FAIR REDISTRICTING IN VIRGINIA

Understanding and Advocating for Racially Fair Election Plans in Virginia's Cities, Counties and Towns

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To Obtain Copies

Copies of Fair Redistricting in Virginia are available online at www.acluva.org,
or by contacting the ACLU of Virginia at 804-644-8080 or acluva@acluva.org

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Introduction

Although redistricting is often thought of as something best left to politicians and the experts, nothing could be further from the truth. Every voter has a vital stake in redistricting because it determines the composition of districts that elect public officials at every level of government.

This document examines local redistricting in Virginia from the viewpoint of racial fairness. You will find inside a brief history of redistricting in Virginia over the last thirty years and tips on how you can have an impact on redistricting today.

One warning in advance: Voting rights law continues to evolve and sometimes rather complex questions arise. The first part of this document presents a general overview of the redistricting process in Virginia, but it is by no means intended to offer definitive answers. The question and answer primer on the Voting Rights Act that follows delves deeper into redistricting law. But it also may not answer all the questions you have. The last section, which is a list of contacts, is the place to go when your needs move beyond the text of this document.

Thomas Jefferson said that for democracy to work, we must have a well-informed citizenry. Nowhere is this more apparent than with redistricting. Interested citizens can have a positive impact on redistricting just by letting government officials know they are being watched. But citizens who are informed and organized can profoundly affect the outcome of redistricting in their locality. This publication will not make you a voting rights expert overnight, but being familiar with it could dramatically increase your effectiveness as an advocate for racially fair redistricting.

Race and Redistricting in Virginia: The Last Three Decades

THE EIGHTIES: THE LAW LEAPS FORWARD

Passed by Congress in 1965, the Voting Rights Act prohibited racially discriminatory election practices and quickly became an effective tool for advancing minority voting rights. But it was not until the 1980s that several dramatic developments gave the law the power it needed to have a widespread impact on the drawing of election district boundaries.

1986: U.S. Supreme Court rules that the Voting Rights Act can be used to compel state and local governments to draw single-member election districts in which minority voters have a fair opportunity to elect the candidate of their choice.

In 1982, Congress amended the Voting Rights Act to make litigation easier by requiring that challengers to discriminatory election plans prove only that the plan had a discriminatory effect on minority voters. Previously, plaintiffs in these lawsuits had the much greater burden of proving that the plan was both intentionally designed to prevent minorities from holding elected office and that it had a discriminatory impact.

Later, in 1986, the Supreme Court ruled in *Thornburg v. Gingles* that the Voting Rights Act could be used to compel state and local governments to draw single-member election districts in which minority voters had a fair opportunity to elect the candidate of their choice. Three conditions had to be present to justify the creation of the district. First, it had to be possible to draw a compact and contiguous election district in which a majority of the people are minorities. Second, minorities in the district must have demonstrated that they were politically cohesive. Third, it had to be shown that white voters in the area tended to vote as a bloc to defeat the minority's preferred candidates.

As a result of these developments, more than 20 successful legal challenges were brought or threatened in Virginia under the Voting Rights Act. Most of the cities, counties and towns that were targets of these cases either conducted at-large elections in which white voters completely controlled the election process or were divided into districts designed to insure the election of white candidates over minority candidates.

In case after case, federal court judges in Virginia ordered these localities to redesign their election plans. The remedy, typically, was to create one or more voting districts in the political jurisdiction in which minority voters would have an equal opportunity to elect the candidate of their choice.

By the late 1980s, places such as Mecklenburg, Pittsylvania, Hopewell, South Hill, Lancaster, Covington, and King & Queen, to name only a few, had created their first ever majority-minority election districts and elected African-American candidates to represent those districts.

THE EARLY NINETIES: MORE DRAMATIC RESULTS

In 1991, when local government officials began the required post-census redistricting process, they were very aware of the successful lawsuits from the 1980s. They were also aware that new majority-minority districts could be drawn in many places where they still did not exist. For this reason--and with prodding from citizens and advocacy groups--local officials began to comply with the Voting Rights Act by voluntarily drawing election districts in which minorities comprised a majority of the voters.

1993: About 125 African-Americans elected to city councils, boards of supervisors, and other local governing bodies in Virginia.

By the time the early 1990s' redistricting process was completed, minorities were poised to be elected to public office in unprecedented numbers. In 1983, according to the Joint Center for Political and Economic Studies in Washington, D.C., there were about 80 African-Americans elected to city councils, boards of supervisors, and other local governing bodies in Virginia. By 1993, there were about 125, an increase of nearly 70%. While population shifts could account for some of these elections, the vast majority came about as a result of lawsuits and racially fair redistricting.

THE MID-NINETIES: RESETTING THE VOTING RIGHTS CLOCK

Unfortunately, the U.S. Supreme Court had a few surprises in store in for voting rights advocates during the mid-1990s. In several high impact cases, the nation's highest court placed new restraints on the Voting Rights Act, turning it into something less than what advocates and the lower courts supposed it to be.

Over the years, gerrymandering for political gain has caused many election districts to be stretched or hammered into unusual shapes. The Supreme Court found no problem with that tradition, but in 1993 -- in *Shaw v. Reno* -- it ruled that a bizarre shaped election district, when drawn for the purpose of creating a racially fair election plan, violated the Constitution.

Mid-1990s: U.S. Supreme Court cases make 2001 redistricting rules regarding race more complicated.

Later, in *Miller v. Johnson*, the Supreme Court ruled that unless the government could show a compelling reason, it was unconstitutional for race to be the dominant factor in determining the shape of any election district, no matter how pretty or ugly it was.

In the early 1990s, the Voting Rights Act was generally interpreted to mean that wherever the three *Gingles* factors were present majority-minority districts had to be drawn. *Shaw* and *Miller* did not supersede *Gingles*, but they did cast a shadow over it, making the 2001 redistricting rules more complex and less clear than the 1991 rules.

2001 REDISTRICTING: PROTECTING THE GAINS MADE IN THE NINETIES

The Voting Rights Act, requires that minority districts, once created, not be reduced in minority voting strength unless demographic shifts necessitate such changes. After the great strides made during redistricting in the early nineties, redistricting in 2001 was mostly a matter of protecting the gains made ten years earlier. Still, most experts agree that by 2001, there were approximately 250 African-American elected officials in Virginia.

Creating and Protecting Fair Districts in 2011

CREATING NEW MAJORITY-MINORITY VOTING DISTRICTS

It is not true, as some say, that race can no longer be considered when drawing election boundaries. It is just that race cannot be such a dominant factor that it subjugates traditional factors such as compactness of shape, communities of interest, or the protection of incumbents.

As Justice O'Connor put it, in order to find that a majority-minority district was unconstitutional, the challenger to such a plan would have to show that the designers "relied on race in substantial disregard of customary and traditional redistricting practices."

In the end, there are very few election districts-- majority-minority or not--that are ever drawn without taking all these other factors into consideration to some extent. But because it can be controversial, the racial factor may tend to dominate media coverage or the public hearings on redistricting, even when, in truth, it is no more important than other factors.

This time around, it is important to make certain that the public record of the redistricting process shows that these other factors were taken into consideration when drawing election boundaries. Whether it appears in the minutes of meetings or in written comments submitted to the official redistricting group, all the factors that determine the outcome of the election district boundaries should be recorded.

PROTECTING PREVIOUS GAINS BY MINORITY VOTERS

Virginia is one of the states covered by Section 5 of the Voting Rights Act. This means that every new redistricting plan will be submitted to the U.S. Department of Justice for its approval--or "preclearance" as they

call it--before the plan can take effect. The Justice Department will determine if the new plan is "retrogressive," that is, whether or not it makes minority voters worse off than they were under the old plan.

If the redistricting proposal for your locality reduces the number of majority-minority districts or reduces the proportion of minority voters in an existing district, it may be retrogressive.

Because of Virginia's history of diluting minority voting power, the U.S. Department of Justice must "preclear" state redistricting plans before they can take effect.

When a proposed plan appears retrogressive, community groups should point this out to the official redistricting group and warn them that the plan needs to be changed. If the plan is adopted anyway, the Justice Department should be contacted immediately.

The Local Redistricting Process

A main goal of redistricting after each census is to make certain that every citizen's vote carries the same weight. This concept of "one person, one vote" means that election districts within a jurisdiction should all contain, within reason, the same number of people. The census data reveals where the population shifts have occurred, thus enabling local governments to redraw election boundaries to insure compliance with the one-person, one vote requirement.

In jurisdictions that have a substantial number of minority voters, the Voting Rights Act also requires that the plans be drawn so as not to discriminate on the basis of race. Individuals and groups who wish to have an impact on the redistricting process need to know what they can expect under the law and how they can effectively advocate for those results.

If you believe that a majority-minority district can be drawn that meets the three *Gingle*s criteria--that is, the district is geographically compact, minorities in it are politically cohesive, and whites there tend to vote as a bloc to defeat candidates preferred by minority voters--you should ask the redistricting group to do it. If you have drawn such a district yourself, you should present it to the commission, even if it is just a rough draft.

If your concern is primarily to protect the status quo of minority voters, then you should familiarize yourself with the current election plan and be prepared to comment on any actions that appear to diminish the impact of the minority community on the political process. A legitimate standard to seek is the adoption of a plan that has the "least change" from the existing plan.

