of their choice outside the New Orleans area.”34

**South Carolina**
South Carolina submitted a State Senate redistricting plan in 1997 for preclearance, and the DOJ objected. According to the objection letter, there were clear findings of racially polarized voting. The letter noted, “In the context of the racially polarized voting patterns that the court found to exist, see Smith, 946 F. Supp. at 1202, these reductions [in black voting age population] will significantly hinder black voters’ electoral opportunities in these districts.”35

**Texas**
In 2001, DOJ objected to the proposed State House redistricting plan. The objection letter found racially polarized voting in those elections.36
Greater Racially Polarized Voting in the Formerly Covered Jurisdictions than in Non-Covered Jurisdictions

In *Northwest Austin Municipal Utility District No. One v. Holder*, several prominent academics authored an amicus brief that included, among other things, an analysis comparing the degree of support Barack Obama received from white voters in covered and non-covered jurisdictions in the 2008 general election. According to an exit poll, 26 percent of white voters supported Barack Obama in covered states compared to 48 percent white voters in non-covered states. Moreover, the six states with the lowest percentage of whites voting for Obama were fully covered by Section 5 at the time: Alabama (10 percent), Mississippi (11 percent), Louisiana (14 percent), Georgia (23 percent), South Carolina (26 percent), and Texas (26 percent). The five states where Obama received the lowest levels of white support are among the six states where African Americans make up the greatest percentage of the population. The county-level regression analysis showed similar results: Obama received the estimated support of 24 percent of white voters in counties formerly covered by Section 5 compared to 46 percent of white voters in non-covered counties.

Similarly, in 2005, the National Commission on the Voting Rights Act received testimony from Dr. Richard Engstrom, a noted expert on the issue of racially polarized voting, who has testified on behalf of the federal government, state, and local governments, and private parties. Dr. Engstrom stated that based on recent analyses he had done, voting was racially polarized throughout Louisiana, South Carolina, Georgia, Florida, Alabama, North Carolina, and Texas.

The presence of racially polarized voting is the “evidentiary linchpin” of a successful vote dilution claim. Federal courts, DOJ (in its administrative review function), and several analysts have demonstrated that voting remains polarized in many areas of the country, and particularly in the states that were covered by Section 5. Given this persistent trend, minorities are likely to continue finding themselves subject to election schemes and redistricting plans that limit their ability to fully participate in the electoral process.
III. AT-LARGE AND MULTI-MEMBER METHODS OF ELECTION AND RELATED PRACTICES DILUTE MINORITIES’ VOTING STRENGTH

Introduction

As was detailed at the beginning of this Report, vote dilution schemes have taken many forms over the years. The use of at-large elections and multi-member districts remains one of the common vote dilution schemes. The Supreme Court has explained that

At-large voting schemes and multimember districts tend to minimize the voting strength of minority groups by permitting the political majority to elect all representatives of the district. A distinct minority, whether it be a racial, ethnic, economic, or political group, may be unable to elect any representatives in an at-large election, yet may be able to elect several representatives if the political unit is divided into single-member districts. The minority’s voting power in a multimember district is particularly diluted when bloc voting occurs and ballots are cast along strict majority-minority lines.43

In an at-large or multi-member district system, all voters in the jurisdiction vote for all of the seats on a governmental body for that jurisdiction; if there are five seats on the county council, for instance, each voter is able to cast a vote for all five seats. At-large elections and multi-member districts are not per se a violation of the Constitution or of Section 2 of the VRA.44 Rather, it is only when at-large elections and multi-member districts are used and voting is also racially polarized that these methods of election can dilute minority voting strength and violate Section 2. When voting is racially polarized in at-large and multi-member systems, the majority will be able to elect all of its candidates of choice and the minority will not be able to elect any.45 Even if the polarization is “less than absolute,” at-large and multi-member systems can still severely inhibit the ability of minorities to elect their candidates of choice.46

There are several other election practices that can dilute minority votes when used where voting is racially polarized. One such practice is a majority vote requirement in the context of at-large or multi-member elections, which requires that a candidate garner a majority—not simply a plurality—of the votes in order to win. If the white majority splits its votes among many candidates, it is possible that a minority-preferred candidate may win a plurality. If there is a majority vote requirement and a runoff is necessary, however, the minority candidate will not win in a racially polarized context.

Another practice that can dilute minority voting strength if voting is racially polarized is the prevention of “single-shot” or “bullet” voting in at-large or multi-member elections. Single-shot voting is only possible in contests where multiple seats are open and top vote-getters fill the available seats. When a voter “single-shoots” he has the opportunity to vote for multiple
candidates but chooses to cast only one vote in order to concentrate support for his preferred candidate. “Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates.” Single-shot voting has often led to the election of a minority-preferred candidate where voting is racially polarized, though it does require that minority voters forgo their say over the other candidates for the office in question.

One anti-single-shot device is the “full-slate rule,” wherein voters are required to cast all of their available votes for an office (or their ballots will be invalidated). A second is a numbered place system, wherein each candidate must run for a specific place (1, 2, 3, etc.) rather than against all of the candidates. Much like numbered place systems, residency districts prevent single-shot voting by restricting candidacy for a position to individuals who live in a certain district, even though voters from all districts will choose among the candidates for that district. Both numbered place systems and residency districts also tend to reduce the number of candidates in a contest, which makes it less likely that majority support will be divided and that a minority candidate will be able to win with a plurality of votes. In a racially polarized setting, any of these devices may prevent election of a minority-preferred candidate.

Many current attempts to dilute the voting power of minorities are reactions to changes in the location and size of minority populations. What follows are several examples that provide an overview of the types of vote dilution cases from the very recent past.