Below are a few things to remember as you engage in the redistricting process:

1. Finding Out Who, When and Where

Redrawing election boundaries is ultimately the responsibility of the local governing body, but the process may occur largely through an appointed commission and its technical advisors. The first thing you need to do is to find out who is doing what, where and when. This should require nothing more than a phone call to city hall.

While there will be public hearings on the redistricting process at which individuals may comment, much of the work on redistricting plans will be done in other venues. Under the Virginia Freedom of Information Act, you have a right to access the information that those groups are reviewing, and you have a right to attend their meetings. In most places, you will discover that this information will be freely shared by government officials, but when it is not, you should know your rights.

2. Being Organized, Informed, and Present

Having a say in the redistricting process is best accomplished by individuals speaking on behalf of community groups. Better, still, are individuals who represent a coalition of groups that has formed to urge the passing of fair redistricting plans. And while one or two individuals typically address the

redistricting commission or local governing body, it is equally important that large numbers of citizens be present at these hearings. Nothing influences public officials more than a room crowded with people who are there for a particular purpose.

You should make certain that you know as much about the proposed election plans as possible and that you have a clear idea of what it is you want in a plan. When possible, this means having a set of alternative plans that you can present to the redistricting group. This is not as hard as it sounds. Although not required to help you create your own plans, nothing prevents your local governing body from giving you access to the personnel or equipment needed to draw election districts. If you need help drawing plans from an outside source, there are a number of places that can offer that service. (See the list of organizations beginning on page 38.)

3. Engaging the local media

Make sure that local television, radio and newspapers are aware of the redistricting process and especially of your interest in a fair election plan. Although not always true, generally the more light spread on the subject of redistricting, the better.

4. Acting multiracially, when practical

The 2000 census data shows that African-Americans, while still the dominant minority in Virginia, have been joined by a dramatic growth in the Hispanic and Asian-American populations. Minority groups in the same communities who have common goals should consider working together to advocate for fair plans. As the state becomes more diverse, the ability of minorities to join forces politically becomes an increasingly important factor in the redistricting process.

5. Documenting the process

Although your local government's redistricting committee will be required to document the process, it will be telling the redistricting story from its own perspective. Your documentation could be critically important if the plan you desire is not adopted, and you decide to take your comments to the U.S. Department of Justice.

Remember, because of the new rules for redistricting, you should be sure to document all the factors that helped determine the boundary lines of the plan you prefer. While race is obviously a relevant factor, the factors listed below should be clearly involved in the drawing of the plan, and they should be documented.

A. Compactness

Districts should look somewhat regular and not be distorted into terribly odd shapes to make them racially fair. There is no exact legal language used to define a plan that passes the shape test, but districts should be reasonably compact. While there is no single measure to determine compactness, courts generally apply a visual or “eyeball” evaluation to determine if a district appears “compact.” It is important to remember, though, that shape is relative. An oddly shaped city or county is likely to produce oddly shaped voting districts that are perfectly acceptable.

B. Contiguity

Each district must be in a single piece. The test of contiguity is whether or not you can actually drive or walk to every part of a district without going through another district. In Virginia, as in most states, a district split by water is still considered to be contiguous.

C. Communities of interest

Any factors showing that a district was drawn to include segments of the population who share common goals and lifestyles should be documented.

D. Protection of incumbents

The redistricting process is often perceived as a way for one group to diminish the power of another group by putting two or more incumbents in a district, or drawing an incumbent out of district in which he or she has popular support. This may be true, but customarily redistricting is supposed to allow voters an opportunity to continue to elect someone to office if he or she has represented them well. Lines drawn to keep two or more incumbents from being lumped in the same district are considered a plus when judging the fairness of plans.

After the Local Redistricting Process is Completed

CONTACTING THE JUSTICE DEPARTMENT

Every voting change, whether it is the location of a polling place or the redrawing of an election plan, must be submitted to the U.S. Department of Justice for preclearance.

The Justice Department will check the new plan to make sure that it is not retrogressive. In jurisdictions where minority voters made significant advances during the 1991 redistricting process, this is a powerful tool that will prevent reversals of the gains made at that time. Whether or not this is the case, if you are dissatisfied with the local redistricting process or the final result, you should contact the U.S. Department of Justice for comment.

The Justice Department will be judging the plan by a number of factors to determine if retrogression has occurred. By anticipating the criteria the Justice Department will use to determine retrogression, your comments will have greater impact and be more helpful to the preclearance reviewers. Here are the three main questions for which the Justice Department will be seeking answers:

1. Does the new plan reduce the percentage of minority voters in any particular district?

2. Did it pack more minority voters than necessary in a particular district, thereby reducing minority voting strength elsewhere?

3. Did it split the minority community up by putting minority voters in several different districts?

The Justice Department will also look at the voting history in the jurisdiction--which may include past election results and voter registration and voter turnout patterns--and any other factor that may affect equal participation in the political process by minority voters.

If the Department of Justice refuses to preclear the plan, as someone who has commented on it, you will be told why. You will then have an opportunity to participate in the redistricting process again when your local governing body is required to make changes to comply with the Justice Department's demands.

If you are satisfied with the local plan that has been submitted to the Department of Justice, you should also submit comments. Endorsement of a plan by minority groups is also an important factor in preclearance.

To submit a comment to the Department of Justice, email the Voting Section at vot1973c@usdoj.gov with the subject line "comment". If you know the submission number, include that in the subject line as well. If you don't have the submission number and want to find it, you may check here at http://www.justice.gov/crt/voting/notices/noticepg.php.. Comments can be mailed to the Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, D.C. 20035-6128. Mark the envelope and first page "comment under Section 5 of the Voting Rights Act0.

The Justice Department has sixty days to act on the plan, but if elections are imminent, the jurisdiction submitting the plan may request that the timetable be shortened. Whether or not this is the case in your locality, it is wise to file your comments as soon as possible after the plan has been submitted.

If you have questions about the preclearance process, you may email the Voting Section of Department of Justice at Voting.Section@usdoj.gov, call (800) 253-3931, or visit www.usdoj.gov/crt/voting.

LITIGATION

If all else fails, a lawsuit under Section 2 of the Voting Rights Act may be possible. Although there were many successful lawsuits in Virginia in the past, the U.S. Supreme Courts rulings in the mid-nineties have made such cases more difficult. If you are interested in a lawsuit, first read the relevant sections of *The Basics of Redistricting Law,* which follows directly, then contact a lawyer or one of the appropriate organizations listed as a contact. You may also contact the Department of Justice, which has the authority to file Section 2 lawsuits, although such cases are rare.

The Basics of Redistricting Law: Q&A[1]

Redistricting And Reapportionment

Q: What is redistricting? What is reapportionment?

A: Redistricting refers to the process of redrawing the lines of districts from which public officials are elected. Redistricting typically takes place after each census and affects all jurisdictions that use districts, whether for members of Congress, state legislatures, county commissions, city councils, school boards, etc.

Reapportionment in its most narrow, technical sense refers to the allocation of representatives to previously established voting areas, as when Congress allocates, or "apportions," seats in the U.S. House of Representatives to the several states following the decennial census. But the terms reapportionment and redistricting are generally used interchangeably and refer to the entire process, at whatever level it takes place, of redrawing district lines after the census.

ONE PERSON, ONE VOTE

Q: Why bother to redraw district lines?

A: The U.S. Constitution and the federal courts require it. It's also the fair and equitable thing to do. Historically many states did not redistrict to reflect shifts and growth in their populations. As a consequence, the voting power of residents of heavily populated areas was often significantly diluted. In a series of cases in the 1960s, one of which coined the phrase "one person, one vote," the Supreme Court held that the Fourteenth Amendment guaranteed "equality" of voting power and that the electoral systems in states which failed to allocate voting power on the basis of population were unconstitutional.[2]

Q: As far as state and local offices are concerned, how does one person, one vote work?

A: For state and local offices one person, one vote requires the jurisdiction to make "an honest and good faith effort" to construct districts with as near to equal population as is practicable.[3] Population equality is determined by calculating a district's deviation from ideal district size. Ideal district size is determined by dividing the total population by the number of seats involved. Deviation is determined by calculating the extent to which an actual district is larger (has a "+" deviation) or smaller (has a "-" deviation) than the ideal district size. Plans with a total population deviation (the sum of the largest plus and minus deviations) under

[1] Excerpts from *Everything You Always Wanted to Know About Redistricting But Were Afraid to Ask*, published by the American Civil Liberties Union, Voting Rights Project, 2010

[2] Gray v. Sanders, 372 U.S. 368, 380-81 (1963); Reynolds v. Sims, 377 U.S. 533 (1964).

[3] Reynolds v. Sims, 377 U.S. at 577; Brown v. Thomson, 462 U.S. 835, 842 (1983)

10% are presumptively regarded as complying with one person, one vote.[4] Plans with deviations between 10% and 16.4% are acceptable *only* if they can be justified "based on legitimate considerations incident to the effectuation of a rational state policy."[5] Plans with deviations greater than 16.4% are regarded as unconstitutional and are probably never justifiable.[6]

Q: How can a jurisdiction justify a total deviation among districts of greater than 10%?

A: A state can justify a deviation greater than 10% based on a rational state policy, such as drawing districts that are compact and contiguous (all parts connected and touching), keeping political subdivisions intact, protecting incumbents, preserving the core of existing districts, and complying with the Voting Rights Act.[7] Given the ease with which districts of equal population can be drawn using modern redistricting technology, and the fact that a plan with an excessive deviation is an invitation to a lawsuit, a jurisdiction has every incentive to draw a plan with a deviation of less than 10%.

Q: Do the same deviation rules apply to congressional redistricting?

A: No. The duty to reapportion Congress is imposed by Article I, Section 2 of the U.S. Constitution rather than the Fourteenth Amendment. The courts have interpreted Article I as imposing a much stricter population equality standard in congressional redistricting. Congressional districts must be "as mathematically equal as reasonably possible."[8] Given modern technology and the large size of congressional districts, it is generally possible to draw plans that accommodate a state's policies with virtually no deviations at all. A number of states drew plans after the 1990 and 2000 censuses with a deviation of only one person from ideal district size.

Q: What other factors are considered when drawing districts?

A: Aside from population equality, jurisdictions are required to comply with the provisions of the Voting Rights Act and the Constitution prohibiting discrimination. Jurisdictions also apply "traditional redistricting principles" which include: compactness (related to district shape), contiguity (all parts of a district touching or connected), preservation of county and municipal lines, maintaining communities of interest (specific groups with shared interests/identity), maintaining cores of existing districts, and incumbency protection or competitiveness. States may add to or prioritize the traditional redistricting principles.

Q: How often must a state redistrict?

A: As a matter of federal law, redistricting is required only once a decade following release of the census, and only then if districts are malapportioned.[9] States are free to redistrict more often if they wish. As the Supreme Court has held: "With respect to a mid-decade redistricting to change districts drawn earlier in conformance with a decennial census, the Constitution and Congress state no explicit prohibition."[10]

Q: How does the Census Bureau count people?

A: The Census Bureau counts persons based on a "usual residence" rule, which has been defined as the place where the person lives and sleeps most of the time. Thus, incarcerated persons, members of the military, students, and persons in other institutions are counted as members of the population where their institutions are located.[11] Many, however, contend that this practice provides an unfair advantage in

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[4] White v. Regester, 412 U.S. 755, 764 (1973); Brown v. Thomson, 462 U.S. at 842-43; Cox v. Larios, 542 U.S. 947 (2004).
[5] Mahan v. Howell, 410 U.S. 315, 325 (1973).
[6] Connor v. Finch, 431 U.S. 407, 420 (1977). *But see* Brown v. Thomson, 462 U.S. 835 (1983), and Gorin v. Karpan, 775 F. Supp. 1430 (D. Wyo. 1991).
[7] Mahan v. Howell, 410 U.S. at 325.
[8] White v. Weiser, 412 U.S. 783, 790 (1973); Karcher v. Daggett, 462 U.S. 725, 730 (1983).
[9] Reynolds v. Sims, 377 U.S. at 583-84.
[10] LULAC v. Perry, 548 U.S 399, 415 (2006).
[11] U.S. Census Bureau, Residence Rules: Facts About Census 2000 Residence Rules (2000), www.census.gov/population/www/censusdata/resid_rules.html (last visited April 4, 2011).

redistricting to such communities by inflating their populations with individuals likely to return to their actual home areas upon release from prison, the military, or other institution.

MINORITY VOTE DILUTION

Q: What is minority vote dilution?

A: Vote dilution, as opposed to vote denial, refers to the use of redistricting plans and other voting practices that minimize or cancel out the voting strength of racial and other minorities. In the words of the Supreme Court, the essence of a vote dilution claim "is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives."[12]

Q: What are some of the techniques used in redistricting plans to dilute minority voting strength?

A: Three techniques frequently used to dilute minority voting strength are "cracking," "stacking," and "packing." "Cracking" refers to fragmenting concentrations of minority population and dispersing them among other districts to ensure that all districts are majority white. "Stacking" refers to combining concentrations of minority population with greater concentrations of white population, again to ensure that districts are majority white. "Packing" refers to concentrating as many minorities as possible in as few districts as possible to minimize the number of majority-minority districts. All of these techniques may result in a districting plan that violates the Voting Rights Act, as well as the Fourteenth Amendment.[13] Other techniques have also been used to affect a group's voting strength: questionable purging of registration rolls; moving polling places; administering difficult registration procedures; annexing areas; decreasing the number of voting machines in minority areas; and threatening reprisals for voting.[14]

Q: Is vote dilution prohibited by the Constitution?

A: Yes. A reapportionment plan that dilutes minority voting strength is unconstitutional if it was conceived or operated as a *purposeful* device to further racial discrimination.[15] Race need not be the sole or main purpose, but only a motivating factor in the decision making process.[16]

Q: Does the Voting Rights Act prohibit vote dilution in redistricting?

A: Yes. Two provisions of the Voting Rights Act, Section 2[17] and Section 5,[18] prohibit the use of voting practices or procedures, including redistricting plans that dilute minority voting strength.

Q: Who is protected by the Voting Rights Act?

A: When it was first enacted, the Voting Rights Act targeted southern states which had systematically discriminated against African-Americans in voting. The Act prohibited discrimination based on "race or color." In 1975 Congress extended the protection of the act to language minorities, defined as American Indians, Asian-Americans, Alaskan Natives, and persons of Spanish Heritage.[19]

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[12] Thornburg v. Gingles, 478 U.S. 30, 47 (1986).
[13] *See* Major v. Treen, 574 F. Supp. 325 (E.D. La. 1983); Voinovich v. Quilter, 507 U.S. 146, 153-54 (1993); Jeffers v. Clinton, 730 F. Supp. 196 (E.D. Ark. 1990).
[14] Chandler Davidson, *Minority Vote Dilution: An Overview in* MINORITY VOTE DILUTION 3, (Chandler Davidson ed., Howard Univ. Press 1989).
[15] Rogers v. Lodge, 458 U.S. 613 (1982).
[16] Hunter v. Underwood, 471 U.S. 222 (1985).
[17] 42 U.S.C. § 1973 (2006).
[18] 42 U.S.C. § 1973c (2006).
[19] 42 U.S.C. § 1973aa-1a(e) (2006).

SECTION 2 OF THE VOTING RIGHTS ACT

Q: What does Section 2 provide?

A: Section 2 provides that a voting practice is unlawful if it "results" in discrimination, *i.e.*, if, based on the totality of circumstances, it provides minorities with "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[20] Although Section 2 does not require proof of racial purpose, practices which were enacted or are being maintained for the purpose of discriminating on the basis of race or language minority status would also be unlawful under the statute.

Q: Why did Congress dispense with the requirement of proving racial purpose under Section 2?

A: Congress did not require proof of racial purpose for a statutory violation for several reasons, the most important of which was that whether or not public officials acted out of bias or intended to discriminate against a minority group asked the "wrong question." The relevant inquiry, according to Congress, was whether minorities "have equal access to the process of electing their representatives." The intent requirement was also "unnecessarily divisive" because it required plaintiffs to allege and prove that local officials, or indeed entire communities, were racists. Finally, the requirement of proving the subjective motives of a legislative body imposed an "inordinately difficult" burden of proof on minority plaintiffs.[21] As Judge John Minor Wisdom wrote in an early voting case, to require proof of an unconstitutional legislative purpose was "to burden the plaintiffs with the necessity of finding the authoritative meaning of an oracle that is Delphic only to the court."[22]

Q: How do you prove a violation of the results standard of Section 2?

A: The most important case interpreting Section 2 is *Thornburg v. Gingles*,[23] in which the Supreme Court invalidated multi-member legislative districts in a redistricting plan adopted by North Carolina after the 1980 census. The Court identified three factors, known as the "*Gingles* factors," that are of primary importance in determining a violation of the statute: (1) whether "the minority group . . . is sufficiently large and geographically compact to constitute a majority in a single-member district;" (2) whether "the minority group . . . is politically cohesive," *i.e.*, tends to vote as a bloc; and (3) whether "the majority votes sufficiently as a bloc to enable it - in the absence of special circumstances . . . usually to defeat the minority's preferred candidate."[24]

The legislative history further provides that "a variety of factors, depending upon the kind of rule, practice, or procedure called into question" are also relevant in determining a violation.[25] Typical factors identified in the Senate report include: the extent of any history of discrimination in the jurisdiction that touched the right of the members of the minority group to participate in the democratic process; the extent to which the jurisdiction uses devices that may enhance the opportunity for discrimination, such as majority vote requirements or anti-single shot provisions; whether the members of the minority group bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process; whether political campaigns have been characterized by overt or subtle racial appeals; and, the extent to which members of the minority group have been elected to public office in the jurisdiction.[26] A court's ultimate duty is to determine whether, in light of the *Gingles* factors and the totality of circumstances, a challenged practice dilutes minority voting strength.[27]

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[20] 42 U.S.C. § 1973(b) (2006).
[21] S. Rep. No. 417, 97th Cong., 2d Sess. 36 (1982). *See* Thornburg v. Gingles, 478 U.S. at 43 n.8.
[22] Nevett v. Sides, 571 F.2d 209, 238 (5th Cir. 1978).
[23] Thornburg v. Gingles 478 U.S. 30 (1986).
[24] *Id*. at 50.
[25] S. Rep. No. 417 at 28-29.
[26] Thornburg v. Gingles, 478 U.S. at 36-37.
[27] Johnson v. De Grandy, 512 U.S. 997 (1994).