Overview of successful Section 2 challenges and Section 5 objections to at-large and multi-member methods of election, 1995 to present

Of the cases brought between 1995 and June 2014 under Section 2 of the VRA in which plaintiffs have been successful (excluding cases regarding bilingual requirements), the vast majority—over 70 percent—related to methods of election. These cases were brought in 21 different states, including six of the states formerly covered in whole by Section 5. Most of these 21 states had between one and three successful cases related to methods of election, but Georgia had six, Mississippi had seven, and Texas had 78.

In the same time period, 20 voting changes related to methods of election were denied preclearance under Section 5 of the VRA by the Attorney General. These denials represent a much smaller share of Section 5 denials than the percent of successful Section 2 cases that relate to election methods. The difference in these percentages is illustrative of the different types of problems that Section 2 and Section 5 are able to address most effectively. The 20 preclearance denials were spread out among jurisdictions in nine different states, though there were four denials for jurisdictions in South Carolina and five denials for jurisdictions in Texas. There was only one preclearance denial for a state-level method of election: in 2010,
the Attorney General denied preclearance to Mississippi for a majority vote requirement for certain county boards of trustees and boards of education.\textsuperscript{52}

**Changing to At-Large Elections as Minority Groups Grow**

In certain areas of the country, the minority population has markedly increased its share of the overall population over the last several decades. In some places, as the minority population grew, jurisdictions changed their method of election from single-member districts—through which the minority group may have been able to elect a candidate of choice—to at-large elections where the minority group’s votes would be diluted. In each of the following examples, a Section 2 challenge resulted in the restoration of single-member districts several years after a jurisdiction changed to at-large elections.

**United States v. Benson County, North Dakota**

In March 2000, the United States and Benson County, North Dakota ended litigation by entering into a consent decree in which the County admitted that its at-large method of electing its five County Commissioners violated Section 2 of the VRA. Prior to 1992, the members of the Benson County, North Dakota Board of Commissioners had been elected from single-member districts.\textsuperscript{53} Between the 1980 census and the 1990 census, the Native American population in Benson County grew as a share of the County’s total population. In 1980, Native Americans constituted 29.2 percent of the County’s total population;\textsuperscript{54} by 1990 they had grown to be 38.3 percent of the County’s total population and 29.3 percent of the voting age population.\textsuperscript{55} As of the 1990 census, two of the districts for the County Commission were majority Native American.\textsuperscript{56} In 1992, the county changed its method of electing the County Commissioners from single-member districts to at-large.\textsuperscript{57} No Native American was elected to the County Commission under the at-large method of election.\textsuperscript{58}

In March 2000, the United States filed suit against Benson County, alleging that the at-large method of electing county commissioners, adopted after the Native American share of population increased, violated Section 2 of the VRA.\textsuperscript{59} The district court entered a consent decree four days later in which Benson County admitted that the at-large method of elections for the County’s Commissioners violated Section 2 of the VRA.\textsuperscript{60} The consent decree provided that Benson County would devise a new single-member district voting plan including two majority-Native American districts if they could be constitutionally drawn.\textsuperscript{61}

**United States v. Osceola County, Florida**

In 2006, a U.S. district court in Florida held that Osceola County’s method of electing its five-member County Commission caused a dilution of Hispanic votes in violation of Section 2 of the VRA.\textsuperscript{62} The total population of Osceola County had increased dramatically over the previous decades, and the percentage of the population that is Hispanic had also increased
dramatically. In 1980, Hispanics represented only two percent of the County's population; by 2000, Hispanics made up almost 30 percent of the County’s population. Additionally, the Hispanic population, as a portion of all registered voters in the County, grew from about 20 percent in 2000 to almost 31 percent in 2006. As the Hispanic population grew, leaders in the Latino community began to express an interest in political representation at the county level, but Latino candidates had not been successful in getting elected. In 1991, the Osceola County Hispanic American Association requested that the County Commission change the election system from at-large to single-member districts. A public referendum to change to single-member districts passed in the 1992 election, with 57 percent of voters in favor. Less than two weeks later, efforts began to return the system to at-large. The 1996 election was conducted under a single-member district system, but included a referendum for a return to at-large elections. A Hispanic candidate was elected from a single-member district in the 1996 election, but the referendum to return to at-large elections also passed. Members of the Hispanic community continued to advocate for single-member districts, but the County Commission was not responsive to their requests. Hispanic candidates also continued to run unsuccessfully for County Commission.

In 2005, the United States sued Osceola County alleging that the at-large method of electing the County Commissioners violated Section 2 of the VRA. The defendants did not dispute that the second and third Gingles preconditions were satisfied (i.e., that Hispanics in the county were politically cohesive and that white voters generally voted in a bloc to defeat minority candidates). After a trial, the district court found that the first Gingles precondition was also satisfied, and that, under the totality of the circumstances, the County’s at-large method diluted the voting strength of Hispanics in violation of Section 2. In its analysis of the totality of the circumstances, the court relied on the extent of racially polarized voting; the history of a lack of success by Hispanic candidates at the polls (other than when the County employed a single-member plan); the socioeconomic disparities between Hispanics and non-Hispanics in the County; and a history of discrimination against Hispanics in the County, including discrimination at the polls in the 2000 election when Hispanics “were turned away without being allowed to vote, refused assistance, forbidden to use their own interpreters, asked for multiple forms of identification (unlike non-Hispanic voters), and treated in a hostile manner by poll workers.”

The court also noted that several of Osceola County’s election practices—including the requirement of a runoff in primary elections and Commissioners’ residency districts—further enhanced opportunities for discrimination and contributed to the lack of success of Hispanic candidates.
Refusal to Change to Single-Member Districts as a Minority Population Increases

In some areas of the country where the minority population has grown as a share of the total population, minority groups have advocated for a change from an at-large system in order to increase the chances of electing a candidate of choice. Jurisdictions have staunchly refused to change to a more racially-fair alternative and have needed to be compelled by court order to do so.

United States v. Village of Port Chester, New York

In January 2008, a U.S. district court found that the at-large method of election for the six-member Board of Trustees of the Village of Port Chester, New York violated Section 2 of the VRA by impermissibly diluting the voting strength of Latinos. From 1990 to 2000, the Latino population of Port Chester had grown 73 percent, and, as of the 2000 census, Latinos constituted 46.2 percent of the village’s population, while 42.8 percent of the population was white and 6.6 percent was non-Hispanic black. The citizen voting age population was 65.5 percent white, 21.9 percent Hispanic, and 8.9 percent non-Hispanic black. Despite the increase in and substantial size of the Latino population of Port Chester, no Latino had ever been elected to the Board of Trustees (or, as of the time of the trial in the case, to any elected office in Port Chester).
In finding a violation of Section 2, the court’s discussion included the history of official discrimination in Port Chester Village and Westchester County against Latinos, including disparate treatment of Spanish-speaking voters and failure to provide sufficient Spanish language assistance at the polls; the nominating process for getting on the ballot, which favored those with political ties or institutional support, which most Latinos lacked; the lower average levels of income and formal education for Latinos in Port Chester; and racial appeals in campaigns in Port Chester, including a flyer stating, “The Hispanics are running the show already.”

The Village of Port Chester proposed cumulative voting—a system where every voter is allotted as many votes as there are candidates and may give all to one candidate or varying numbers to several candidates—as a remedy, and the court accepted a plan of at-large elections with cumulative voting. In 2010 the Village of Port Chester elected its first Latino member of the Board of Trustees.

United States v. Blaine County, Montana

“Official discrimination against American Indians, racially polarized voting, voting procedures that enhanced the opportunities for discrimination against American Indians, depressed socioeconomic conditions for American Indians, a tenuous justification for [the] at-large voting system. While Blaine County argued that none of this existed in their voting system, the record was clear to the contrary.”

William ‘Snuffy’ Main at the NCVR Rapid City regional hearing

In 2002, a U.S. district court found that Blaine County, Montana’s at-large system for electing its three-member County Commission violated Section 2 of the VRA. From 1980 to 2000, the share of the population of Blaine County that was Native American had increased dramatically. In 1980, Native Americans made up 31.7 percent of the population of Blaine County; as of the 1990 census, that number had increased to 39.6 percent. By the time of the 2000 census, Native Americans comprised 45.2 percent of the total population and 38.8 percent of the voting age population of Blaine County (with 80 percent of the Native population concentrated on the Fort Belknap Reservation), yet no Native American had ever been elected to the County Commission. In 1999, the United States sued Blaine County, alleging that the at-large voting system for electing County Commissioners violated Section 2 of the VRA. In concluding that the at-large system violated Section 2, the court found that there was a history of official discrimination against Native Americans, racially polarized voting, voting procedures that enhanced the opportunities for discrimination against Native Americans, and a tenuous justification for the at-large voting system. Blaine County proposed a remedial plan with three single-member districts, which the district court approved. In 2002, a tribal member, Delores Plumage, was elected to the County Commission.
United States v. City of Euclid

Until the late 1970s, the city of Euclid was a predominantly white suburb of Cleveland. In the 1970s, African Americans represented only half of one percent of the city’s total population. The African-American population grew in the 1980s and 1990s, while the white population decreased. As of the 2000 census, Euclid’s African-American voting age population was 27.8 percent of the total population, yet none of Euclid’s four wards had a majority of African Americans of voting age.83 The nine-member City Council was elected as follows: four members were elected from single-member districts, four were elected at-large from numbered posts, and one was elected at-large to serve as president of the council.84 African-American candidates had run for city council ten times since 1981, but lost each time. No African-American had ever been elected to the City Council, School Board or as Mayor of Euclid.85

In 2008, the United States filed a suit alleging that Euclid’s method of electing its City Council resulted in the dilution of African-American voting strength in violation of Section 2. The court agreed that Euclid’s method of electing its City Council violated Section 2 based on racially polarized voting, a history of discrimination in several areas including housing and education, and a persistent lack of responsiveness to the needs of the African-American community by elected officials.

In response, the city divided Euclid into eight single-member districts, while retaining the at-large Council President position. After implementation of the plan, an African American was elected to the Euclid City Council from one of the majority-minority districts established by the remedial plan.86 Since then, a second African American has been elected to the Euclid City Council.

Entrenched Opposition to Minority Representation

Other cases of minority vote dilution, whether or not they follow an increase in the minority group’s share of the population, demonstrate entrenched opposition to minority representation. From refusing to submit a single-member plan as ordered by a court, to attempting to return to an at-large system after having changed to a single-member system, to refusing to settle cases where the Section 2 violation is so clear that it had been decided on summary judgment, there are several examples of this entrenched opposition, including the following.

Large v. Fremont County, Wyoming

In Wyoming, a U.S. district court found in 2010 that Fremont County’s at-large system for the election of County Commissioners violated Section 2 of the VRA by impermissibly diluting the voting strength of Native American voters.87 Fremont County is home to the Wind River Indian Reservation, which includes Eastern Shoshone and Northern Arapaho Tribes.88 As of the 2000 census, the population of the County was about 20 percent Native American.89 Yet prior to the filing of Large, no Native American had ever been elected to the five-seat County
Commission. The district court found that discrimination against Indians in Fremont County was “ongoing, and that the effects of historical discrimination remain[ed] palpable[,]” and the court rejected “any attempt to characterize this discrimination as being politically, rather than racially, motivated.” The evidence of ongoing discrimination included the use of racial slurs against Native Americans, including signs on stores that said “No Dogs or Indians Allowed”; Native Americans being followed around in stores, ignored by sales people, or served only after whites had been served; disparate treatment in the criminal justice system; and even a comment by a County Commissioner (before he was in office) that, “I hate the [expletive] Indians.” Additionally, when Native Americans had run for office in Fremont County, the campaigns against them included racial appeals such as ads reminding voters that a candidate was “an enrolled member and that he would be voting on water issues,” and a warning not to vote for one Native American candidate because if elected he “was going to give [a town in Fremont County] back to the Indians.” After Large was filed (but before the case concluded), one Native American was elected to the County Commission. During her campaign, she voiced support for at-large elections, which is a position that the white majority would likely favor.