Q: How compact must a district be to satisfy Section 2 and the first Gingles factor?

A: The Supreme Court has said that a district need not be the winner "in endless beauty contests" to meet the compactness standard of Section 2.[28] Instead, a district complies with Section 2 if it "is *reasonably* compact and regular, taking into account traditional redistricting principles such as maintaining communities of interest and traditional boundaries."[29]

There are various social science measures of compactness, such as the perimeter measure and the dispersion measure,[30] but most courts have applied an intuitive, "eyeball" test, *i.e.*, if a district looks reasonably compact and is similar in shape to other districts drawn by the jurisdiction it is deemed compact within the meaning of Section 2 and the first *Gingles* factor.[31] Some courts have placed more emphasis on how a district would function in the political process, rather than on how it looks. The functional approach takes into account such things as transportation networks, media markets, the existence of recognized neighborhoods, *etc*., to determine whether it is possible to organize politically and campaign effectively in the district.[32]

Q: What is the test for determining if a minority is a "majority" in a district?

A: Most courts have held that, to be a majority, the minority must make up 50% plus 1 of the voting age population (VAP) in a district on the theory that only those of voting age have the potential to elect candidates of their choice within the meaning of Section 2.[33] The Supreme Court affirmed this view in *Bartlett v. Strickland* by holding that: "Only when a geographically compact group of minority voters could form a majority in a single-member district has the first *Gingles* requirement been met."[34]

Q: If a minority population is too small to be a majority, but large enough to elect candidates of choice with help from voters who are members of the majority, does Section 2 require the drawing of such "crossover" or "coalition" districts?

A: No. The Supreme Court also held in *Bartlett v. Strickland* that "§ 2 does not mandate creating or preserving crossover districts."[35] The Court was careful to note, however, that while not required by § 2, "in the exercise of lawful discretion States could draw crossover districts as they deemed appropriate."[36]

Q: How does a court determine whether a minority is politically cohesive within the meaning of the second Gingles factor?

A: The Supreme Court held in *Gingles* that political cohesion can be shown by evidence "that a significant number of minority group members usually vote for the same candidates."[37] Elsewhere in the opinion the Court said that racial bloc voting and political cohesion could be established "where there is a consistent relationship between [the] race of the voter and the way in which the voter votes.'"[38] Most courts have applied a common sense rule that if a majority of minority voters vote for the same candidates a majority of the time the minority is politically cohesive.

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[28] Bush v. Vera, 517 U.S. 952, 977 (1996); *See also* Clark v. Calhoun County, 21 F.3d 92, 95 (5th Cir. 1994) (*Gingles* "does not require some aesthetic ideal of compactness").
[29] Bush v. Vera, 517 U.S. at 977.
[30] *See*, *e.g.*, Richard H. Pildes & Richard G. Niemi, *Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich.L.Rev. 483, 554 & n.200, 555 & n.203 (1993).
[31] *See*, *e.g.*, Houston v. Lafayette County, 56 F.3d 606, 611 (5th Cir. 1995); Cuthair v. Montezuma-Cortez, Colo. Sch. Dist., 7 F. Supp. 2d 1152, 1167 (D. Colo. 1998).
[32] *See*, *e.g.*, Clark v. Calhoun County, 21 F.3d at 95; Sanchez v. Colorado, 97 F.3d 1303, 1312 (10th Cir. 1996).
[33] *See*, *e.g.*, McNeil v. Springfield Park Dist., 851 F.2d 937 (7th Cir. 1988); Magnolia Bar Ass'n, Inc. v. Lee, 994 F.2d 1143, 1150 (5th Cir. 1993).
[34] Bartlett v. Strickland, 129 S. Ct. 1231, 1249 (2009).
[35] *Id.* at 1248.
[36] *Id.* at 1248.
[37] Thornburg v. Gingles, 478 U.S. at 56.
[38] *Id.* at 53 n.21.

Q: How pervasive must white bloc voting be to satisfy the third Gingles factor?

A: The third *Gingles* factor (whether white bloc voting is "legally significant") is satisfied if the majority votes sufficiently as a bloc to enable it "usually" to defeat the minority's preferred candidate.[39] The fact that some minority candidates may have been elected does not foreclose a Section 2 claim. Instead, in the words of the Supreme Court, where a challenged scheme "generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters."[40]

Q: Can two minority groups, such as African-Americans and Hispanics, ever be combined for purposes of Section 2?

A: The Supreme Court hasn't resolved this issue,[41] but most courts have held that different minority groups can be combined provided they satisfy the *Gingles* factors.[42]

Q: Since we have a secret ballot, how is it possible to show racial bloc voting?

A: In *Gingles* the Court approved two widely used methods of proving racial bloc voting: extreme case (or homogeneous precinct) analysis, and ecological regression analysis.[43] Homogeneous precinct analysis looks at precincts predominantly (90% or more) of one race. If, for example, a black candidate gets most of the votes in the predominantly black precincts but few votes in the predominantly white precincts, the voting in those precincts is necessarily along racial lines. Ecological regression analysis, which is generally performed by experts in the field, looks at all the precincts to determine if there is a correlation between the racial makeup of the precincts and how votes are cast. It generates estimates of the percentages of members of each race who voted for minority candidates. Courts have now accepted a third approach, Ecological Inference (EI), which also estimates racial bloc voting.[44]

Q: Is it necessary to prove that voters are voting because of race?

A: No. The Supreme Court has held that "the reasons black and white voters vote differently have no relevance to the central inquiry of ' 2. . . . [O]nly the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters."[45]

Q: Which elections are the most important in proving racial bloc voting and in determining whether it is legally significant?

A: Every election in which a voter votes, *e.g.*, a presidential preference primary, a statewide contest, a local school board election, tells us something about voter behavior and is therefore theoretically relevant in a vote dilution challenge. However, elections for the particular office at issue and those which give the voters a racial choice are generally considered the most important in determining a Section 2 violation.[46] In *Gingles*, for example, the only elections analyzed by the Court were black-white legislative contests.[47]

Defendants in some voting cases have argued that minority voters were often able to elect candidates of their choice in white-white contests and that therefore there was no dilution of minority voting

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[39] *Id.* at 51, 56.
[40] *Id.* at 76.
[41] Growe v. Emison, 507 U.S. 25, 41 (1993).
[42] *See* Nixon v. Kent County, 76 F.3d 1381, 1393 (6th Cir. 1996); Campos v. City of Baytown, 840 F.2d 1240, 1244 (5th Cir. 1988).
[43] Thornburg v. Gingles, 478 U.S. at 52-53.
[44] For a discussion of Ecological Inference see Gary King, A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data, Princeton University Press (1997). Ecological Inference eliminates estimates that are greater than 100% or less than 0%.
[45] Thornburg v. Gingles, 478 U.S. at 63.
[46] Clark v. Calhoun County, 21 F.3d at 97 ("elections involving the particular office at issue will be more relevant than elections involving other offices"); Rural West Tennessee African American Affairs Council v. Sundquist, 29 F. Supp. 2d 448, 457 (W.D. Tenn. 1998) ("[b]ecause of the prevalence of endogenous [legislative] data, the court does not find the exogenous [county] elections to be particularly useful or necessary").
[47] Thornburg v. Gingles at 478 U.S. at 80-2

strength. The courts have generally rejected these arguments on the grounds that Section 2's guarantee of equal opportunity is not met when "candidates favored by blacks can win, but only if the candidates are white."[48]

Q: What is "proportionality" and does it play a role in the Gingles analysis?

A: The term "proportionality," as used by the Supreme Court, "links the number of majority-minority voting districts to minority members' share of the relevant population."[49] Whether a challenged plan provides proportionality is a factor to be considered by a court in its totality of circumstances analysis under Section 2, but proportionality does not insulate a plan, or provide it a safe harbor, from a vote dilution challenge. According to the Court, "[n]o single statistic provides courts with a short-cut to determine whether a [redistricting plan] unlawfully dilutes minority voting strength."[50]

Q: If a plan drawn to remedy a Section 2 violation were to exceed proportionality, would it for that reason be unacceptable?

A: No, particularly where the remedial plan has less disparity and more closely approximates proportionality than the existing plan. As one court put it, "[t]here is no reason why the . . . minority in this case should continue to bear the burden of under-representation under the current scheme while the white majority enjoys over-representation."[51]

Q: Does the Gingles analysis also apply to challenging existing single member district plans?

A: Yes. The Court has held that the analysis in *Gingles* applies to single member redistricting plans as well as multi-member plans and at-large elections.[52]

SECTION 5 OF THE VOTING RIGHTS ACT

Q: How does Section 5 work?

A: Section 5 requires certain "covered" states, *i.e.*, those which historically used discriminatory tests for voting and had low levels of voter participation, to get federal approval, or preclearance, of their new voting laws or practices before they can be implemented.[53] Section 5 was designed to prohibit states from replacing their discriminatory tests for voting with other, equally discriminatory voting practices.

Q: What states are covered by Section 5?

A: Section 5 covers nine states in their entirety (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia) and parts of seven others (California, Florida, Michigan, New Hampshire, New York, North Carolina, and South Dakota).