“The issue is, we weren’t being represented and our population is 20 percent of the county… [and] our population is growing.”

Gary Collins, Northern Arapaho Tribal Liaison, at the NCVR Rapid City regional hearing

After finding that the at-large plan violated Section 2, the district court ordered the County to propose a plan to elect Commissioners by district rather than at-large. Despite this order, the County proposed another plan that negated the voting power of Native Americans. This hybrid plan consisted of two districts: one single-seat majority-Native American district, with 19.2 percent of the county's population, and one four-seat majority white district covering the rest of the county. Candidates from the majority-Native American district would be required to live in the district and would be elected only by voters in that district; the four remaining seats would be elected by the remaining population using an at-large scheme. Essentially, members of the white majority would be allowed to vote for four commissioners while Native Americans would be allowed to vote for only one. The district court found that the plan “perpetuat[ed] the separation, isolation, and racial polarization in the County, guaranteeing that the non-Indian majority continues to cancel out the voting strength of the minority.” The district court rejected the county's proposed plan and ordered a single-member district plan be implemented.

Cuthair v. Montezuma-Cortez School District

In 1998, a district court in Colorado found that the at-large elections of the six-member Board of Education for the Montezuma-Cortez School District diluted Native American voting strength in violation of Section 2 of the VRA. The plaintiffs, members of the Ute Mountain Ute Tribe and Southern Ute Tribe, had originally brought suit in 1989 challenging the at-large
method.\textsuperscript{100} In 1990, the district court entered a consent decree establishing a majority Native American district (“District D”) for the 1991 and 1993 school board elections; the remaining five positions on the School Board were still elected at-large. The consent decree also included the unusual provision that if no Native American candidate (or candidate endorsed by the Tribal Council) was elected for District D in 1991 or 1993, the defendants would have a year in which they could request that the court allow them to restore at-large elections for all school board positions.\textsuperscript{101} When no Native American was elected to District D in 1991 or 1993, the defendants sought permission to resume at-large elections.

A different district court judge determined that the consent decree was unenforceable, and held that the at-large elections violated Section 2 of the VRA. The court reviewed an extensive history of “pervasive discrimination and abuse at the hands of the government” suffered by Native Americans in the United States and specifically in Colorado. That history, which includes government seizure of Ute land, a massacre of Indians in eastern Colorado, and decades of official policies of coercive assimilation, led to dire social and economic situations for Native Americans.\textsuperscript{102} The court also found that voting in the county was racially polarized, that the historical use of at-large elections presented the opportunity for discrimination against minority groups in Colorado and the County, that Native Americans in the County bore the effects of discrimination, and that no Native American had been elected to a non-tribal office in the County. The district court ordered the parties to submit appropriate districting plans for future elections.

\textbf{Georgia State Conference of the NAACP v. Fayette County, Georgia}

In 2013, the U.S. District Court for the Northern District of Georgia found that Fayette County, Georgia’s at-large method of electing members of the Board of Commissioners and Board of Education diluted the voting strength of African-American voters in violation of Section 2 of the VRA.\textsuperscript{103} The court made this finding on a motion for summary judgment—meaning there was not even a trial because the court found that the key facts were undisputed. Indeed, some of the Board of Education defendants had already conceded that the at-large election of its members violated Section 2. This case is an example of both a refusal to change methods of election when a minority population increases and entrenched opposition to minority representation.

The percentage of the population of Fayette County that is African-American had almost doubled between 2000 and 2010. As of the 2000 census, African Americans comprised 11.5 percent of the County’s population.\textsuperscript{104} By the time of the 2010 census, African Americans comprised 20.1 percent of the population and 19.5 percent of the voting age population, yet no African-American candidate had ever been elected to the five-member Board of Commissioners or five-member Board of Education.\textsuperscript{105} Five African-American candidates had run for the Board of Education and seven had unsuccessfully run for the Board of Commissioners.
“Elections in Fayette County show a clear pattern of racially polarized voting. Although, Black voters are politically cohesive, bloc voting by other members of the electorate consistently defeats black-preferred candidates.”

Stated Rep. Virgil Fludd at the NCVR Georgia hearing.

The members of the County’s Board of Commissioners and Board of Education served staggered four-year terms and had to reside in the district from which they were elected, though the elections were at-large. No African American had ever been elected to either the Board of Commissioners or Board of Education, and only one African American had ever been elected to a county-wide office.

In arguing against the plaintiffs’ motion for summary judgment, Fayette County did not even dispute the second and third Gingles preconditions. The court found that the first precondition was satisfied and that the totality of the circumstances demonstrated vote dilution. In addition to finding a history of racial discrimination and racially polarized voting, the court also noted that election practices enhanced opportunities for discrimination. First, the County split its Commissioners into five individual contests and used numbered posts, eliminating the opportunity for single-shot voting. Second, the County had a majority-vote requirement, which can also dilute the voting strength of minority voters.
Case Spotlight
Charleston County, South Carolina

In 2003, a district court found that the at-large method of election of the members of the County Council of Charleston County, South Carolina, impermissibly diluted minority voting strength in violation of Section 2 of the VRA. As of the 2000 census, African Americans comprised 34.3 percent of Charleston County’s total population and 30.6 percent of its voting age population. Only one of the nine members of the County Council was African-American, and he was not a minority-preferred candidate. At the time, Charleston County was one of only three counties in South Carolina that elected its entire County Council at-large, and was the only county in South Carolina to do so where whites were a majority of the population. In July 2002, the court granted summary judgment to the plaintiffs on the three Gingles preconditions, meaning that the facts upon which the court relied to determine if the preconditions had been met were undisputed. The trial that followed thus focused on the totality of the circumstances, and the plaintiffs prevailed.