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[48] Smith v. Clinton, 687 F. Supp. 1310, 1318 (E.D. Ark. 1988); Clarke v. City of Cincinnati, 40 F.3d 807, 812 (6th Cir. 1994); Rural West Tennessee African American Affairs Council v. Sundquist, 29 F. Supp. 2d at 456. *Contra*, Lewis v. Alamance County, 99 F.3d 600 (4th Cir. 1996); Solomon v. Liberty County Comm'rs, 221 F.3d 1218 (11th Cir. 2000) (*en banc*).

[49] Johnson v. De Grandy, 512 U.S. at 1014 n.11.

[50] *Id.* at 1020-21.

[51] Stabler v. County of Thurston, 129 F.3d 1015, 1022 (8th Cir. 1997). *See also* Harvell v. Blythville Sch. Dist. No. 5, 71 F.3d 1382, 1389 (8th Cir. 1995) ("the white majority has no right under Section 2 to ensure that a minority group has absolutely no opportunity to achieve greater than proportional representation in any given race").

[52] Voinovich v. Quilter, 507 U.S. at 158.

[53] 42 U.S.C. § 1973c (2006). The determination of Section 5 coverage is made by the Attorney General and the Director of the Census. 42 U.S.C. § 1973b(b) (2006).

Q: What voting changes are covered by Section 5?

A: The courts have interpreted Section 5 broadly to cover practices that alter the election laws of a covered jurisdiction in even a minor way.[54] Covered changes have run the gamut from redistricting plans, to annexations, to setting the date for a special election, to moving a polling place.[55]

Q: Is Section 5 permanent?

A: No. Unlike Section 2, Section 5 was originally enacted as a temporary, five year measure.[56] Section 5 was extended and expanded by amendments in 1970, 1975, 1982, and 2006. Pursuant to the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Section 5 is now set to expire in 2032.

Q: Can jurisdictions "bail out" from Section 5 coverage?

A: Yes. In *Northwest Austin Municipal Utility District Number One v. Holder,* the Supreme Court held that all covered jurisdictions, including political subdivisions, can escape or bail out from Section 5 by showing that for the preceding ten years they have had clean voting rights records and have implemented affirmative measures to increase minority political participation.[57]

Q: Do we still need Section 5?

A: Yes. Some have argued that since Bull Connor and other segregationists are dead, and since we elected an African American President, Barack Obama in 2008, we no longer need Section 5. Congress, however, passed the 2006 extension and amendments of the Voting Rights Act by a vote of 390 to 33 in the House and by a unanimous vote in the Senate. It held a total of 21 hearings, heard from more than 80 witnesses, and compiled a comprehensive record of more than 16,000 pages of evidence. The legislative history, which details continuing Section 5 objections, Section 5 enforcement actions, the use of Federal observers, and Section 2 litigation in the covered jurisdictions, strongly supports Congress' considered finding that "vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers constructed to prevent minority voters from fully participating in the electoral process."[58]

One of the most sobering facts to emerge from the congressional record is the continuing presence of racially polarized voting. As Congress concluded, "[t]he continued evidence of racially polarized voting in each of the jurisdictions covered by the expiring provisions of the Voting Rights Act of 1965 demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act."[59]

Q: How is preclearance obtained?

A: Preclearance can only be granted by the United States District Court for the District of Columbia in a lawsuit, or by the U.S. Attorney General in an administrative submission. Local federal courts have the power, and duty, to enjoin the use of unprecleared voting practices, but they have no jurisdiction to determine whether a change should be approved.[60] That decision is reserved exclusively for the District of Columbia court or the Attorney General. Section 5 also places the burden of proof on the jurisdiction to show that a

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[54] Allen v. State Bd. of Elections, 393 U.S. 544, 566-67 (1969).
[55] Beer v. United States, 425 U.S. 130 (1976) (redistricting plans); City of Richmond v. United States, 422 U.S. 358 (1975) (annexation); Henderson v. Harris, 804 F. Supp. 288 (M.D. Ala. 1992) (date of special election); Perkins v. Matthews, 400 U.S. 379, 387-90 (1971 (polling place location).
[56] S. Rep. No. 295, 94th Cong., 2d Sess. 12 (1975).
[57] Nw. Austin Mun. Util. Dist. No. One v. Holder, 129 S. Ct. 2504 (2009).
[58] Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577, § 2(b)(2)(2006).
[59] *Id.* at § 2(b)(3).
[60] Allen v. State Bd. of Elections, 393 U.S. at 555 n.19.

proposed voting change does not have a discriminatory purpose or effect.[61] The statute was thus designed to shift the advantages of inertia and the delay associated with litigation from the victims of discrimination to the jurisdictions which practiced it.

Q: What if a jurisdiction refuses to submit a voting change for preclearance?

A: Congress placed the initial burden of "voluntary" compliance with the statute on the covered jurisdictions,[62] but it also authorized the Attorney General and private citizens to bring suit in local federal court to block the use of unprecleared voting practices.[63] It also made it a crime to fail to comply with the statute.[64]

Q: What standards do the District of Columbia Court and the Attorney General use in determining whether a proposed change has a discriminatory effect?

A: The Supreme Court has construed the discriminatory effect standard of Section 5 narrowly to mean retrogression.[65] That is, only those voting changes that make minorities worse off than they were under the preexisting practice or system (known as the "benchmark" for determining retrogression)[66] are objectionable under the effect standard. The Court has even held that if a voting change clearly violates the results standard of Section 2, it would still be objectionable under Section 5 only if it caused a retrogression in minority voting strength.[67]

In *Georgia v. Ashcroft*, the Court held that a redistricting plan that diminished the ability of minorities to elect candidates of their choice was not necessarily objectionable under the effect standard if it provided them the ability to "influence" the election of candidates "sympathetic to the interests of minority voters."[68] Congress remedied the decision by amending Section 5 in 2006 to provide that the statute's purpose "is to protect the ability of such citizens to elect their preferred candidates of choice."[69]

Q: Can an intervening court decision alter the benchmark for determining retrogression under Section 5?

A: Yes. In the event that an existing practice or plan were held to be unconstitutional, the benchmark for determining retrogression of any proposed practice or plan would normally be the last legally enforceable practice or plan used by the jurisdiction.[70] However, a court ordered remedial redistricting plan would itself become the benchmark for determining retrogression in a subsequent Section 5 submission rather than the last legally enforceable plan.[71]

Q: What is the standard for determining whether a proposed change has a discriminatory purpose under Section 5?

A: As with the effect standard, the Supreme Court construed the purpose standard of Section 5 narrowly to mean a purpose to retrogress. Thus, a voting change enacted with the express purpose of abridging minority voting strength would be objectionable only if the jurisdiction intended to make minorities worse off than

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[61] McCain v. Lybrand, 465 U.S. 236 (1984). A voting change has a discriminatory effect under Section 5 if it leads to a "retrogression" in minority voting rights, *i.e.*, makes them worse off. Beer v. United States, 425 U.S. at 141.
[62] Perkins v. Matthews, 400 U.S. at 396.
[63] 42 U.S.C. §§ 1973j(d) and (f).
[64] 42 U.S.C. § 1973j(a) (2006). Despite numerous court decisions finding that Section 5 had been violated, no one has ever been charged with the crime of failing to comply with the act.
[65] Beer v. United States, 425 U.S. at 141.
[66] Holder v. Hall, 512 U.S. 874, 883-84 (1994) (the baseline for comparison in determining retrogression "is the existing status").
[67] Reno v. Bossier Parish Sch. Bd., 520 U.S. 471, 485 (1997).
[68] Georgia v. Ashcroft 539 U.S. 461, 482-83 (2003).
[69] 42 U.S.C. § 1973 (5)(3)(d).
[70] Abrams v. Johnson, 521 U.S. 74, 97 (1997).
[71] Texas v. United States, 785 F. Supp. 201, 205 (D.D.C. 1992).

they were before. Congress remedied this narrow interpretation by amending the Voting Rights Act in 2006 to provide that the term "purpose" as used in Section 5 "shall include any discriminatory purpose."[72]

Q: Can minorities participate in the Section 5 preclearance process?

A: Yes. The Attorney General's regulations allow, and encourage, minorities to participate in the preclearance process and submit information concerning the possible discriminatory purpose or effect of voting changes. In practice, the Attorney General is heavily dependent on information received from citizens in the communities affected by proposed voting changes in administering the statute.

Q: What is the procedure for making a Section 5 comment?

A: Section 5 comment letters can be mailed to the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, D.C. 20035-6128. The envelope and first page should be marked: Comment under Section 5 of the Voting Rights Act. Comments can also be made by phone by calling 1-800-253-3931 or (202) 307-2767, or by e-mail at: vot1973c@usdoj.gov. To learn more about the Section 5 process, you can log on to the voting section website at www.usdoj.gov/crt/voting.

Q: If a voting change has been precleared under Section 5 can it still be challenged under Section 2?

A: Yes. Even if a redistricting plan has been precleared under Section 5, it can still be challenged under Section 2 by a lawsuit in the local federal district court.[73]

THE *SHAW/MILLER* CASES OF THE NINETIES

Q: What was the significance of the Shaw/Miller cases?

A: In *Shaw v. Reno*,[74] decided in 1993, the Court held that white voters, who alleged that North Carolina's two majority black congressional districts were so bizarre in shape that they could only be understood as an attempt to assign or segregate voters on the basis of race, stated a claim under the equal protection clause of the Fourteenth Amendment.

In *Miller v. Johnson*,[75] the Court held that Georgia's majority black Eleventh Congressional District was unconstitutional, not because of its shape, but because race was the "predominant" factor in drawing district lines and the state "subordinated" its traditional redistricting principles to race without having a compelling reason for doing so, such as remedying or avoiding a violation of federal law. According to the Court, a bizarre shape was not required for an equal protection challenge but was simply one way of proving a predominant racial motive and subordination of traditional redistricting principles.

The *Shaw/Miller* cases allowed white voters to challenge the constitutionality of majority-minority districts based solely on their shape, while in voting cases brought by blacks the Court has required the plaintiffs to prove that a challenged practice was adopted or was being maintained with a discriminatory purpose to establish a constitutional violation.[76] In the *Shaw/Miller* cases, the plaintiffs did not attempt to prove, or even claim, that the state's redistricting plans were enacted for the purpose of discriminating against them or other white voters.[77] In civil rights cases brought by blacks the Court had held that the plaintiffs were required to show a personal, concrete injury.[78] In the *Shaw/Miller* cases, however, the Court dispensed with any requirement that the plaintiffs allege or prove that the challenged plans had diluted their voting strength or personally injured them in any way.[79] These cases transformed the Fourteenth

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[72] 42 U.S.C. § 1973 (5)(3)(c).
[73] Thornburg v. Gingles, 478 U.S. 30 (1986); Major v. Treen, 574 F. Supp. 325 (E.D. La. 1983).
[74] Shaw v. Reno 509 U.S. 630 (1993).
[75] Miller v. Johnson 515 U.S. 900, 919-20 (1995).
[76] City of Mobile v. Bolden, 446 U.S. 55 (1980).
[77] Shaw v. Reno, 509 U.S. at 641-42.
[78] Allen v. Wright, 468 U.S. 737, 754, 756 (1984).
[79] Shaw v. Reno, 509 U.S. at 641.

Amendment from a law designed to prohibit discrimination against racial minorities,[80] to one that can now be used to challenge majority-minority districts and allow whites to seek to maximize their control of the redistricting process. That this should be done in the name of "equal protection" is one of the great ironies of the Court's modern redistricting cases.

Q: Is it still permissible to draw majority-minority districts?

A: Yes. The Court has invalidated majority black and Hispanic districts in some states,[81] but it has rejected challenges to such districts in others.[82] States are not only permitted to draw majority-minority districts, but may be required to do so to comply with the Voting Rights Act. According to the Court, a legislature "will . . . almost always be aware of racial demographics," but it may not allow race to predominate in the redistricting process.[83] A state "is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interest."[84] Redistricting may be performed "with consciousness of race."[85] Indeed, it would be "irresponsible" for a state to disregard the racial fairness provisions of the Voting Rights Act.[86] A state may therefore "create a majority-minority district without awaiting judicial findings" if it has a strong basis in evidence for avoiding a Voting Rights Act violation.[87] Admittedly, it may be difficult to steer a median course between these competing principles articulated by the Court, but it is clear that the Court has not banned the use of majority-minority districts.

Q: Are majority-minority districts a suspect form of gerrymandering?

A: No. Majority black or Hispanic districts are no more "gerrymandered" than majority white districts. One leading expert has said that "[a]ll districting is 'gerrymandering.'"[88] Indeed, districts are always designed to give, or try to give, an advantage to somebody, some group, or some interest, and to that extent can be called "gerrymandered." Incumbents try to "gerrymander" districts in which they can get elected; Democrats try to "gerrymander" districts that protect their party, suburbanites try to "gerrymander" districts to include the suburbs, and so on. As the Court noted in *Davis v. Bandemer*,[89] "[a]n intent to discriminate in this sense may be present whenever redistricting occurs."

Q: Do majority-minority districts segregate voters?

A: No. The majority-minority districts in the South created after the 1990 census, far from being segregated, were the most racially *integrated* districts in the country. They contained an average of 45% of non-black voters. Georgia's two current congressional majority-minority districts created mid-decade had an average black population of 54.57%.[90] No one familiar with Jim Crow could ever confuse highly integrated redistricting plans, or plans that provide minorities with a realistic opportunity to elect candidates of choice, with racial segregation under which blacks were not allowed to vote or run for office. Moreover, the notion that majority black districts are "segregated," and that the only integrated districts are those in which whites are the majority, is itself a racist concept. A constitutional doctrine that can tolerate only what is majority white in redistricting is surely a perversion of the equal protection standard of the Fourteenth Amendment.

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[80] The Slaughter-House Cases, 83 U.S. 36, 81 (1872) (the Fourteenth Amendment was adopted to remedy "discrimination against the negroes as a class, or on account of their race").

[81] *E.g.*, Districts 2 and 11 in Georgia (Miller v. Johnson, 515 U.S. 900 (1995), Abrams v. Johnson, 521 U.S. 74 (1997)), District 12 in North Carolina (Shaw v. Hunt, 517 U.S. 899 (1996)), and Districts 18, 29, and 30 in Texas (Bush v. Vera, 517 U.S. 952 (1996)).

[82] *E.g.*, in California (DeWitt v. Wilson, 515 U.S. 1170 (1995), aff'd, 856 F. Supp. 1409 (E.D. Cal. 1994)), and in Illinois (King v. Illinois Bd. of Election, 522 U.S. 1087 (1998), aff'd, 979 F. Supp. 582, 619 (N.D. Ill. 1996)). In Lawyer v. Department of Justice, 521 U.S. 567 (1997), the Court rejected a *Shaw* challenge to a majority black and Hispanic state legislative district in Florida.

[83] Miller v. Johnson, 515 U.S. at 916.

[84] *Id.* at 920.

[85] Bush v. Vera, 517 U.S. at 958.

[86] *Id.* at 991 (O'Connor, J., concurring).

[87] *Id.* at 994.

[88] Robert G. Dixon, Jr., DEMOCRATIC REPRESENTATION: REAPPORTIONMENT IN LAW AND POLITICS 462 (1968).

[89] Davis v. Bandemer 478 U.S. 109, 164 (1986).

[90] Figure tabulated from 2000 Census PL94-171 Population Counts and the mid-decade Congressional redistricting in Georgia under the Unifiedgeorgia Plan.

Q: Have majority-minority districts increased political opportunities for minorities?

A: Yes. In 1964 there were only about 300 black elected officials nationwide. By 1998 the number had grown to more than 8,858.[91] This increase was the direct result of the increase in majority-minority districts since passage of the Voting Rights Act in 1965.[92] By 2000, the number of black elected officials had increased to 9,040, a gain of over 600 percent since 1970.[93] By 2002, the number of black elected officials had grown to 9,430.[94] The number of Hispanic elected officials grew from 3,147 in 1985 to 5,240 in 2008.[95]

Q: Are majority-minority districts still needed?

A: Yes. Although some black incumbents drawn into new majority white districts as a result of the *Shaw* cases were reelected, *e.g.*, Cynthia McKinney and Sanford Bishop in Georgia, voting in their elections was still racially polarized.[96] A 2006 report by the National Commission on the Voting Rights Act found that black candidates are unlikely to be elected when non-Hispanic whites are the majority of the electorate.[97] This is likely for other minority groups as well. The report further indicates that in 2000 only four of thirty-eight black congressmen were elected from majority-white congressional districts, and no Latino U.S. Representatives holding office in 2000 had been elected from majority-white districts.

Prior to the 1996 elections, the only black candidate in this century to win a seat in Congress from a majority white district in the deep South states of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas was Andrew Young. He was elected in 1972 from the Fifth District in metropolitan Atlanta, in which blacks were 44% of the population. A pattern of minority office holding similar to that in Congress exists for southern state legislatures. Throughout the 1970s and 1980s, only about 1% of majority white districts elected a black candidate. As late as 1988 no blacks were elected from majority white districts in Alabama, Arkansas, Louisiana, Mississippi, or South Carolina.[98] The number of blacks elected to state legislatures increased after the 1990 redistricting, but the increase was the result of the increase in the number of majority black districts.[99] Prior to 2006, 402 state house and senate black legislators were elected from black majority districts, while 140 Hispanic state legislators were elected from Hispanic majority districts.[100]

Given the persistent patterns of racial bloc voting over time in the South, the destruction of majority-minority districts, whether at the congressional or state and local levels, would inevitably lead to a decline in the number of minority office holders. It is premature to claim that the electorate is suddenly color-blind or that majority-minority districts are no longer necessary to counter the effects of racial bloc voting.

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[91] Joint Center for Political and Economic Studies, NUMBER OF BLACK ELECTED OFFICIALS IN THE UNITED STATES, BY STATE AND OFFICE, (Jan 1998).

[92] *See* Lisa Handley & Bernard Grofman, *The Impact of the Voting Rights Act on Minority Representation: Black Officeholding in Southern State Legislatures and Congressional Delegations*, *in* QUIET REVOLUTION IN THE SOUTH 335 (Chandler Davidson & Bernard Grofman eds., 1994) ("the increase in the number of blacks elected to office in the South is a product of the increase in the number of majority-black districts").