In the court’s discussion of the totality of the circumstances in its 2003 opinion, it noted the “egregious” racial polarization in voting in Charleston County; that only one African-American candidate had ever won a county-wide election for any of the seven single-seat offices (including probate judge, sheriff, and auditor); and the vast socioeconomic disparity between African Americans and whites, with 34.2 percent of African Americans in the County living below the poverty level, compared with 7.9 percent of whites. The court found that the depressed socioeconomic status of African Americans was “a direct legacy of Charleston County’s history of official discrimination” and “makes it more difficult presently for Charleston County’s African-American citizens to participate in the political process and elect candidates of choice.” Additionally, the residency districts, staggering of terms, and primary nominating system meant that there was essentially a majority vote requirement, as all contests were either single-seat or two-seat contests with only two viable candidates per seat (one Democrat, one Republican). Such a situation also denied minority voters the opportunity to exert influence through single-shot voting.

The court also found “significant evidence of intimidation and harassment” of African-American voters at predominantly African-American polling places; the Charleston County Circuit Court had even issued a restraining order against the Election Commission to cease the ongoing interference with the ability of African Americans to vote. There was also evidence that the right of African-American voters to receive assistance had been violated, with white poll managers asking questions such as, “Why do you need assistance? . . . Can’t you read and write?” and “[Y]ou know how to spell your name, why can’t you just vote by yourself?”
After finding a violation of Section 2, the district court ordered single-member districts to replace the at-large system. In the first election by districts, in 2004, African-American voters elected three African-American council members, all of whom were minority-preferred candidates. The County appealed the case first to the Fourth Circuit Court of Appeals and then to the U.S. Supreme Court. The appeals court affirmed the district court, and the Supreme Court did not hear the case. As a result, Charleston County spent more than $2 million defending its discriminatory election system. The County was ordered to pay several hundred thousand dollars in attorneys’ fees to the private plaintiffs.

This case also provides an illustration of the differences between Section 2 and Section 5. Like the County Council, the Charleston County School Board has nine members. At the time of the trial regarding the County Council’s method of election, a majority of the School Board, which was elected by a different method, was African American. In 2003, while the case regarding the County Council was on appeal, the South Carolina General Assembly, led by legislators from Charleston County, enacted a law changing School Board elections from nonpartisan to partisan. DOJ objected to the change on the ground that it would decrease minority voting strength, noting, among other things, that it eliminated the opportunity for single-shot voting. The Section 5 process thus prevented the implementation of a discriminatory voting change that could have taken several years and millions of dollars to invalidate in a Section 2 lawsuit.
IV. REDISTRICTING PLANS

There are three ways that redistricting plans can dilute minority voting strength. The first is through malapportionment, which the Supreme Court recognized in *Reynolds v. Sims* to be an unconstitutional form of vote dilution, as discussed above. When minority voters are in an overpopulated district, their votes are being diluted. The other two methods are fragmenting (or “cracking”) the minority population into different districts or packing it into a single district. The Supreme Court described these principles in *Voinovich v. Quilter*:

In the context of single-member districts, the usual device for diluting minority voting power is the manipulation of district lines. A politically cohesive minority group that is large enough to constitute the majority in a single-member district has a good chance of electing its candidate of choice, if the group is placed in a district where it constitutes a majority. Dividing the minority group among various districts so that it is a majority in none may prevent the group from electing its candidate of choice: If the majority in each district votes as a bloc against the minority candidate, the fragmented minority group will be unable to muster sufficient votes in any district to carry its candidate to victory.

This case focuses not on the fragmentation of a minority group among various districts but on the concentration of minority voters within a district. How such concentration or “packing” may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a super-majority, it will be assured only two candidates. 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.”

The following discussion sets forth examples of all three and how malapportionment, cracking, and packing have been used to dilute minority voting strength.

**Malapportionment**

The example of a recent case in Montana involving Native American voters demonstrates how malapportionment is used to dilute minority voting strength.
In August 2013, the American Civil Liberties Union filed a federal lawsuit against the Board of Trustees of Wolf Point, School District 45A, for creating a multimember districting plan that gave residents in a predominantly white voting district vastly more voting power than those in a majority Native American voting district.\textsuperscript{124} The Wolf Point School District, located in north-eastern Montana, resides entirely in the Fort Peck Indian Reservation.\textsuperscript{125} Wolf Point School District 45A was created with the merger of High School District 45 and Elementary School District 3.\textsuperscript{126} When the merger took place, Wolf Point assigned five electable trustee positions to District 45 and three to District 3.\textsuperscript{127} District 45 is a majority Native American district.\textsuperscript{128} In April of 2014 the Court approved a consent decree finding that the Wolf Point School Board districts were malapportioned in violation of the 14th Amendment.\textsuperscript{129} The consent decree recognized that, with respect to District 45, the ideal population for a district electing five of the eight Board members should be 2,897, as opposed to the 4,205 found under the existing plan.\textsuperscript{130} The consent decree also recognized that, with respect to District 3, the ideal population for a district electing three members of the Board should be 1,738, rather than the 430 that it actually had.\textsuperscript{131} Through the consent decree the School District agreed to redraw voting areas for board elections and to eliminate two seats from District 3 for the 2014 election.\textsuperscript{132} The School District also agreed to create five single-member districts with an approximately equal number of residents and one at large position.\textsuperscript{133} Each of the new single-member districts will have populations that vary no more than 1.54 percent.\textsuperscript{134}

\textbf{Cracking}

The following examples demonstrate how jurisdictions have sought to dilute the minority voting strength by cracking cohesive effective minority districts.