[93] National Commission on the Voting Rights Act, Lawyer's Committee for Civil Rights Under Law, PROTECTING MINORITY VOTERS: THE VOTING RIGHTS ACT AT WORK, 1982-2005 37 (2006). The National Commission on the Voting Rights Act is a private non-partisan Commission organized in 2005 to determine the extent of discrimination in voting since 1982.

[94] U.S. Census Bureau, STATISTICAL ABSTRACT OF THE UNITED STATES: 2010 (129th ed. 2009).REDISTRICTING MANUAL

[95] *Id.*

[96] David Bositis, *The Persistence of Racially Polarized Voting in the 1996 Elections*, Voting Rights Review 5 (1997).

[97] National Commission on the Voting Rights Act, at 37, *supra* n.109.

[98] Lisa Handley & Bernard Grofman, *The Impact of the Voting Rights Act on Minority Representation: Black Officeholding in Southern State Legislatures and Congressional Delegations*, *in* QUIET REVOLUTION IN THE SOUTH 336-37 (Chandler Davidson & Bernard Grofman eds., 1994).

[99] David Bositis, Joint Center for Political and Economic Studies, REDISTRICTING AND REPRESENTATION: THE CREATION OF MAJORITY AND MINORITY DISTRICTS AND THE EVOLVING PARTY SYSTEM IN THE SOUTH 46 (1995).

[100] *See* David Lublin, *Redistricting in the 2000s*, (American University 2006). http://www.american.edu/dlublin/redistricting/index.html.

Q: Is there any way to avoid a Shaw/Miller challenge?

A: Probably not, but during the past decade there was a notable decrease in *Shaw/Miller* voting rights cases. However, there will always be voters who are disgruntled over being put in a majority-minority district and who will be willing to go to court to challenge the plan. But there are things a legislative body can do to defeat a *Shaw/Miller* challenge if one is brought. They include: drawing districts that are reasonably compact; observing traditional redistricting principles; and establishing a record showing that the minority community has common interests, needs, and concerns.

A jurisdiction can also draw majority-minority districts if it has a reasonable basis in evidence for avoiding a Section 2 violation. That evidence would consist of the factors identified in *Gingles* and the legislative history of Section 2: geographic compactness; political cohesion; legally significant white bloc voting; a history of discrimination; the use of devices that enhance the opportunity for discrimination, such as majority vote requirements or anti-single shot provisions; whether the minority bears the effects of discrimination in such areas as education, employment and health, which hinders its ability to participate effectively in the political process; whether political campaigns have been characterized by overt or subtle racial appeals; and the extent to which minorities have been elected to public office in the jurisdiction. A jurisdiction should make it clear, moreover, that it considered these factors *at the time* it adopted its redistricting plan. After-the-fact attempts to establish a basis in evidence for complying with Section 2 might be dismissed as being unrelated to the decision making process.

Q: Are minorities better off influencing the election of white candidates, rather than electing minority candidates whom they might prefer?

A: When it amended Section 2 of the Voting Rights Act in 1982, Congress provided that the right protected by the statute was the equal right of minorities "to elect" candidates of their choice.[101] As Congress recognized, a system in which the majority can freely elect candidates of its choice but in which minorities can only influence the outcome of elections is not a true democracy. Congress reaffirmed this position when it amended Section 5 of the Voting Rights in 2006 to provide that the statute's purpose "is to protect the ability of [minority] citizens to elect their preferred candidates of choice."[102]

Touting minority influence as a substitute for equal voting power is also paternalistic, for it assumes that minorities are better off being represented by officials (mainly white) chosen from white majority districts. If influence were such a great idea, white voters would certainly promote the creation of as many districts as possible in which they were the minority so that they could maximize their influence over elections. But the white voters who have challenged majority-minority districts would scoff at such a suggestion.

Q: Shouldn't redistricting be color blind?

A: In an ideal world where people didn't vote on the basis of race, perhaps. In the real world, states may and should consider race in redistricting for a variety of reasons—to overcome the effects of prior and continuing discrimination, to comply with the Fourteenth Amendment and the Voting Rights Act, or simply to recognize communities that have a particular racial or ethnic makeup to account for their common, shared interests. The Supreme Court has acknowledged that legislators are always aware of racial information and the relationship between race and voting behavior. Modern technology and more sophisticated census data have also increased access by legislators and the general public to race and electoral behavior information. It is far more honest to discuss and consider race openly than to pretend it is not a factor in reapportionment decision making.

[101] 42 U.S.C. § 1973 (2006).
[102] 42 U.S.C. § 1973 (5)(3)(d).

PARTISAN GERRYMANDERING

Q: Can the party in control enact a plan to limit the political opportunities of another party?

A: In theory, no. The Supreme Court held for the first time in 1986 that a plan which discriminated against a political party could be challenged under the Fourteenth Amendment.[103] Although the Court rejected the plaintiffs' claim, it indicated that a violation could be established by proof of intentional discrimination, an actual discriminatory effect, and that the system would "consistently degrade" the group's influence on the political process as a whole.[104]

Q: Have the courts invalidated many redistricting plans on the basis that they were partisan gerrymanders?

A: No. As a practical matter the standard of proof announced by the Court has proved to be almost impossible to meet. Only one reported case has invalidated an election plan on the basis that it was a partisan gerrymander, a plan involving judicial elections in North Carolina. The case, however, was ultimately dismissed as moot. Claims of partisan gerrymandering in three states—Pennsylvania, Texas, and Georgia—following the 2000 census were dismissed despite conclusive evidence that the redistricting was driven by partisan bias.[105] Four of the Justices who decided those cases concluded that political gerrymandering claims were nonjusticiable.

Understanding Retrogression

(Excerpted from "Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c," Department of Justice, Office of the Assistant Attorney General, Civil Rights Division; Federal Register, Vol. 76, No. 27 (Feb. 9, 2011). http://www.justice.gov/crt/about/vot/sec_5/sec5guidance2011.pdf

THE SCOPE OF SECTION 5 REVIEW

Under Section 5, a covered jurisdiction has the burden of establishing that a proposed redistricting plan "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in [Section 4(f)(2) of the Act]" (i.e., membership in a language minority group defined in the Act).[106] A plan has a discriminatory effect under the statute if, when compared to the benchmark plan, the submitting jurisdiction cannot establish that it does not result in a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[107]

If the proposed redistricting plan is submitted to the Department of Justice for administrative review, and the Attorney General determines that the jurisdiction has failed to show the absence of any discriminatory purpose or retrogressive effect of denying or abridging the right to vote on account of race, color or membership in a language minority group defined in the Act, the Attorney General will interpose an objection. If, in the alternative, the jurisdiction seeks a declaratory judgment from the United States District Court for the District of Columbia, that court will utilize the identical standard to determine whether to grant the request; i.e., whether the jurisdiction has established that the plan is free from discriminatory purpose or retrogressive effect. Absent administrative preclearance from the Attorney General or a successful declaratory judgment action in the district court, the jurisdiction may not implement its proposed redistricting plan.

The Attorney General may not interpose an objection to a redistricting plan on the grounds that it violates the one-person one-vote principle, on the grounds that it violates *Shaw* v. *Reno*,[108] or on the grounds

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[103] Davis v. Bandemer, 478 U.S. 109 (1986).
[104] *Id.* at 132.
[105] Vieth v. Jubelirer, 541 U.S. 267 (2004); League of United Latin American Citizens v. Perry, 548 U.S. 399 (2006); Cox v. Larios, 542 U.S. 947 (2004).
[106] 42 U.S.C 1973c(a)
[107] Beer v. United States, 425 U.S. 125, 141 (1976).
[108] 509 U.S. 630 (1993),

that it violates Section 2 of the Voting Rights Act. The same standard applies in a declaratory judgment action. Therefore, jurisdictions should not regard a determination of compliance with Section 5 as preventing subsequent legal challenges to that plan under other statutes by the Department of Justice or by private plaintiffs.[109]

THE SECTION 5 "BENCHMARK"

As noted, under Section 5, a jurisdiction's proposed redistricting plan is compared to the "benchmark" plan to determine whether the use of the new plan would result in a retrogressive effect. The "benchmark" against which a new plan is compared is the last legally enforceable redistricting plan in force or effect.[110] Generally, the most recent plan to have received Section 5 preclearance or to have been drawn by a Federal court is the last legally enforceable redistricting plan for Section 5 purposes. When a jurisdiction has received Section 5 preclearance for a new redistricting plan, or a Federal court has drawn a new plan and ordered it into effect, that plan replaces the last legally enforceable plan as the Section 5 benchmark. [111]

A plan found to be unconstitutional by a Federal court under the principles of *Shaw* v. *Reno* and its progeny cannot serve as the Section 5 benchmark,[112] and in such circumstances, the benchmark for Section 5 purposes will be the last legally enforceable plan predating the unconstitutional plan. Absent such a finding of unconstitutionality under *Shaw* by a Federal court, the last legally enforceable plan will serve as the benchmark for Section 5 review. Therefore, the question of whether the benchmark plan is constitutional will not be considered during the Department's Section 5 review.

ANALYSIS OF PLANS

As noted above, there are two necessary components to the analysis of whether a proposed redistricting plan meets the Section 5 standard. The first is a determination that the jurisdiction has met its burden of establishing that the plan was adopted free of any discriminatory purpose. The second is a determination that the jurisdiction has met its burden of establishing that the proposed plan will not have a retrogressive effect.

Discriminatory Purpose

Section 5 precludes implementation of a change affecting voting that has the purpose of denying or abridging the right to vote on account of race or color, or membership in a language minority group defined in the Act. The 2006 amendments provide that the term "purpose" in Section 5 includes "any discriminatory purpose," and is not limited to a purpose to retrogress, as was the case after the Supreme Court's decision in *Reno* v. *Bossier Parish* (''*Bossier II*).[113] The Department will examine the circumstances surrounding the submitting authority's adoption of a submitted voting change, such as a redistricting plan, to determine whether direct or circumstantial evidence exists of any discriminatory purpose of denying or abridging the right to vote on account of race or color, or membership in a language minority group defined in the Act.

Direct evidence detailing a discriminatory purpose may be gleaned from the public statements of members of the adopting body or others who may have played a significant role in the process.[114] The Department will also evaluate whether there are instances where the invidious element may be missing, but the underlying motivation is nonetheless intentionally discriminatory. In the *Garza* case, Judge Kozinski provided the clearest example:

> Assume you are an anglo homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that having an integrated neighborhood would lower property values and that you stand

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[109] 42 U.S.C. 1973c(a); 28 CFR 51.49.
[110] Riley v. Kennedy, 553 U.S. 406 (2008); 28 CFR 51.54(b)(1).
[111] McDaniel v. Sanchez, 452 U.S. 130 (1981); Texas v. United States, 785 F. Supp. 201 (D.D.C. 1992); Mississippi v. Smith, 541 F. Supp. 1329, 1333 (D.D.C. 1982), appeal dismissed, 461 U.S. 912 (1983).
[112] Abrams v. Johnson, 521 U.S. 74 (1997)
[113] Reno v. Bossier Parish (''Bossier II), 528 U.S. 320 (2000).
[114] Busbee v. Smith, 549 F. Supp. 494, 508 (D.D.C. 1982), *aff'd,* 459 U.S. 1166 (1983).

> to lose a lot of money on your home. On the basis of that belief, you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward minorities don't matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood.[115]

In determining whether there is sufficient circumstantial evidence to conclude that the jurisdiction has not established the absence of the prohibited discriminatory purpose, the Attorney General will be guided by the Supreme Court's illustrative, but not exhaustive, list of those "subjects for proper inquiry in determining whether racially discriminatory intent existed," outlined in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*[116] In that case, the Court, noting that such an undertaking presupposes a "sensitive inquiry," identified certain areas to be reviewed in making this determination:

> (1) The impact of the decision; (2) the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; (3) the sequence of events leading up to the decision; (4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and (5) contemporaneous statements and viewpoints held by the decision-makers.[117]

The single fact that a jurisdiction's proposed redistricting plan does not contain the maximum possible number of districts in which minority group members are a majority of the population or have the ability to elect candidates of choice to office, does not mandate that the Attorney General interpose an objection based on a failure to demonstrate the absence of a discriminatory purpose. Rather, the Attorney General will base the determination on a review of the plan in its entirety.

Retrogressive Effect

An analysis of whether the jurisdiction has met its burden of establishing that the proposed plan would not result in a discriminatory or "retrogressive" effect starts with a basic comparison of the benchmark and proposed plans at issue, using updated census data in each. Thus, the Voting Section staff loads the boundaries of the benchmark and proposed plans into the Civil Rights Division's geographic information system [GIS]. Population data are then calculated for each district in the benchmark and the proposed plans using the most recent decennial census data.

A proposed plan is retrogressive under Section 5 if its net effect would be to reduce minority voters' "effective exercise of the electoral franchise" when compared to the benchmark plan.[118] In 2006, Congress clarified that this means the jurisdiction must establish that its proposed redistricting plan will not have the effect of "diminishing the ability of any citizens of the United States" because of race, color, or membership in a language minority group defined in the Act, "to elect their preferred candidate of choice."[119] In analyzing redistricting plans, the Department will follow the congressional directive of ensuring that the ability of such citizens to elect their preferred candidates of choice is protected. That ability to elect either exists or it does not in any particular circumstance.

In determining whether the ability to elect exists in the benchmark plan and whether it continues in the proposed plan, the Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment. Rather, in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district. As noted above, census data alone may not provide sufficient indicia of electoral behavior to make the requisite determination. Circumstances, such as differing rates of electoral participation within discrete portions of a population, may impact on the ability of voters to elect candidates of choice, even if the overall demographic data show no significant change.

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[115] Garza and United States v. County of Los Angeles, 918 F.2d 763, 778 n.1 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part), *cert. denied,* 498 U.S. 1028 (1991).
[116] Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 268 (1977).
[117] *Id.* at 266–68.
[118] Beer v. United States*,* 425 U.S. at 141.
[119] 42 U.S.C. 1973c(b) & (d).

Although comparison of the census population of districts in the benchmark and proposed plans is the important starting point of any Section 5 analysis, additional demographic and election data in the submission is often helpful in making the requisite Section 5 determination.[120] For example, census population data may not reflect significant differences in group voting behavior. Therefore, election history and voting patterns within the jurisdiction, voter registration and turnout information, and other similar information are very important to an assessment of the actual effect of a redistricting plan.

The Section 5 Procedures contain the factors that the courts have considered in deciding whether or not a redistricting plan complies with Section 5. These factors include whether minority voting strength is reduced by the proposed redistricting; whether minority concentrations are fragmented among different districts; whether minorities are over concentrated in one or more districts; whether alternative plans satisfying the jurisdiction's legitimate governmental interests exist, and whether they were considered; whether the proposed plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and, whether the plan is inconsistent with the jurisdiction's stated redistricting standards.[121]

ALTERNATIVES TO RETROGRESSIVE PLANS

There may be circumstances in which the jurisdiction asserts that, because of shifts in population or other significant changes since the last redistricting (*e.g.*, residential segregation and demographic distribution of the population within the jurisdiction, the physical geography of the jurisdiction, the jurisdiction's historical redistricting practices, political boundaries, such as cities or counties, and/or state redistricting requirements), retrogression is unavoidable. In those circumstances, the submitting jurisdiction seeking preclearance of such a plan bears the burden of demonstrating that a less-retrogressive plan cannot reasonably be drawn.

In considering whether less-retrogressive alternative plans are available, the Department of Justice looks to plans that were actually considered or drawn by the submitting jurisdiction, as well as alternative plans presented or made known to the submitting jurisdiction by interested citizens or others. In addition, the Department may develop illustrative alternative plans for use in its analysis, taking into consideration the jurisdiction's redistricting principles. If it is determined that a reasonable alternative plan exists that is non-retrogressive or less retrogressive than the submitted plan, the Attorney General will interpose an objection.

Preventing retrogression under Section 5 does not require jurisdictions to violate the one-person, one-vote principle.[122] Similarly, preventing retrogression under Section 5 does not require jurisdictions to violate *Shaw* v. *Reno* and related cases. The one-person, one-vote issue arises most commonly where substantial demographic changes have occurred in some, but not all, parts of a jurisdiction. Generally, a plan for congressional redistricting that would require a greater overall population deviation than the submitted plan is not considered a reasonable alternative by the Department. For state legislative and local redistricting, a plan that would require significantly greater overall population deviations is not considered a reasonable alternative.

In assessing whether a less retrogressive plan can reasonably be drawn, the geographic compactness of a jurisdiction's minority population will be a factor in the Department's analysis. This analysis will include a review of the submitting jurisdiction's historical redistricting practices and district configurations to determine whether the alternative plan would (a) abandon those practices and (b) require highly unusual features to link together widely separated minority concentrations. At the same time, compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria. For example, criteria that require the jurisdiction to make the least possible change to existing district boundaries, to follow county, city, or precinct boundaries, protect incumbents, preserve partisan balance, or in some cases, require a certain level of compactness of district boundaries may need to give way to some degree to avoid retrogression. In evaluating alternative or illustrative plans, the Department of Justice relies upon plans that make the least departure from a jurisdiction's stated redistricting criteria needed to prevent retrogression.

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[120] 28 CFR 51.28(a).
[121] 28 CFR 51.56–59.
[122] 52 FR 488 (Jan. 6, 1987).

Who to Contact for Help or for More Information

Virginia Organizations

American Civil Liberties Union of Virginia
530 East Main Street, Suite 310
Richmond, VA 23219
Tel: (804) 644-8080
acluva@acluva.org

Virginia State Conference, NAACP
P.O. Box 27212
Richmond, VA 23261
Tel: (804) 321-5678

National Organizations

Advancement Project
1220 L. Street, NW, Suite 850
Washington, DC 20005
www.advancementproject.org
Tel: (202) 728-9557

American Civil Liberties Union (Southern Regional Office)
230 Peachtree Street, NW, Suite 1440
Atlanta, GA 30303
www.aclu.org/votingrights
Tel: (404) 523-2721

Asian American Legal Defense and Education Fund
99 Hudson Street, 12th Floor
New York, NY 10013
http://aaldef.org
Tel: (212)966-5932
votingrights@aaldef.org

Brennan Center for Justice at NYU School of Law
161 Avenue of the Americas
New York, NY 10013
http://www.brennancenter.org
Tel: (212)998-6730

Latino Justice PRLDEF
99 Hudson Street, 14th Floor
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http://latinojustice.org
Tel: (212)219-3360

Lawyers Committee for Civil Rights Under Law
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