\textbf{Arizona: Southwest Phoenix and Central and Southwest Tucson, 2002}

In May 2002 in Arizona, the United States Department of Justice (DOJ) objected under Section 5 of the Voting Rights Act (VRA) to the proposed 2001 legislative redistricting plan for the state, finding that southwest Phoenix voters from the existing House District 22 would “lose their present ability to elect their candidate of choice.” In its proposal, Arizona sought to split the existing District 22 between two districts, Districts 13 and 14. The resulting proposed districts would have Latino voting age populations of 51.2 and 50.6 percent, respectively, a significant reduction from the 65 percent found under the old District 22. DOJ noted that Arizona districts with Latino voting age population percentages in the low 50s had not historically permitted Latino voters “to elect a candidate of their choice.” In central and southwest Tucson, the DOJ also objected to proposed District 29. Proposed District 29 was created by cracking the previous Districts 9, 10, 11, and 14, and would have had “a Hispanic voting age population of 45.1 percent.” In particular the DOJ noted that the majority of proposed District 29’s population came from the previous “District 10, which had a Hispanic
voting age population of 55.3 percent,” and that Arizona did not present credible evidence allowing DOJ to conclude that the drop of eight percentage points in the Hispanic voting age population would result in the “continued ability of voters in Proposed District 29 to elect candidates of their choice.” More generally, the DOJ determined that the proposed plan would result in a net loss of three districts in which minority voters could elect candidates of choice.\textsuperscript{135}

**Virginia: Northampton County, 2001-03**

Prior to its 2001 redistricting, the board of supervisors for Northampton County, Virginia had two majority black supervisor districts where African Americans had elected their candidates of choice for the last decade.\textsuperscript{136} During the next several years, the county repeatedly submitted retrogressive redistricting plans and associated voting changes to DOJ for preclearance.

First, in September 2001, DOJ objected to the redistricting plan for the board of supervisors, as well as changes to the method of election for the board of supervisors in Northampton County.\textsuperscript{137} Under the existing method of election, which included six single-member districts, two African-American supervisors, both from majority-black districts (and a third majority-minority district had previously elected minority candidates), were in office.\textsuperscript{138} However, the proposed redistricting plan and change to three two-member districts contained no districts in which minorities constituted a majority of the voting age population. The DOJ cited that one district in the proposed plan would have “a minority voting age population of 48.8 percent.”\textsuperscript{139} Others would have voting age populations of 39.3 percent and 43.5 percent.\textsuperscript{140} The DOJ was not persuaded by the county’s argument that these changes were required to include “incorporated towns within single election districts” and to make access to polling places more convenient to voters.\textsuperscript{141} In fact the DOJ provided an illustrative six-district plan that addressed these concerns. The illustrative plan was very similar to the benchmark plan already in place. In all, the DOJ concluded that after examining the populations in question the proposed plan would have made it unlikely for the minority community to “elect two, much less, three candidates of choice.”\textsuperscript{142}

The next year Northampton County submitted a new redistricting plan and DOJ objected to it in May 2003.\textsuperscript{143} DOJ again noted that under the existing plan there were three majority-minority (two of them majority African-American) districts.\textsuperscript{144} However, “[t]he proposed plan has no district in which black persons constitute a majority of the [voting age population].”\textsuperscript{145} Moreover, under the proposed plan, none of the districts had a combined minority voting age population above 52.1 percent, whereas the lowest combined minority voting age population among the three existing majority-minority districts was 52.8 percent.\textsuperscript{146} The county defended its proposed redistricting plan by arguing that Northampton voters no longer voted on “purely racial grounds.”\textsuperscript{147} The DOJ disagreed with this view. It cited evidence to the contrary, namely that “[i]n the last ten years, no black preferred candidate has won in a district in
which whites were a majority of the [voting age population] and in the district in which neither blacks nor whites constitute a majority of the total [voting age population], a black-preferred candidate has only won once in the past three elections. Based on this evidence the DOJ determined that even a slight reduction in the voting age population would make it less likely for African Americans to elect candidates of choice.

In October 2003, DOJ objected to the proposed redistricting plan for board of supervisors in Northampton County for a third time. Under the proposed redistricting plan one of the two majority African-American districts would be cracked by reducing its African-American voting age population “from 53.3% to 48.2%, thereby eliminating the ability of black voters to elect their candidates of choice.”

Wisconsin: 2012

In 2012, a federal court held that the state of Wisconsin’s legislative redistricting act, known as Act 43, violated Section 2 of the VRA, by “improperly diluting the citizen voting age population of Latinos across New Assembly Districts 8 and 9.” The defendants sought to rely on voting age population as opposed to citizen voting age population. The defendants had argued that in drawing the districts they had given Latinos 60.5 percent of the voting age population in “New Assembly District 8 and 54.03 percent of the voting age population in New Assembly District 9.” However, as the trial unfolded the state conceded that “the relevant measure is citizen voting age population, at least for an ethnic group with as high a proportion of lawful non-citizen residents as Latinos.” The defendants also argued that two Latino influence districts would be superior to one majority-minority district. The court was not convinced by either argument. Relying on Bartlett v. Strickland, it held that “the creation of influence districts in lieu of a majority-minority district is not on the menu of options for relief.” It also held that sacrificing influence in one district for the benefit of another “flies in the face of Section 2’s protection against cracking minority populations.”

The court noted that “Latinos in Milwaukee are politically cohesive in their voting behavior... [and] voting is racially polarized, such that the majority group can block the Latino candidate from winning.” For instance, during trial an expert testified that, in surveying 36 elections since 1989, Latino candidates only had an 11.1% success rate when they “ran against one or more Caucasian, non-Latino candidates...” The court also noted that neither party disputed that “Milwaukee’s Latino community bears the socioeconomic effects of historic discrimination in employment, education, health, and other areas, and that its depressed socioeconomic status hinders its ability to participate in the electoral process on an equal basis with other members of the electorate.” The court concluded that the plaintiffs are entitled to relief because “Act 43 fails to create a majority-minority district for Milwaukee’s Latino population.”
Kendra Glover, a paralegal in the office of the General Counsel of the National Association for the Advancement of Colored People who is from Suffolk, Virginia, testified about the redistricting process in her hometown after the 2010 census. On the right is Jean Jensen, former Secretary of the Virginia State Board of Elections and Guest Commissioner at the NCVR Virginia state hearing. PHOTO CREDIT: ROSE CLOUSTON

Packing

The following examples demonstrate how jurisdictions have sought to dilute the minority vote by over-concentrating such voters into one or as few as possible jurisdictions. This is typically done at the expense of minority-influence districts or districts with small or borderline majorities.

**Louisiana: City of Plaquemine, Iberville Parish, 2003**

In Louisiana, in December 2003, the DOJ objected to a redistricting plan for the City of Plaquemine, in Iberville Parish. In its proposed plan, the City of Plaquemine sought to create two packed districts, by reassigning and therefore reducing the African-American voting age population in a third district. Under the benchmark plan the city had three districts where African-Americans constituted a majority of the voting age population and were able to elect candidates of their choice to office. The proposed packed districts, Districts 2 and 6, would have African-American voting age population percentages of 80.4 and 86.9, respectively, while District 3 would see its African-American voting age population drop to 48.5 percent from the benchmark 51.1 percent. The DOJ determined that the voting age population reduction found in proposed District 3, while small, called into question the ability of African-American voters to elect their candidate of choice. The DOJ also determined that the “reduction in the black voting age population percentage in District 3 was neither inevitable nor required by any constitutional or legal imperative.”
Louisiana: City of Ville Platte, Evangeline Parish, 2004

In June 2004, the DOJ objected to a redistricting plan for the City of Ville Platte in Evangeline Parish in Louisiana. In its proposed plan the city sought to pack District B – which was almost 80 percent African-American – with African Americans from District F, and thereby eliminate that district’s African-American voting majority by reducing the African-American voting age population to 38.1 percent. The DOJ determined that reassigning voters from District F would have produced a “precipitous drop in black voting strength,” which “was not driven by any constitutional or statistical necessity.” In fact, the DOJ made clear that the city “provided no evidence to rebut the conclusion” that its efforts were intentionally designed to “retrogress minority voting strength by eliminating the electoral ability of black voters in District F.” In its analysis the DOJ found that the African-American population in District F had steadily increased since it was created in 1997 and that census data suggested that African-Americans constituted a majority 55.1 percent of District F’s voting age population.

Nebraska: Thurston County, 1997 (Cracking and Packing)

In Stabler v. County of Thurston, Native American citizens and organizations filed suit against Thurston County, Nebraska. The plaintiffs claimed that the County’s seven member district plan for the County Board diluted Native American voting strength by packing most of the County’s Native American population into two voting districts and fragmenting the remaining Native American population into three other districts. The district court found that the plan violated Section 2 and ordered the county to draw a plan with three majority Native American districts, and the Eighth Circuit affirmed. The judgment was left undisturbed on appeal to the Supreme Court.

A Category of its Own: Randolph County, Georgia

Another example of discriminatory conduct that deprived a minority group from electing its candidates of choice, but which defies the categories set forth above, occurred in Randolph County, Georgia.

In September 2006, DOJ objected to the Randolph County Board of Education’s proposed reassignment of sitting Board Chair Henry L. Cook from District 5 to District 4. Randolph County is located in the Southwest corner of Georgia. Cook, an African-American, had served on the Randolph County Board of Education since 1993, representing a District that was over 70 percent African-American. The Board of Registrars sought to remove Cook as an Education Board member by simply redrawing the district line around his home and placing him in a new district—one that was over 70 percent Anglo. In so doing, the Board of Registrars was effectively seeking to deprive the district of the ability to elect its longstanding candidate of choice.
Because Cook’s property had straddled the line between the two districts, the issue of his residency had been raised previously in 2002. At that time, Superior Court Judge Gary McCorvey, serving as an acting election superintendent, had held a hearing regarding Cook’s eligibility status, after it was challenged by an opponent. Judge McCorvey found that “the residence of Henry L. Cook is within the boundaries of such ‘new’ district five as contemplated by the Laws and Constitutions of both the State of Georgia and the United States of America.”\(^\text{175}\) Despite this 2002 decision, the three-member Randolph County Board had proceeded to hold a special meeting three years later “for the sole propose of determining anew the proper voter registration location of Mr. Cook and his family members living at his address.”\(^\text{176}\) The DOJ found it unusual that the Board would revisit an issue “without any intervening change in fact or law, and without notifying Mr. Cook that it was doing so.”\(^\text{177}\) The DOJ also noted that it was “particularly unusual for officials with no legal training to overturn, in effect, a decision by a judge in order to disturb an incumbent officeholder.”\(^\text{178}\) In support of its objection the DOJ further cited a “history of discrimination in voting in the County” and that the Board failed to carry its burden in demonstrating that Cook’s proposed reassignment to District 4 lacked a “discriminatory purpose.”\(^\text{179}\)
CHAPTER 5

Case Spotlight
Texas Redistricting Post–2000

Federal courts have found that Texas violated the Voting Rights Act with respect to its 2003 congressional redistricting plan and its 2011 congressional, State Senate, and State House plans. The reviewing courts found that the State repeatedly manipulated district lines to the detriment of minority voters.

In *League of United Latin American Citizens (LULAC) v. Perry*, the Supreme Court held in 2006 that changes to District 23, a Latino-majority district in west Texas, in Texas's 2003 congressional redistricting plan violated Section 2 of the VRA.\(^{180}\) District 23 was redrawn by the Legislature to protect incumbent Republican Henry Bonilla, who had decreasing Latino support.\(^{181}\) After his election in 1992, Bonilla’s share of Latino support decreased with each election cycle, bottoming out in 2002 when he “captured only 8% of the Latino vote and 51.5% of the overall vote.”\(^{182}\) Bonilla likely prevailed in that election because “88% of non-Latinos voted for him.”\(^{183}\) To protect Bonilla’s seat the Texas Legislature divided District 23 by removing half of Webb County and the city of Laredo. At the time, Webb County was 94% Latino.\(^{184}\) This change alone reassigned 100,000 individuals from Bonilla’s district to “another district in which Latinos already controlled election outcomes.”\(^{185}\) The Legislature then added largely Anglo—and Republican—voters from neighboring central Texas.\(^{186}\) Consequently, the Latino share of the citizen voting age population in District 23 dropped from 57.5 percent before redistricting to 46 percent.\(^{187}\) The Supreme Court noted Texas’s well-documented history of discrimination, and that the diminishing support for Congressman Bonilla indicated a belief among the Latino voters that Bonilla was unresponsive to their needs.\(^{188}\) The Court also noted that even if the changes were largely motivated by political rather than racial goals, redrawing a district along racial lines to protect an incumbent is not a valid policy justification.\(^{189}\) The Court observed that Latino voters in District 23 were poised to elect their candidate of choice as “[t]hey were becoming more politically active, with a marked and continuous rise in Spanish-surnamed voter registration.”\(^{190}\) Accordingly, the Court held that the 2003 congressional redistricting plan bore “the mark of intentional discrimination,” and the districts in south and west Texas would have to be redrawn to remedy the Section 2 violation.\(^{191}\)

Undeterred by the Supreme Court’s decision, the Texas Legislature went to even greater lengths in its post-2010 redistricting. Deciding to bypass the DOJ preclearance process, Texas filed suit in July 2011 for judicial preclearance of new redistricting plans for the Texas House of Representatives, the Texas Senate, and Congress.\(^{192}\) All three redistricting plans were denied preclearance by a three-judge panel of the federal district court in Washington D.C.\(^{193}\) The panel concluded that the State of Texas engaged in intentional discrimination against minority voters in enacting the 2011 State Senate and congressional redistricting
Chapter 5

plans, that the State House and congressional plans were retrogressive, and that the State House plan also showed signs of purposeful discrimination. The case regarding the Senate plan focused on Senate District 10. The existing Senate District 10 (SD 10) was located in Tarrant County, which includes Fort Worth. Evidence from the trial cited by the Court included testimony by the defendant’s own expert, Dr. John Alford, who agreed that “the enacted plan ‘diminishes the voting strengths of Blacks and Latinos in [SD 10].’” The court also cited testimony by Texas State Senator Rodney Ellis, who explained that:

The demolition of District 10 was achieved by cracking the African American and Hispanic voters into three other districts that share few, if any, common interests with the existing District’s minority coalition. The African American community in Fort Worth is “exported” into rural District 22—an Anglo-controlled District that stretches over 120 miles south to Falls [County]. The Hispanic Ft. Worth North Side community is placed in Anglo suburban District 12, based in Denton County, while the growing South side Hispanic population remains in the reconfigured majority Anglo District 10.

This testimony was further supported by a report provided by expert witness Dr. Allan J. Lichtman, who wrote:

The state legislature, in dismantling benchmark SD 10 cracked the politically cohesive and geographically concentrated Latino and African American communities and placed members of those communities in districts in which they have no opportunity to elect candidates of their choice or participate effectively in the political process.

Ultimately, the court denied preclearance “because Texas failed to carry its burden to show that it acted without discriminatory purpose in the face of largely unrebutted defense evidence and clear on-the-ground evidence of cracking minority communities of interest in SD 10.”

The court’s findings of fact detailed other actions taken by the State of Texas to intentionally discriminate against voters on the basis of race. For example, as to the congressional plan, the court made the following findings: (1) Texas grew by 4.3 million people between 2000 and 2010 of which Latinos accounted for 65 percent of the increase, African Americans 13.4 percent and Asian-Americans 10.1 percent; (2) as a result of the growth in population, the state gained four congressional seats; and (3) nonetheless, the number of seats to which minority voters could elect a candidate did not increase (two of the three judges concluded
that this number had decreased by one). In addition, the court noted that the legislature had removed the “economic guts” from the African-American districts, but “[n]o such surgery was performed on the districts of Anglo incumbents.”

With regard to the State House redistricting plan, the court did not make formal findings of intentional discrimination, but did conclude that the plan would have a retrogressive effect on minority voters. The court did note, however, that it had been presented with substantial evidence that the State House plan was also motivated by discriminatory intent. For instance, the court noted that “the process for drawing the House Plan showed little attention to, training on, or concern for the VRA.” In terms of the process used to create House District 117, the court noted that map-drawers altered it “so that it would elect the Anglo-preferred candidate yet would look like a Hispanic ability district on paper.” This was accomplished by using “voting and population data” to distinguish “between minorities who turn out heavily to vote and those who do not …” In this way, districts with large minority populations could be created that would feature “a much smaller number of minority voters.” The court found this evidence “concerning because it shows a deliberate, race conscious method to manipulate not simply Democratic vote but, more specifically, the Hispanic vote.” The court cited the testimony provided by the lead house map-drawer, Gerardo Interiano, which it found “reinforces evidence suggesting map-drawers cracked [voter tabulation districts] along racial lines to dilute minority voting power.”

The panel’s decision was vacated after the Shelby County decision, and after the Texas Legislature enacted new plans. The new congressional and State House plans are being challenged in consolidated Section 2 lawsuits with trial to occur in summer 2014.
Deciding to bypass the DOJ preclearance process, Texas filed suit in July 2011 for judicial preclearance of new redistricting plans for the Texas House of Representatives, the Texas Senate, and Congress. All three redistricting plans were denied by a three-judge panel of the federal district court in Washington D.C. The panel concluded that the State of Texas engaged in intentional discrimination against minority voters in enacting the 2011 State Senate and congressional redistricting plans, that the State House and congressional plans were retrogressive, and that the State House plan also showed signs of purposeful discrimination.